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Regulation on the Central Communication Port

Abstract: In the article the author presents the regulations from the act of 10th May 2018 about Central Communication Port. Author focuses on the provisions of this law and its place in the legal system, emphasizing the elements which were not well defined in the act's text. He describes the regulations of the act that are related to the organization of the public administration which carries out the investment, and other regulations that are also related to the facilities location, management, real estate trading and other formalities connected with Port's construction.

Keywords: Regulation; Central Communication Port

Introduction

In studies prepared in the nineties of the previous century for Polish administration by foreign, renowned expert centers from Japan, Western Europe, and America, we find opinions that Central Europe is waiting for a new intercontinental airport. During the last quarter of a century, many Polish studies, analyzes and expert opinions were drawn up, aiming at similar conclusions, underlining that this port should enrich Poland. Referring to this rich literature from many years ago, in a significant part outdated, there is no justification today unless someone wants post factum to assess the accuracy of predictions and forecasts. We should focus on what is today and what is to happen in the future. Roma locuta, causa finita - the decision of the highest authorities of the Republic of Poland has been made that the Central Communication Port will be established and the discussion on the purposefulness of this undertaking will be cut through; only the future will be demonstrated or definitively. Referring to the present state of affairs, this article is devoted to the content of the Act of 10 May 2018 on the Central Communication Port (hereinafter simply referred to as the Act). I write about what is in the Act, and what the projectors intentionally omitted. I am also writing about the place of the Act in the system of Polish law. I am disregarding detailed economic and logistical issues related to the planned investment because they would not be worth a short discussion, but rather a comprehensive, interdisciplinary, team book publication. I have no doubt that such books will appear.

The legislative process

Proceedings to pass the Act began with the recommendation of the KERM adopted on March 17, 2017. The Committee then decided to build the Central Communication Port (CPK); earlier, the talk was about a new airport connected to rail and road communication networks. One month later, on April 27, 2017, the Council of Ministers issued a regulation on the establishment of a Government representative for CPK; On 9 May last year, such a proxy - Mikołaj Wild - was appointed and proceeded to the initial program work. November 7, 2017. By resolution No. 173/2017, the Government accepted the concept of preparation and implementation of the Port Solidarność investment - Central Communication Port for the Republic of Poland.

The Concept prepared by the Representative assumes remodeling the directions of the

State's transport policy in order to base it on the so-called hubs and spokes (Hub & Spoke). In this system, the CPK will play a central role as a reference point for the development of other basic transport investments (road, rail, and airport). It is important that we be aware of the importance of this revolutionary concept; the present state transport system (in the networked and infrastructural sense) has been shaped for centuries and spontaneous social and economic processes have led to, among others, to the fact that the capital city of Warsaw became the means of gravitation of the infrastructure. After all, since the capital city diameter, the design of a railway timetable has traditionally started today. Meanwhile, when planning the construction of the CPK, it is planned to transfer this transport center of gravity of the Republic to the south-west and adapt to its new location the network of connections within the country.

The program works led to the conclusion that the project cannot be implemented without changes at the statutory level. The Government Plenipotentiary for CPK, by designing the Act, recognized that under the current legal situation, it would not be possible to ensure an appropriate level of coordination without the use of specific instruments, because the lack of legal solutions ordering and improving the implementation process is a threat to the success of the actions taken.

This resulted in the draft law, 27 April 2018, addressed by the Prime Minister to the Sejm of the Republic of Poland (Sejm print No. 2473). On May 10, the Sejm adopted the Act, and the Senate accepted it without amendment on May 16. The project ran through parliament in less than a month.

The Act is to be a formal basis for the implementation of the Central Communication Port, accompanying investments, creating a transport system based on the central location of the CPK, and other tasks, including investment (also revitalization), included in the executive program in relation to the Act.

The title does not fully reflect the content of the Act, focusing on selected problems; on the competence of the Government Plenipotentiary for the Central Communication Port, on the tasks of the special purpose vehicle created for the purpose of the program, on expropriations, compensations, reports, and facilitation regarding the investment process. The act does not refer to CPK operational issues, although they may also require formal regulation at the statutory level. There are also no regulations regarding the financing of the project. The location of the CPK was also not determined. In general - the Act does not cover all issues related to CPK. It is also interesting that the subject matter of the Act has not been decided in its content. In addition to the basic Investment - defined as the construction of the CPK along with the facilities and facilities necessary for its operation, in particular - necessary for air traffic service - the Act also includes Associate Investments, i.e. public-purpose investments specified in the list issued by the Council of Ministers in the form of a regulation. In other words, it is the Government, the executive act, that determines the scope of specific provisions of the Act. An insightful reading of the provisions of Section IV of the Act, relating to the Accompanying Investments, leads to the conclusion that this ordinance of the Council of Ministers may include a special regime of facilities throughout the country. The provision requires only that the accompanying investments are important to ensure the proper functioning of the Central Communication Port, the development of the national transport and transmission system as well as the development and integration of agglomerations associated with the investment. The Government's decision taken on the basis of this authorization may lead to the range of application of the Act being surprisingly broad. Bringing the whole thing to an unlikely paradox, it can be concluded that in principle any transport investment in Poland will in future be eligible as an Accompanying Investment of CPK within the meaning of the Act!! However, it should be stipulated that the List of Accompanying Investments is not the same as specifying a special area (see further explanation in this article), where

simplifications in the area of investment law are in force.

Government Plenipotentiary for CPK

The Act is dominated by numerous specific provisions derogating from the generally applicable investment law (in a broad sense). However, before I lean over them, I want to draw attention to the special meaning of the provisions of Chapter II, Chapter 1 of the Act. Here is the Government Plenipotentiary for the construction of the CPK, until now authorized only by a government regulation, which at any time could have eliminated this office, received the statutory basis of operation. The liquidation of the CPK plenipotentiary's office will, therefore, require amendment of the Act; it will be more difficult to abolish the office of the plenipotentiary than to remove the office of the minister of infrastructure and, for example, entrust the affairs of transport to the minister of culture (an attributing regulation is enough for this). The CPK Representative will be appointed by the Prime Minister but will be placed as one of the deputies (secretary or undersecretary of state) in the office of the minister responsible for transport. Thanks to such a procedure, he will gain significant independence (as appointed by the head of government) but also the possibility of using the department's executive apparatus (the Act provides that the service of the government's representative for CPK is provided by the minister responsible for transport).

Additional substantive support of the attorney will be obtained in the special purpose vehicle created by the Prime Minister in order to ensure the preparation and implementation of investments as well as the coordination and control of project implementation. The company will be created with share capital no less than PLN 10 million, paid from the state budget. This is not the end of regulations determining the special position of the government's representative for CPK. The Act indicated that the minister responsible for transport will perform his tasks in relation to the Polish Air Navigation Services Agency, the State Enterprise "Port Lotnicze" and supervision over the President of the Civil Aviation Office always and exclusively through an attorney. The functions indicated here constitute a significant part of the constitutional competence of the minister competent for transport, who - in the face of the subordination of the President of the Office of Rail Transport to the Prime Minister - also has limited tools in relation to the railway. What's more, projects of strategic changes in government documents in the field of infrastructure, such as the National Railway Program and the Road Construction Program, are to be reviewed by the Plenipotentiary before submitting to the Council of Ministers. It can, therefore, be simplified that launching the implementation of the CPK entails the division of administrative competence in transport between two important central authorities: the minister responsible for transport and the proxy for the construction of the CPK.

Special area

The special area is, according to the theory of administrative law, a territory with special legal regulations. On the basis of the Act on CPK, it will be designated such territory, covered by a special legal regime. The Council of Ministers, by way of a regulation, will indicate municipalities or their parts, in which special principles of real estate management, planning, and spatial development will be used in order to prepare the investment. By issuing this regulation, the Government will take into account the results of spatial, environmental, economic and technical analyzes. In this way, an area necessary to ensure proper investment preparation in a possibly compact manner will be designated.

The Government regulation will set a date for the loss of its power, amounting to a maximum of 2 years from the date of entry into force - and without extension! This is the only time you will be able to use the facilities granted by the Act, unless this period will be

extended by the legislator at the request of the government. With changes in assumptions resulting in fundamental changes in legislation, we are often dealing in transport matters, only to recall from the distant past the statutory (but only for a moment) minimum amount of subsidies for regional transport or contemporary deferring of the full entry into force of the Act on public collective transport.

The special rules provided for in the regulation for the special area include the right of pre-emption of real estate, excluding self-contained residential premises, entitled to the special purpose company established under the Act. The company will be able to purchase and convert real estate for the implementation of CPK. The Government Plenipotentiary will consent to the establishment of limited property rights, a conclusion of lease agreements and lease of land properties of the State Treasury, as well as agreements that allow the implementation of investments on these properties, also investments of a non-constructional nature. Investors participating in the CPK construction program (the special purpose vehicle is to be mentioned above) will be entitled to enter real estate areas in order to carry out tests or measurements necessary for the preparation and implementation of investments, in particular archaeological, geological and natural research. If it is necessary to enter the property of someone else to carry out the tests or measurements, the investor will obtain permission from the voivode to make it available. The regulation also introduces - in relation to the special area in question - the obligation to agree, with the Minister of Transport, on a study of the conditions and directions of spatial development of the commune, a framework study of conditions and directions for spatial development of the metropolitan union and the local spatial development plan.

At the request of the special purpose vehicle, the so-called reservation of the investment area, taking into account, in particular, environmental, spatial, economic and technical analyzes, determining the area necessary to ensure proper investment preparation. The reservation of this area will be made by the voivode in the reservation plan, issued in the form of an ordinance, which is an act of local law. Special rules of real estate management, planning, and spatial development and implementation of public purpose investments that may be established in the investment area reservation plan include, apart from the previously mentioned elements, prohibitions on issuing: building permits, land development, and planning decisions, location decisions, and property division decisions. In the area covered by the reservation plan, it is forbidden to issue location decisions and decisions authorizing the execution of construction works on the basis of special laws regarding the preparation and implementation of investments in rail transport, public roads, public use airports, gas terminal, telecommunications services, and networks, structures flood control facilities, nuclear power facilities, and transmission networks. Irrespective of the prohibitions set out in the booking plan, it is permissible to issue decisions regarding selected types of construction works, for example to monuments, renovations or reconstructions that do not change the functions of buildings. Permits are also allowed for the construction equipment, landscaping structures and connections or other construction works leading to adaptation to the needs of disabled persons, improvement of fire safety or the improvement of sanitary conditions. It will also be free to carry out works aimed at reducing the annual energy demand or costs of obtaining heat, converting the energy source into a renewable source and ensuring telecommunications. The reconstruction that does not change the color of the building object is also allowed and - in the case of buildings - does not increase the building area by more than 5%.

The location of investments provided for in the Regulation may be made contrary to the provisions of the local zoning plan. In this case, the findings of this plan inconsistent with the findings of the decision on the location of the investment do not apply and the local government should correct the plan.

The provisions regarding the location of the Central Communication Port are also specific

to specific provisions introduced specifically for road, rail and air investments. So these are, as it was said at school, exceptions to exceptions. This extraordinary character will force the organs applying the discussed right to extreme diligence because mistakes are not difficult. The Regulation explicitly states that the decision on determining the location of an investment in the CPK area is connected with the issuance of decisions on the basis of special laws relating to the preparation and implementation of a road, rail and airport investments, so-called special act.

The location decision in the area of CPK causes civil law effects, causing the property to be nationalized for compensation. The Act also regulates such compensation in a special way that deviates from the general principles of the law on real estate. What is more, we find in the Act also a chapter devoted to administrative proceedings in the subject matter of the decision on the location of investments and building permits - this chapter introduces a distinction in relation to the general procedures of the Code of Administrative Procedure.

Instead of conclusions

The Central Communication Port is a huge undertaking. There were large investments in Polish transport - the coal-line of the Polish-French Railway Society, the motorway construction program, etc. - however, there has been no attempt to build a new, integrated node of various transport modes of significance and size. The size of the program determines the necessity of its staging, also in the field of legal regulations. It is hardly surprising that the Act devoted to this implementation is currently silent on financial issues and does not clearly indicate the location of the CPK since these issues are not yet decided. We should also not be surprised when the need for revisions of the Act appears as the conceptual work progresses.

Due to the fact that a separate set of investment law provisions was deemed necessary for this project, despite the fact that simplified investment regulations have already been adopted for all types of transport, an important conclusion is emerging. Poland needs a building code. Code, which will not be a duplication of the provisions of the construction law and the law on planning and development. Construction Code, which will definitively break with a bad tradition and allow rational implementation of large and small investments.