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Changes to the law on the Central Communication Port

Abstract: The author presents changes introduced to the regulations concerning the construction of the Central Communication Port. These changes were introduced by the Act on improving the investment process of the Central Communication Port of July 22, 2022. Transformation of the state-owned enterprise "Porty Lotnicze" into a company and contribution of its shares to the company CPK S.A.

Keywords: Airports; Central Airport; Transform; Streamline

Introduction

The subject of the article is the changes in regulations related to the implementation of the investment commonly referred to as the Central Transportation Hub (CTH). I say "commonly," as the investments covered by the Act of May 10, 2018, on the Central Transportation Hub (hereinafter referred to as the CTH Act) [13] go far beyond the realization of a transportation hub planned in the Baranów area, which includes an airport, a railway station, and a road junction. The inspiration for the information and considerations presented below is the Act on Improving the Investment Process for the Central Transportation Hub, adopted on July 22, 2022 [21], which introduces these changes and was published in the Journal of Laws on September 1 of this year under item 1846, hereinafter referred to as the Improvement Act.

Construction of the Central Transportation Hub (CTH)

The construction of the Central Transportation Hub (hereinafter referred to as CTH) has been the subject of numerous articles, including in *Przegląd Komunikacyjny*. Among others, editor Marek Serafin and engineer Ryszard Zaremba addressed programmatic issues of the investment in two articles [10, 11], while Dr. Jakub Kociubiński discussed its financing (subsidy law) [3]. I also wrote about the legal regulation of the project in *Przegląd Komunikacyjny* in 2018 [12], limiting my discussion to a systemic, legislative analysis of the regulations. At the time, I pointed out that "the fact that a separate set of investment law provisions was deemed necessary for this project, even though simplified investment regulations had already been adopted for all types of transport, leads to an important conclusion: Poland needs a construction code." Efforts to develop such a code, undertaken years ago, were unsuccessful, and specific regulations related to the implementation of CTH have just been significantly modified by the Improvement Act. I would add that Tomasz Wardak even dedicated a book to the CTH program [33], addressing the technical, organizational, and economic aspects of the investment.

Changes to the Central Transportation Hub Act

The draft of the Improvement Act [8] was submitted to the Sejm on July 1, 2022, and was referred for its first reading at a plenary session on July 7. The act was reviewed by the Committees on Energy, Climate, and State Assets, as well as on Infrastructure. On July 22, the Sejm adopted the act with 230 votes in favor, 213 against, and 2 abstentions. The Sejm voted again on August 5, rejecting – with 233 votes – the Senate's resolution to oppose the act

[7]. The Senate's negative stance was based on what I consider an overly critical evaluation by the Senate's legislative experts, who assumed the role of an authority competent to rule on the constitutionality of the new law [4].

Before delving into the changes introduced by the Improvement Act [21], let me remind you that the CTH Act [13] had already been amended multiple times before. The history of these amendments is as follows:

1. *Journal of Laws of 2018, item 2089* – publication of the original text of the CTH Act [13].
2. *Journal of Laws of 2019, item 630* – amendment via the Act of February 22, 2019, on the preparation and implementation of strategic investments in the oil sector [22].
3. *Journal of Laws of 2019, item 2020* – amendment through the provisions introducing the Public Procurement Law (Act of September 11, 2019) [14].
4. *Journal of Laws of 2020, item 234* – consolidated text.
5. *Journal of Laws of 2020, item 1378* – amendment via the Act of July 15, 2020, on amendments to the Act on the Principles of Development Policy and certain other acts [17].
6. *Journal of Laws of 2021, item 784* – amendment via the Act of March 30, 2021, on amendments to the Act on the Provision of Environmental Information and its Protection (...) [26].
7. *Journal of Laws of 2021, item 1354* – consolidated text.
8. *Journal of Laws of 2022, item 807* – amendment via the Act of February 9, 2022, on amendments to the Code of Commercial Companies and certain other acts [29].
9. *Journal of Laws of 2022, item 1079* – amendment via the Act of April 28, 2022, on the principles for implementing tasks financed from European funds for the 2021–2027 perspective [25].
10. *Journal of Laws of 2022, item 1390* – amendment via the Act of May 12, 2022, on amendments to the Act on Government Administration Departments and certain other acts [16].

Even before the changes introduced by the Improvement Act [21], the CTH Act [13] had already undergone eight amendments and two consolidated texts. Considering that the CTH Act should essentially serve as a one-time action program, the number of amendments made so far is clearly excessive. Nevertheless, I am recounting here yet another significant modification adopted by Parliament at the government's request.

Content of the Improvement Act and the Commercialization of "Porty Lotnicze"

The Improvement Act [21] is divided into three chapters. The first regulates the transformation of the state enterprise "Porty Lotnicze" (hereinafter abbreviated as PPL) into a single-shareholder company owned by the State Treasury. The second introduces amendments to 26 other laws (including particularly extensive modifications to the Act of May 10, 2018, on the Central Transportation Hub [13]). The third contains transitional, adaptive, and final provisions.

The state enterprise "Porty Lotnicze" (PPL), whose transformation is planned in the first chapter of the Improvement Act, was formally established in 1987 through the transformation of the "Air Traffic and Airport Management Authority," which had been operating as a budgetary unit since 1959 [23]. The purpose of creating PPL was to utilize revenues from airspace usage fees to fund the modernization of aviation infrastructure, which required a change in the management structure (as budgetary units could not independently manage their revenues). PPL became an independent, self-financing organizational unit of the national economy with a structure similar to state enterprises established under the Act of September 25, 1981, on State Enterprises [24].

Due to the lack of adapting amendments to the Act of October 23, 1987—which remained in force until 2017—this structure became outdated, as PPL operated under principles that were largely unchanged since 1987. Meanwhile, the regulations on state enterprises were significantly modified during this period.

The scope of PPL's activities at that time included, among other things:

- Construction, modernization, and operation of transportation airports and ground aviation facilities;
- Construction, expansion, and maintenance of airport terminals and other port infrastructure facilities;
- Provision of aviation services related to the takeoff, landing, and parking of aircraft.

Additionally, PPL was tasked with performing duties delegated by the Minister of Transport (...) in the areas of air traffic management, control, supervision, security, and operations.

It is worth noting that the definition of PPL's tasks included provisions that did not account for the terminology used in other regulations. For example:

- The construction of airports and the construction of airport terminals were treated separately, despite the fact that the latter are components of the former.
- The introduction of a "modernization of construction facilities" category was inconsistent with the terminology of the Building Law, which does not recognize such a term.

This oversight highlights the lack of alignment between PPL's legislative framework and broader legal standards in Poland. The planned transformation of PPL into a commercial entity under the Improvement Act seeks to address these long-standing structural and regulatory issues.

The 1987 PPL Act and Subsequent Attempts at Reform

The 1987 PPL Act was amended only once and in a very minimal scope. Several attempts to prepare more significant, systemic modifications that would account for changes in the legal environment were unsuccessful. For instance, in 1991, during a wave of privatization initiatives, a draft law on the ownership transformation of the state enterprise "Porty Lotnicze" and amendments to the Aviation Law was submitted for interministerial consultations [6]. This shows that serious concepts for the commercialization of PPL were formulated as early as 31 years ago. According to the draft, the Minister of Transport was to transform PPL into a company and separate assets used for air traffic services. This separation was eventually achieved later by other means, through a separate law establishing the Polish Air Navigation Services Agency (PAŻP) [28].

The possibility of delegating functions related to air traffic management, control, supervision, security, and operations to PPL was diminished with the establishment of PAŻP, which, according to Article 3(1) of the Act of December 8, 2006 [28], "ensures continuous, safe, smooth, and efficient air navigation in Polish airspace." PAŻP is a state legal entity based in Warsaw, capable of establishing regional branches. It reports to the Minister of Transport and is supervised by the President of the Civil Aviation Authority regarding aviation tasks, ensuring compliance with EU regulations on the Single European Sky.

Subsequent Efforts to Transform PPL

In 2015, another attempt to transform PPL was undertaken. On March 24, 2015, the government reviewed a draft law on the commercialization of PPL [1]. However, the law enacted two years later, on September 15, 2017, retained the existing form of PPL as a state enterprise operating under special principles while updating its scope of activity (e.g., due to the transfer of air traffic management functions to PAŻP). Under the 2017 Act [19], PPL was

managed by a President and a Supervisory Board (which was limited to advisory functions), effectively eliminating the workers' council, which had previously served as a rudimentary form of employee self-governance. PPL operated independently, on its own account and in its own name, bearing full responsibility for its obligations, like all state legal entities.

Commercialization Under the Improvement Act

The Improvement Act [21], discussed here, provides for the commercialization of the state enterprise "Porty Lotnicze," transforming it into a single-shareholder joint-stock company owned by the State Treasury, operating under the name Polskie Porty Lotnicze Spółka Akcyjna (PPL SA). The commercialization of PPL follows a model similar to that outlined in the Act of August 30, 1996, on Commercialization and Certain Employee Rights [27], and the Act of September 8, 2000, on the Commercialization and Restructuring of the State Enterprise "Polish State Railways" [32]. Selected provisions of the former [27] will also apply to the transformation of PPL in certain aspects.

It is important to clarify that, contrary to some opinions, the commercialization of state enterprises does not constitute universal succession, even though many rights and obligations of PPL as a state enterprise will transfer to PPL SA by operation of law. For instance, real estate will be transferred to PPL SA later by the government's plenipotentiary for CTH. The plenipotentiary, endowed with powers similar to those of a minister, will perform separate legal actions to transfer properties. Under this procedure, real estate that, as of the date the Improvement Act comes into force, was held by PPL through perpetual usufruct, management, or permanent management—or was simply possessed without legal title—will be transferred. The only exceptions are properties belonging to the Ministry of National Defense.

The plenipotentiary will transform PPL into a joint-stock company within six months of the Improvement Act's entry into force [21]. The transformation will involve preparing, on behalf of the State Treasury, a transformation deed, which will substitute for the actions typically preceding the filing of a company registration application in the commercial register in accordance with the Commercial Companies Code [30].

Key Requirements for PPL SA Under the Improvement Act

The Improvement Act [21] establishes specific requirements that PPL SA must fulfill. These include the mandatory inclusion of activities such as:

- Construction, reconstruction, maintenance, and operation of airports, aviation ground facilities, and surrounding airport infrastructure.
- Provision of services related to aircraft takeoff, landing, and parking, as well as other operations involving aircraft, crews, passengers, and cargo, including freight and mail.

These tasks are permanently included in the scope of activities for PPL SA and cannot be removed.

The Act also guarantees employment stability. Employees of the state enterprise PPL will automatically become employees of the newly formed company, while the president of PPL will continue as the president of PPL SA.

The closing balance sheet of PPL will become the opening balance sheet of PPL SA, with the sum of the company's share capital and reserve capital being equal to PPL's foundational and operational funds. This is a standard principle in the commercialization of state enterprises.

Changes Related to CPK SA

The Improvement Act [21] grants the government's plenipotentiary for the Central Transportation Hub (CPK) an additional six months after PPL's transformation to transfer

PPL SA's shares to the special-purpose company CPK SA, increasing its capital. The State Treasury, represented in CPK SA by the plenipotentiary, will hold the shares in the expanded capital. This significantly increases the assets and, presumably, the creditworthiness of CPK SA.

As a result, PPL SA will become a subsidiary or "daughter company" within the Central Transportation Hub holding structure. It is worth noting that this holding structure allows CPK SA to assign tasks to other companies created or acquired by the parent company (CPK). This provision also enables CPK to take control of other infrastructure and transportation companies.

Key Amendments to the CPK Act [13]

The most noteworthy changes introduced by the Improvement Act [21] concern the amendments to the CPK Act [13], surpassing the significance of the adjustments made to other laws. A clear trend emerges to broaden the scope of projects covered by this law and expand the responsibilities of CPK SA.

For example, the statutory definition of an "investment" (Article 2, point 3 [13]) has been expanded to include public roads, power transmission networks, railways, water facilities, and oil pipelines that are spatially and functionally connected to the planned airport. Furthermore, projects implemented under the CPK Act [13] will now encompass social and economic activities.

The responsibilities of CPK SA have also been extended. Under the amendments, CPK SA can:

- Operate within specific geographic areas to make airports available to airlines.
- Develop or manage networks that provide public transport services via rail or automated systems.
- Ensure optimal socio-economic and spatial development around the CPK area.
- Engage in economic activities related to the production and distribution of electricity and heat.

CPK SA's Transformation into a Multidisciplinary Enterprise

Originally created to build the CPK transportation hub, the company is evolving, under the new amendments, into a multidisciplinary enterprise with both commercial and administrative functions. This transformation broadens its mandate beyond constructing and operating transportation infrastructure, turning CPK SA into a versatile entity capable of undertaking a wide range of activities related to infrastructure, energy, public services, and regional development.

Planning and Land Management

In light of the modified definitions [13], it is necessary to distinguish between the primary investment, accompanying investments, and other (remaining) tasks. In the context of the Central Transportation Hub (CPK), the government's representative for CPK assumes a coordinating role in the socio-economic and spatial development. A new, specific planning document is introduced – the strategic location study, which addresses location-related issues for facilities included in the project across the entire country (such as the so-called railway spokes). This study, along with local plans for specific investments that are part of the project, gains a particular and dominant position in the hierarchy of spatial planning acts. This solution references the tradition of special acts, initiated with the toll highways regulations of 1994 (see [2], p. 44).

Meanwhile, the area surrounding the CPK is to be treated as a functional area and a strategic intervention zone as defined by the regulations on the principles of conducting

development policy [31]. This functional area is established indefinitely. It is here that the CPK company will conduct long-term economic activities and administration.

Significant changes have occurred in the section of the CPK Act dedicated to location. The plan for reserving properties for the primary investment has been abolished (it remains only for accompanying investments). Instead, the Council of Ministers is to issue a regulation designating municipalities or parts thereof where special principles of property management, spatial planning and development, and investment implementation will apply. This regulation will also outline special rules for acquiring properties and making them available for environmental studies. Such special areas may be established for more than five years. These decisions will be made regardless of the designation of the CPK surroundings as a special area for an indefinite period. The regulation will take into account the findings of governmental strategic documents, including the strategic location study.

The special rules introduced by the regulation for designated areas may include authorizing the CPK representative to approve the establishment of limited property rights, lease agreements, and rental of State Treasury land, as well as agreements allowing investments on these lands, including non-construction investments. The regulation may also impose prohibitions, such as:

- Issuing building permits,
- Issuing decisions on land use and development for all or selected changes in land use,
- Conducting administrative proceedings and performing technical actions leading to parcel mergers or divisions,
- Separating independent residential units in buildings,
- Changing the use of buildings or their parts,
- Issuing decisions for location or construction works based on special regulations,
- Selling properties.

The possibility of obtaining a "waiver" (permission to violate some of these prohibitions) does not change the fact that areas covered by the Council of Ministers' regulation will be subject to a clearly restrictive regime during its validity, up to five years.

The CPK company will have the right of first refusal on properties, paying prices higher than those determined under general rules in property management laws. It can acquire properties at a price equivalent to their replacement value, even without considering depreciation. While raising the prices paid is a considerate gesture towards the residents of areas covered by the project, it must be noted that properties acquired by the company, even if not used for investment, will increase significantly in value due to proximity to the project. Awareness of this situation negatively affects the outcomes of the voluntary acquisition program, though stakeholders must understand that the next step—after acquisition offers—is the initiation of expropriations for public purposes. The increased price levels are also justified by the fact that real reconstruction of properties at the appraised replacement value, accounting for depreciation, may not be feasible.

The decision establishing the location of a CPK investment may also encompass the location of other objects, facilities, networks, or installations that are spatially and functionally connected to the primary investment, including public roads, drainage systems, conduits, railways, aviation infrastructure, water facilities, and oil pipelines. Properties covered by such a decision will become the property of the CPK company and part of its resources.

In the context of land management principles for properties covered by the CPK project, it is worth recalling that on June 15, 2022, the government submitted to parliament a draft law amending the Land Management Act [9]. This draft aimed to modernize property valuation principles for expropriated properties, regardless of the purpose of expropriation, thus having a broader scope than the streamlining law [21]. The law was passed by the Sejm,

but the Senate proposed its rejection, and the Sejm Infrastructure Committee supported the Senate's proposal [5]. The legislative process had not concluded by mid-November 2022, and we await the final decision from the chamber.

The streamlining law [21] also allows for the organized relocation of entire or partial localities, preceded by dialogue with affected parties. The neutral term "relocation" is used, though, in essence, these are necessary displacements that cannot be avoided in investments covering significant areas.

Among the changes introduced in other laws, most of which are consequences of the new concept for project implementation, I would highlight two interesting adjustments. The first is the extension of the timeframe during which the special airport act [15] can be applied by five years, from 2025 to 2030 (Article 33 of the streamlining law). The second noteworthy change is the allowance for funding projects under the CPK program from the Railway Fund.

Conclusions

In this text, I have presented some solutions introduced by the streamlining law. Discussing all the changes made to the laws would exceed the allowable length for a publication in *Przegląd Komunikacyjny*. Among the amendments made to 15 laws, there are also changes whose connection to CPK is limited. One such incidental amendment is the expansion of building restrictions around airports in aviation law to include areas covered by master plans and promises of permits to establish airports. Unfortunately, the practice of "sneaking in" necessary solutions during larger legislative efforts is a normal part of the legislative process. The streamlining law raises other, more significant observations. From a legislative standpoint, the title "*on streamlining the investment process of the Central Transportation Hub*" is already problematic. It is problematic because it does not reflect the content of the law (e.g., it does not refer to the commercialization of the state enterprise PPL) and uses an evaluative term. Streamlining the investment process of the CPK is undoubtedly the goal of the initiators of the law, but whether this goal will be achieved can only be assessed in the future. Of lesser importance is the lack of a legal definition of the "investment process," a term used in the title.

From a pragmatic and functional perspective, two remarks arise. It seems that such extensive changes should not be introduced during the implementation of the largest contemporary investment program in Poland. Were the actions incorrectly planned when the principal CPK Act was passed? This situation is analogous to the restructuring of PKP (Polish State Railways), which has been carried out since 2000 under a repeatedly amended law. The second remark relates to the significant expansion of the scope of authority granted to the government representative and the special purpose company, as well as the vague distinction between the core investment, accompanying investments, and investments implemented through other procedures, e.g., by PLK SA, GDDKiA, or local government units. There is a concern that disputes will arise between public entities responsible for infrastructure investments due to the unclear division of responsibilities. Perhaps for this reason, the streamlining law further reinforces the previously outlined concept of the CPK's dominant role in relation to other modernization and investment projects concerning transport infrastructure. A practical expression of this dominance is the authority granted to the CPK representative to review, before submission to the government, the National Railway Program and the Road Construction Program. The representative himself is statutorily positioned as a member of the leadership (deputy minister) of the Ministry of Regional Development. Unfortunately, the Ministry of Transport plays a limited role in the most significant transport infrastructure investment.

Source materials

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