

# Co-financing of the Activities of Railway Infrastructure Managers Under the Multi-Annual Program Based on Article 38a of the Polish Law on Railway Transport

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## Summary

The article discusses the issue of changes to the system of financing railway infrastructure managers, which the concepts of a multi-annual program and a multi-annual contract implementing this program have been introduced to. The existing solutions allow the comprehensive co-financing of the operations of infrastructure managers with public funds, unlike the previous solutions, where the focus was only on investment operations. The multi-annual program is also a way to guarantee financing over a longer period of time, being a form of departure from the principle of budget annuality. Thanks to the program and the accompanying multi-annual contract, it is guaranteed that an infrastructure manager will receive public funds; however, its activities have to be in accordance with the contract. A multi-annual contract may also be executed between an infrastructure manager and a local government entity; however, this is not obligatory, and therefore may have a negative impact on regional railway infrastructure. The article also presents the evolution of the solutions concerning the financing of railway infrastructure managers and briefly discusses each of them.

**Keywords:** multi-annual program, multi-annual contract, law on railway transport, infrastructure managers, financing of infrastructure

## 1. Introduction

The condition of railway transport in Poland has been widely discussed for many years and is the subject of many controversies. The lack of proper financing and the resulting low quality of services are the main reservations in this respect [12]. Good infrastructure is one of the key elements of an efficient railway system. Even state-of-the-art rolling stock will not compensate for the deficiencies caused by poor infrastructure, long travel times or even the marginalization of railway transport in certain parts of the country – this is because railway transport, in spite of the comfort of traveling it offers, is still not attractive to consumers who value their time. Poland's accession to the European Union enabled the financing of the railway sector to be increased and resulted in the need to adapt the domestic legal system to EU law. The first step taken in order to harmonize Polish law with EU law was the implementation of Directive 2001/12/WE, which provides railway carriers with non-discriminatory access to infrastructure and repeats the assumptions of previous EU regulations [3],

in particular in terms of the separation between railway transport services and infrastructure management, including the prohibition of transferring funds between the two.

The solutions provided for in the Directive with respect to financing railway infrastructure turned out to be insufficient. Consequently, Directive 2012/34/EU [4] was adopted, which introduced solutions intended to balance the operations of railway infrastructure managers thanks to the funds received from infrastructure users and public funds, on the basis of so-called multi-annual contracts between infrastructure managers and public authorities. After the end of the transitional period of Directive 2012/34/UE establishing a single European railway area, Polish legal regulations should be adjusted to this Directive. The recent amendments to the Polish Railway Transport Act [1] (the "RTA") concerning the financing of railway infrastructure managers, which were introduced by means of the Amendments Act to the Railway Transport Act and Certain Other Acts of 16 November 2016 [25], are intended to implement this Directive (especially by means of the amendments to Article 38a). The in-

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roduction of the concept of a multi-annual program, specifying the method of financing the operations of railway infrastructure managers with public funds, has led to a situation where a multi-annual contract between the state and a railway infrastructure manager concerning the financing of railway infrastructure has grown in importance, thanks to the implementation of comprehensive solutions in this respect. This is because a multi-annual contract can now cover all of the operations of a railway infrastructure manager and not just the operations covering railway lines, which was already possible under Article 38c of the RTA.

The first multi-annual program concerning the operations of infrastructure managers, i.e. the “Assistance in Terms of Financing the Costs of Management of Railway Infrastructure, Including Its Maintenance and Renovations, Until 2023” was adopted on 16 January 2018 by the Polish Council of Ministers and will come into effect in 2019 [16]. The purpose of a multi-annual contract is to increase the efficiency of utilizing funds on the part of the infrastructure manager and ensure stable financing over a longer period of time. Therefore, it should be examined whether the relevant legal regulations allow the purposes of the legislator to be achieved; in particular, whether these regulations can be an effective long-term measure of financing the operations of railway infrastructure managers, both at the national and regional levels.

## 2. The multi-annual program in view of the principle of budget annuality

The principle of budget annuality (introduced in Article 219.1 of the Constitution of the Republic of Poland [6]), which is an element of public finance law, provides that the law on state budget may specify the income and expenses of the state only for a period of one year [7]. If the legislator wishes to guarantee the financing of investment projects that require a major input in terms of funds and time, he incorporates a multi-annual program into the Law on Public Finance. The program is intended to ensure funds for investment projects and the coverage of operating expenses over a period of a few years [10]. According to Article 136.2 of the Public Finance Act [19], “Multi-annual programs are established by the Council of Ministers in order to implement the policies adopted by the Council of Ministers, including in terms of defense and state security ...” [28].<sup>2</sup> From the point of view of the entities carrying out the program, Article 136.4 is also important, as it allows obligations

to be contracted in order to finance, in the particular years, the implementation of the program up to the total amount of the expenses specified for the entire program. Prior to the introduction of this solution, the entities carrying out the program could contract obligations only in accordance with the general principles, i.e. up to the amount of the sums allotted for the implementation of the multi-annual program in the law on the budget for the given year. This resulted in the need to divide the program into stages, which defeated the purpose of multi-annual planning in investment projects.

The 2009 Public Finance Act contained a regulation concerning multi-annual programs, which allowed obligations to be contracted in excess of the limit for the given year, the only requirement being that they do not exceed the limit for the expenses under the program. This systemic solution was also implemented with respect to financing railway infrastructure, where multi-annual programs were introduced in order to co-finance infrastructure managers. The solution in the form of a multi-annual program for railway investment projects was introduced in the Act – Regulations Introducing the 2009 Public Finance Act [27]. The introduction of this solution was a consequence of the implementation of the projects co-financed under the “Operational Program Infrastructure and Environment 2007–2013,” which was one of the main sources of financing railway investment projects thanks to funds from the budget of the European Union [31]. The implementation of a program required a national contribution from the state budget and the Railway Fund, which could not take place without a multi-annual program guaranteeing the continuity of financing of investment projects. Without these funds being guaranteed for a multi-annual period, there was a risk of inability to utilize EU funds from the Cohesion Fund allocated to the railway sector. The “Multi-Annual Program of Railway Investment Projects” allows the co-financing of railway investment projects [14] [15] and is adopted for at least three years. In its original version, it concerned all railway investment projects; however, the main implementor, as defined in Article 136.4 of the Public Finance Act, of multi-annual programs is PKP PLK S.A. and therefore this company is the sole beneficiary of these programs. In 2015, the legislator decided to amend the regulations in terms of the multi-annual program concerning railway investment projects. These amendments introduced the necessary elements of this program, such as adjustment of the program contents to the requirements laid down in Chapter 3 of the Principles of Development Policy Act [22]. They also introduced the additional require-

<sup>2</sup> See with respect to the abolishment of multi-annual investment projects and their transformation into multi-annual programs.

ments, such as the need to attach a list of all investment projects implemented with the use of public funds at the disposal of the minister competent for transport, including specification of the total cost of each of these projects and their allocation to the group of projects financed with specific funds, as well as a list of all sources of financing divided into the years of implementation, as covered by the program, listing the groups of projects financed from specific sources.

The amendments also introduced the necessity of a detailed plan of program implementation being approved by the minister competent for transport, as well as providing that the multi-annual program concerning railway investment projects covers only the railway lines managed by PKP PLK S.A. Additionally, according to Article 38.9 of the RTA, a railway infrastructure manager also has the right to use debt-based forms of financing, such as loans, borrowings, or bond issues, in order to finance the preparation of investment projects and the tasks under the multi-annual program referred to in Article 38c of the RTA. It is also possible to use suretyships and guarantees offered by the State Treasury under special laws, such as the Commercialization, Restructuring, and Privatization of the “Polskie Koleje Państwowe” State Enterprise Act [30]. The introduction of this solution was a result of PKP PLK S.A. having insufficient funds and of a deficit in public finance. The main source of debt financing of the infrastructural investment projects of PKP PLK S.A. have been loans provided by the European Investment Bank [9].<sup>3</sup> This is therefore an additional special regulation concerning the contracting of obligations for the purposes of a multi-annual program of financing railway investment projects, as referred to in Article 38c of the RTA. Unlike the multi-annual program discussed below, this program is not carried out under a multi-annual contract; however, its analysis shows that the legislator’s actions in terms of financing railway infrastructure are evolving.

A wider scope of financing is provided for in the multi-annual program concerning the financing of operations of infrastructure administrators, which is specified in the Strategy for Responsible Development 2020 (with a 2030 perspective) [9] and in the Transport Development Strategy 2020 (with a 2030 perspective) [9] as the key financial instrument supporting the development of railway infrastructure [9]. The difference here mainly concerns the fact that co-financing covers not only railway infrastructure, but all of the operations of an infrastructure manager.

The detailed regulation specifying the relevant elements of the multi-annual program concerning the operations of infrastructure managers is contained in

Article 38a.3 of the RTA. According to this regulation, the program should contain a forecast of the expenses and costs of infrastructure managers, together with the need for public funds resulting from the forecasts of the managers who may apply for co-financing (this issue is discussed in the next section), the goals of the program, the ratios concerning the achievement of these goals, and the system of implementation, monitoring, and evaluation of the program. The principles specifying this method of carrying out the multi-annual program are laid down in Article 38a.5. The basis for the implementation of the program is a multi-annual contract executed between the minister competent for transport and a railway infrastructure manager. In this way, it is the fundamental tool of financing infrastructure managers with public funds. The previously mentioned tasks under Article 38 of the RTA, which are carried out by central authorities or local government entities, have to take into account the provisions of the multi-annual program.

### 3. Responsibility for managing railway infrastructure

The concept of a railway infrastructure manager is defined in Article 4.7 of the RTA: in principle, this is an “entity responsible for managing railway infrastructure.” In turn, railway infrastructure is defined through providing an exhaustive list of its elements in Appendix No. 1 to the Act. For the purpose of this article, a more synthetic definition could be used, according to which railway infrastructure covers railway lines and other buildings, structures, and devices, including the land on which they are erected or installed, located in a railway area and intended for managing the transport of persons and cargo, as well as for maintaining the infrastructure manager’s property necessary for that purpose. In Article 5, the Railway Transport Act also explains the concept of management, defining it as, among others, granting the status of a railway line or a siding to a railway track, maintaining infrastructure, managing the real properties on which infrastructure is located, and building, developing, and modernizing infrastructure. The Polish definition can be compared with the EU definition contained in Article 3.2 of Directive 2012/34/EU: “any body or firm responsible for the operation, maintenance and renewal of railway infrastructure on a network, as well as responsible for participating in its development as determined by the Member State within the framework of its general policy on development and financing of infrastructure.”

<sup>3</sup> See the example of the costs of repayment of a loan and interest.

Consequently, Member States may add more detail to the definition, depending on their transport policy. The main railway infrastructure manager in Poland is PKP Polskie Linie Kolejowe S.A., which owns approx. 96% of the entire railway network [17]. There are 13 other infrastructure managers [17],<sup>4</sup> ten of which operate under a security authorization and three under a security certificate (documents issued by the President of the Railway Transport Office that confirm the given infrastructure manager's rights [11])<sup>5</sup>.

From the point of view of financing railway infrastructure by public authorities on the basis of multi-annual contracts, five infrastructure managers are eligible for this form of assistance. The other infrastructure managers either have not been approved by the Ministry of Infrastructure as eligible for this form of support or have been exempted by the European Commission from the obligation referred to in Article 8.3 of the Directive (drafting of a business plan) and classified as not subject to Article 6 of the RTA since their infrastructure has no strategic importance for the functioning of the railway market [2]. Consequently, they are not covered with the program. The beneficiaries of the said multi-annual program are PKP Polskie Linie Kolejowe S.A., PKP Szybka Kolej Miejska w Trójmieście sp. z o.o., Dolnośląska Służba Dróg i Kolei we Wrocławiu, Euroterminal Sławków sp. z o.o., and CARGOTOR sp. z o.o.<sup>6</sup> It should also be pointed out that PKP Szybka Kolej Miejska w Trójmieście sp. z o.o. is not only an infrastructure manager, but also a railway carrier;<sup>7</sup> however, the multi-annual program covers only the portion of its operations that is related to infrastructure management.

#### 4. Sources of financing railway infrastructure managers and the evolution of solutions in this respect

In order to present a full image of the operations of infrastructure managers, the sources of financing other than multi-annual contracts need to be discussed as well; this will be the focus of this section. The non-public source of financing should be the revenue generated by making infrastructure available to

railway carriers. In fact, this revenue constitutes the majority of the revenue from the operations of Polish infrastructure managers [9]. However, the operating costs of the largest railway infrastructure manager grossly exceed the revenue it generates [9]. In principle, a railway infrastructure manager may charge a fee for the services provided as part of minimum access to railway infrastructure. This fee (the so-called basic fee) is related to train runs and, under Article 33.5 of the RTA, is calculated as the product of the distance covered by the train and the rate specified for covering the distance of one kilometer. The manager may also charge a maneuvering fee related to the maneuvers performed, which constitutes the direct cost of performing these maneuvers. The operations of a railway infrastructure manager should be financed with the funds specified above and state financing should only be used when the costs cannot be covered to a sufficient degree, and even then only with respect to the investment projects listed in Article 38.1 of the RTA.

By juxtaposing the data concerning revenue and costs, one can conclude that the former is sufficient to cover only about 50% of all operating costs [9].<sup>8</sup> This creates a financial gap that needs to be closed with the public funds provided for in the law. This is also regulated in Article 8.4 of Directive 2012/34/EU: "Member States shall ensure that, under normal business conditions and over a reasonable period which shall not exceed a period of five years, the profit and loss account of an infrastructure manager shall at least balance income...".

The use of public funds to finance the operations of an infrastructure manager may create doubts as to whether such actions are in accordance with the legal regulations on public aid. However, taking into account that railway infrastructure managers in fact carry out the competencies of the state in terms of construction, maintenance, and modernization of infrastructure, as well as the fact that this infrastructure is open to all potential users on equal and non-discriminatory rules, it is justified to conclude that public financing of the operations of a railway infrastructure manager, in principle, is not a form of public aid, as defined in EU legal regulations [5]. Considering, however, the need to assess in each individual case

<sup>4</sup> See the list of railway infrastructure managers.

<sup>5</sup> According to the previous legal status.

<sup>6</sup> The situation of two infrastructure managers is more complex, since, according to a decision of the Commission, the infrastructure of PKP Szybka Kolej Miejska w Trójmieście sp. z o.o. and Dolnośląska Służba Dróg i Kolei we Wrocławiu may be excluded from the application of Article 8.3 of Directive 2012/34/EU, which means that these entities do not have to draft a business plan, but are still obliged to share railway infrastructure with other entities and collect fees on this account in accordance with the Directive.

<sup>7</sup> The other entities operating both as infrastructure managers and railway carriers are PKP Linia Hutnicza Szerokotorowa sp. z o.o. and Warszawska Kolej Dojazdowa sp. z o.o., which, however, do not share their infrastructure with other carriers and have been excluded from the program.

<sup>8</sup> See the forecasts for the revenue and the costs of PKP PLK S.A. available there.



whether the given form of assistance constitutes public aid, should co-financing of a railway infrastructure manager be deemed to constitute such aid, the relevant legal regulations on public aid will apply [1].

It should be pointed out that, according to Article 38a.2. of the RTA, in principle, public funds are provided on the basis of a multi-annual program, as defined in the Public Finance Act. In Polish law, the principles of financing the costs related to the maintenance of railway infrastructure and railway investment projects are laid down in Article 38 of the RTA. The general regulation assumes that the costs of infrastructure maintenance should be covered by infrastructure managers using state funds, own funds, the funds of local governments, and/or funds from other sources. As already mentioned, the legislator assumes that state funds are to be used to carry out investment projects, renovations, operation, and maintenance of railway lines that are important exclusively for defense reasons, as well as to cover the costs of investment projects concerning railway lines of state importance [13].<sup>9</sup> *A contrario*, there is no possibility of using public funds to directly finance lines that are not classified as such. However, the legislator is not consistent and, as a result, the multi-annual program referred to in Article 38a also allows the operations of a railway infrastructure manager to be co-financed under a multi-annual contract, also in terms of renovations and the costs concerning lines of local importance. Still, in principle, the costs of investment projects and the costs of maintenance of such lines should be covered by infrastructure managers, even though it is permitted for these costs to be covered by local government entities or by the Railway Fund [29]. The multi-annual program referred to in Article 38c of the RTA allows investment projects of a local nature to be co-financed as well.

Another source of financing infrastructure managers with public funds is the Railway Fund, which was established under the Railway Fund Act (Journal of Laws of 2017, item 510). The Fund does not have a legal personality and is only a separate bank account in the Bank Gospodarstwa Krajowego, which is managed by the Council of Ministers. The funds from the Fund may be allocated on the basis of a contract between an infrastructure manager and the minister competent for transport, in accordance with Article 10 of the Railway Fund Act. These contracts are executed in order to carry out tasks in terms of railway infrastructure renovations and maintenance and railway investment projects, as well as to liquidate railway lines that are no longer necessary. They specify the

terms and conditions of financing from the Fund, in accordance with a separate financing plan drafted by the Bank Gospodarstwa Krajowego, as per the material and financial program of using the Railway Fund, which is adopted by the Council of Ministers in the form of a resolution.

According to Article 9a.2.1.c, the resources from the Fund may be used to implement the multi-annual program referred to in Article 38. This means that the funds assigned to carry out a multi-annual program concerning the operations of a railway infrastructure manager do not have to come directly from the state budget, but may also come from the Railway Fund. This explains the relation between the multi-annual program and the Railway Fund. One of the major sources of financing for the Fund is the fuel fee, 20% of which is transferred to the Fund. In connection with the above, and the fact that these funds are not an element of the state budget, the Fund is a stable source of financing the operations of railway infrastructure managers. An infrastructure manager may receive financing from the Fund for operations that cannot be financed from the fees for using railway infrastructure, provided that he makes at least one railway line available. This is, therefore, the same scope of co-financing possibilities as in the case of a multi-annual contract, as both sources of financing are regulated in Article 38 of the RTA. The tasks of the Fund include gathering funds and financing the preparation and implementation of the construction and redevelopment of railway lines, their renovation and maintenance, the liquidation of unnecessary railway lines, and the ongoing expenses of PKP Polskie Linie Kolejowe S.A. related to the tasks of a railway infrastructure operator. This means that there are two types of tasks: those related to railway infrastructure and those related to the operations of PKP Polskie Linie Kolejowe S.A.

The first area concerns investment in infrastructure through the construction of new railway lines and the modernization of existing ones [8].<sup>10</sup> In turn, the financing of operations covers costs related to the maintenance of infrastructure, depreciation, consumption of materials and energy, external services, remunerations, social security and other benefits, other costs by type, taxes and fees, and other operating and financial costs [9]. Although the funds for infrastructure maintenance are available to all infrastructure managers, only PKP PLK S.A. is eligible for the coverage of ongoing operating expenses. Legal regulations also allow the Fund to indirectly finance an infrastructure manager by means of repaying debts

<sup>9</sup> See the current list of such lines.

<sup>10</sup> See as an example.

or redeeming bonds, the funds raised through which were used to carry out the tasks listed in Article 3 of the Railway Fund Act [31]; in the case of the largest railway infrastructure manager (PKP PLK S.A.), this method may also be used to finance its operations related to managing railway infrastructure [31].

Another possibility is the option of railway infrastructure managers being financed by local government entities. Even though the tasks of a public transport organizer listed in Article 8 of the Public Transport Act [20] do not include proper maintenance of infrastructure, the sole definition of this entity contained in Article 4.1.9 of the Act says that the organizer has to ensure the functioning of public transport in the given area. Without proper and correctly maintained infrastructure, this functioning is impossible. This means that local government entities should participate in the costs of infrastructure maintenance, but are not obliged to so *de lege lata*. The options a local government entity may use in this respect are discussed in the section concerning the multi-annual contract.

It should be pointed out that, as a result of the amendments to the Railway Transport Act of 11 September 2015 [24], infrastructure managers who at the same time are railway carriers are prohibited from transferring public funds between these two types of operations. Additionally, Article 37.2a of the RTA, which was added by the amendments of 16 November 2016, orders infrastructure managers to develop a method of allocating the costs for the particular types of services that are offered to railway carriers. The same amendments imposed on railway infrastructure operators the obligation to maintain a public register of assets (Article 37a of the RTA).

The contract of co-financing a railway infrastructure manager was regulated for the first time in 2005, in the Amendments Act to the Railway Transport Act and to Certain Other Acts of 16 December 2005 [23]. This regulation was completely different from the current one. First of all, the contract could be executed only in order to co-finance the costs of renovation and maintenance of railway infrastructure and decrease the fees for the infrastructure made available to other entities. The funds for that purpose could come from the Railway Fund or from the state budget, and the contract itself had to be executed for a period of at least three years. The scope of the contract was much narrower than today. As Article 38a, in the wording discussed above, was added to the Railway Transport Act, the Railway Fund was also created as a source of funds for the performance of the contract (although this was not the only purpose of the Fund). The first multi-annual program concerning the investment operations of a railway infrastructure manager was provided for in the Act – Regulations Introducing the

Public Finance Act, which added Article 38c to the Railway Transport Act. This Article concerns railway investment projects and was discussed in the section on multi-annual programs.

The need to adapt Polish legal regulations to the requirements of Directive 2012/34/EU, the lack of a systemic approach to the financing of railway infrastructure, and the *ad hoc* solutions that did not result in any significant improvement of the situation, forced [17] the legislator to amend the regulations yet again, this time by means of the Amendments Act to the Railway Transport Act and to Certain Other Acts of 16 November 2016.

## 5. Multi-annual contract

The program is carried out on the basis of a contract between the minister competent for transport and the given railway infrastructure manager. The main reason for the permissibility of such a contract is the fact that the infrastructure manager is unable to finance its operations with its own funds. This means a situation where the operations of the infrastructure manager cannot be balanced only with its revenue, but it needs additional support in the form of public funds. The contract is executed for the term of the program because its purpose is to provide financing over a period of at least five years, i.e. the term of the program. The contract is a basis for transferring public funds to the infrastructure manager and, at the same time, it is a guarantee of providing the funds specified in it and of the infrastructure manager carrying out the program [9]. Since the multi-annual contract is the basic form of providing public funds to railway infrastructure managers, and considering the fact that it covers all of their operations and is relatively long term, it is justified to say that it now has a completely new, greater meaning in the legal system.

The multi-annual contract should be governed by civil law regulations. This is confirmed by the lack of special regulations concerning the contract in the RTA and by the existence of a systemic solution for relationships between a public entity and a recipient of public funds, which is specified in Article 139.1 of the Public Procurement Law [26]. Consequently, in the event of the non-performance or improper performance of the contract, claims should be made following the procedure specified in Article 471 of the Civil Code. This is a basis for the aggrieved entity, e.g. an infrastructure manager that was provided with an incorrect amount of funds, to make claims. It also reinforces the feeling of there being a guarantee of contract performance, since the parties may make claims vis-a-vis each other. Another assurance guaranteeing the transfer of funds is the obligation of the minister

competent for transport to submit the relevant report to the Council of Ministers with respect to the performance of the multi-annual contract.

However, statutory regulations contain a requirement which, if not met, makes it impossible to execute the contract: the railway infrastructure manager has to carry out the obligation specified in Chapter 6 of the RTA, i.e. the obligation to make at least one railway line available. As already mentioned above, managers failing to meet this requirement have been excluded from the program.

The contract has to specify the detailed terms and conditions of using public funds to finance the infrastructure manager's operations it is unable to finance with its own funds. In connection with that, the legislator has introduced certain elements that have to be covered by the contract and which are regulated in Annex V to Directive 2012/34/EU and in Appendix No. 3 to the Railway Transport Act. In particular, the contract has to contain provisions specifying the railway infrastructure it covers, including the terms of managing this infrastructure, and the amount of financing, including the principles of its provision. These contractual provisions are a point of departure that lay down the fundamental obligations of the parties, since they specify the amount of funds to be provided and a detailed list of what they may be spent on. The main elements listed in Appendix No. 3 to the Railway Transport Act also include user-oriented performance targets, including in particular reliability and punctuality expectations, improvement of safety levels, environmental protection, the principles of determining the scope of the actions related to infrastructure maintenance and renovation, and operational limitations related to the implementation of the investment project. These targets should be expressed in the form of ratios, the values of which should change as a result of contract performance. These ratios, which refer to the entire railway infrastructure, have already been included in the multi-annual program as program objectives [9];<sup>11</sup> however, they should be specified in more detail in the contract with the infrastructure manager. An example here could be the expected line speed, defined as the average speed of train journeys listed in the timetable [9], which has been adopted as a factor determining the fundamental purpose of the program, i.e. the improvement of the infrastructure managers' offer addressed to railway carriers.

Contracts of this type naturally also have to specify liquidated damages and contain clauses concerning reporting and the provision of information in terms of contract performance, as well as the principles and procedure of controlling contract performance. In ac-

cordance with Section 13 of Appendix No. 3, there should also be a renegotiation clause allowing remedial activities if contractual obligations are violated, as well as the terms and conditions on which the contract may be prematurely terminated.

Infrastructure managers and the minister competent for transport have to provide the applicants, i.e. the entities interested in achieving railway network capacity, in particular railway carriers, who most often are public railway transport organizers, with the possibility of expressing their opinions on the contents of the contract, except for the provisions concerning the infrastructure managers' business secrets. A similar need to consider business secrets appears in the case of the obligation to publish the contract on the infrastructure manager's website, which has to take place within one month of its execution.

According to Article 38b of the RTA, a multi-annual contract does not have to be executed only between the minister competent for transport and a railway infrastructure manager. A local government entity may execute such a contract in a subsidiary capacity. The main difference between a contract executed with a central authority and a contract executed with a local government entity is the lack of obligation to include the latter in the multi-annual program. This is because, pursuant to Article 38b of the RTA, only the provisions of Articles 38a.5–38.9 of the RTA apply accordingly. However, the contract has to be included in the budget of the local government entity. This difference is a result of different rules in terms of public finance applicable to central authorities and local government entities. As mentioned above, central authorities are not responsible for financing all railway infrastructure in Poland; therefore, if local government entities want to fulfill their task of ensuring the proper functioning of regional railway public transport, they should guarantee the correct level of service in regional railway transport that is of public benefit. This means the need to shape the supply of services, not only in terms of creating new railway operators, but also maintaining infrastructure in a proper condition. However, a multi-annual contract is an optional tool for local government entities, which may have a negative impact on the condition of infrastructure in the future.

## 6. Conclusions

The establishment of the multi-annual program intended to co-finance railway infrastructure management and of the accompanying multi-annual contract

<sup>11</sup> See for more about all targets and their ratios.

should definitely be evaluated as positive. The previous solutions were incompatible with projects requiring much time and capital, such as projects in terms of the maintenance of and investment in railway infrastructure. The new regulation corresponds with these needs, creating a solution with the purpose of ensuring proper financing of infrastructure managers for a period of at least five years. The use of contracts to achieve this is intended to guarantee the efficient transfer of funds and, if obligations are improperly performed, offers a basis for liability. The required contractual provisions discussed above and the fact that public authorities establish multi-annual programs allow certain requirements and standards to be created concerning the operations of infrastructure managers, which have to be complied with as a result of contract execution. However, the fact that local government entities do not have to execute multi-annual contracts may have a negative impact on regional railway infrastructure. Therefore, the proper involvement of local government entities in the process of executing multi-annual contracts with infrastructure managers should be ensured, although this may be difficult due to the limited funds at the disposal of local governments. Still, without their participation, it will be impossible to improve the condition of regional railway infrastructure, i.e. the infrastructure that is often most neglected and whose maintenance and development are most necessary from the point of view of local communities.

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