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Transmission corridors – selected problems

Bill on transmission corridors

Transmission corridors are the subject of the bill prepared in 2012. The bill on *transmission corridors*¹ determine the rules of (1) establishing a corridor for new transmission facilities, (2) granting permission for the construction of transmission facilities, (3) determining a transmission corridor for existing transmission facilities, (4) locating further transmission equipment and other transmission facilities in the corridor, (5) establishing transmission easement and land management in the area of the transmission corridor, (6) determining and awarding compensation for the transmission easement encumbrance of real estate.

In 2012 the bill was one of the priorities in the energy sector – not including the amendment of the Energy Law, the work on the bill on renewable energy sources and work on the project of the gas law. The intention of the Act on transmission corridors is to organize the legal system in order to ensure effective development of transmission infrastructure in Poland. The problem with the electricity infrastructure should be considered in a broader context, which means with its poor condition, increasing demand for energy, the need to diversify the energy structure in Poland. The problem with infrastructure will continue to grow due to the need to develop renewable energy sources and the planned construction of a nuclear power plant. Current state of transmission lines threatens the development of renewable energy to the level required by the European Union. However, in the case of the plan to build a nuclear power plant, it will be necessary to condense the grid in areas of poor infrastructure and ensure proper grid balancing.

¹ Draft bill on *transmission corridors* of 19 January 2012 (Version 4).

Despite the government assurances that the bill is not yet another "spec Act", we should be inclined towards the interpretation that the new provisions and *de facto* the new institution of transmission easement on the basis of administrative law, is a tool that is to speed up the current legal procedures to enhance the interference in the property rights of citizens. In contrast to the previous legal solutions, transmission easement on the basis of administrative law is to strengthen the position of the entities implementing investments in the public interest; however, it will be verified in practice how widely the public interest will be understood in the context of this type of easement.

Another problem will be the way of calculating compensation/consideration in connection with the establishment of the easement, which was criticized by the Polish Federation of Valuers' Associations (PFVA). PFVA indicates that in the law there is used the concept of "core values", which may not necessarily mean the market value of the property, which poses a significant threat to the interests of the citizen/owner. This can result in abnormally low compensation/consideration granted to the property owners.²

There is no doubt, however, that, due to the economic interest and the public interest, which should be guided by the central government and local government, the records of the bill will facilitate: (1) investment process, (2) procedures, and (3) will regulate the previous problems associated with similar investments.

Corridor transmission and transmission facilities

Article 3, point 1 of the bill introduces the definition of a transmission corridor, which is to mean "legally separated ground necessary for foundation and proper operation of transmission facilities." Thus, we deal with an attempt made by the legislature to determine what can be called an operational (technical) area. In addition, the legislature introduced a distinction between local transmission corridors (county area) and supra-local transmission corridors (area of two or more counties).

² *Investor's interest - owner's expense* (Position PFVA February 8, 2012), in: [http://www.pfva.com.pl/sites/default/files/Stanowisko% 20PFVSRM% 202012-02-08.pdf](http://www.pfva.com.pl/sites/default/files/Stanowisko%20PFVSRM%202012-02-08.pdf) [access: 15 May 2012].

It is interesting to introduce by the legislature another definition of "transmission device" together with the existing definition in art. 49 CC (Civil Code). Article 3, point 5 of the bill states that the device is: "placed under the ground, on the ground or above the ground drainage lines, technical equipment and facilities to supply or discharge of electricity, natural gases, including carbon dioxide, heat, oil and petroleum products, water, sewage collection and fluids necessary for the construction and operation of underground non-tank storage systems for natural gas, crude oil and petroleum products, with the installations, equipment and facilities necessary for their proper use. " In comparison with the record of the Civil Code we deal with a broader catalogue of various types of equipment, moreover, there was a new term introduced to the definition - a "drainage line." However, it is clear that the provision of art. 49 CC was the basis for a broader interpretation, hence greater flexibility. In addition, the legislature has identified an additional category of "an above ground object", which means: "an item, which is a part of a above ground or underground transmission equipment located on or above the land in a way that prevents the use of the land beneath the object for any other purpose than transmission or distribution" (article 3, point 10). Specification of this element is likely to be a solution to the problem which occurred earlier in jurisdiction, and concerned the scope of elements belonging to the transmission device.

Establishing a transmission easement in the transmission corridor

The basis for the isolation of a new type of transmission easement under the bill on transmission corridors was the inefficiency of the regulations and the insufficiency of the legal system and institutions for the provision of public services or services of economic interest. The solutions of the bill introduce a considerable confusion in the legal system, because it is not known whether special arrangements, characteristic for transmission easement under the bill is *lex specialis* or perhaps a new kind of transmission easement. If this is a new kind of transmission easement then we deal with a situation in which the institution of transmission easement will operate on the basis of civil law and administrative law.

The bill specifies that the date on which the decision to establish a transmission corridor becomes final, the property in the corridor will be charged with transmission easement (article 40). The legislature clarified in art. 40, paragraph 2, points 1 - 3 the range of competences of the transmission undertaking to actively perform the easement, which includes: (1) foundation of the transmission equipment, (2) maintenance, operation, servicing and repair, fault recovery,

remodelling or rebuilding a transmission device, (3) entrance or exit (including heavy equipment) to perform the activities referred to in point 2. Compared to the provisions of the Civil Code, we deal with an exhaustive list of activities. In the case of civil law a significant part of activities concerning the easement is based on case law.



Establishing transmission easement in the transmission corridor results in restrictions on its use, which is reflected in the prohibition of (article 43, paragraph 1, points 1 - 6): construction of buildings, location of objects (including temporary facilities), changes in the shape and destiny of the land, activities which could jeopardize the operation of transmission facilities, activities which could lead to a failure or damage of the device, activities which could lead to difficulties of access to the device, afforestation, maintenance of plants with a height exceeding 2 m (in the case of electricity transmission equipment).

The legislature has provided a possibility to withdraw from the prohibitions listed above, but after consulting the transmission undertaking whose equipment will be located in the transmission corridor (article 43, paragraph 2). Moreover, the legislature established the necessity to obtain a decision on the determination of the transmission corridor for transmission facilities which were built in the period before the entry into force of the Act, and for which there is no legal title to the land on which these facilities were built (art. 66).