European legislation related to supervision of railway system and its implementation in Poland

INTRODUCTION

The European Union consists of 28 countries, covers over 4 million km² and has 503 million inhabitants. Over 10.5 million of them works in the field of transportation, helping to move goods and passengers on 71,405 km of motorways and 215,734 km of railways, not mentioning other modes of transport (source: Eurostat). It is clear that well-performing transportation system is essential in ensuring economic growth and mobility for the continent. This is why in 2011 the European Commission prepared a white paper on building a competitive and resource efficient transport system [4]. According to this document, this goal can only be achieved by creating an integrated transport system across the whole EU.

The EU Commission sees the transport of the future as more diverse in terms of modes used for moving both goods and people. In about 30 years more than 50% of freight now being transported for more than 300 km by trucks should be moved to ships and railway wagons. At the same time, the majority of medium-distance passenger transport should go by rail, especially using complete network of high speed connections. Rail should be used also by air travellers to get to airports from places where they live. In other words, railways shall play a much more important role than they have today.

Reasons for promoting railway transport are quite obvious. Trains allow to move huge amount of both freight and passengers without compromising safety and reliability. Eurostat data shows that in 2012 more than 28 thousand people died in car accidents, compared to only 36 passengers of railways. In normal circumstances train arrival time can be predicted accurate to the minutes and does not depend so much on weather conditions (e.g. heavy rain, fog) as other modes of transport. On the other hand, railway operation is relatively difficult, as it involves strict cooperation between staff inside trains and on the infrastructure side. Also the rolling stock and track have to be compatible with each other, which due to historical reason is often difficult to fulfil while crossing inside EU borders.

In order to overcome problems related to differences in railway infrastructure and operational rules in different Member States (MSs), the EU is building a single European railway area. The area should allow to unify European railway system in several aspects, including e.g. placing new types of rolling stock into service, giving non-discriminatory access to new railway operators or ensuring equal passenger rights throughout the continent. Relevant legislation documents are created by one of decentralised EU agencies, European Railway Agency (ERA), and adopted by the EU bodies as directives or regulations.

According to the European treaties, regulations are directly applicable in all the MSs and this ensures that there should be no differences in their implementation across the EU. This is not the case with the directives, which can be treated as obligatory guidelines for parliaments and must be transposed by each MS into the local law system. Main EU legislation on railway system supervision have been discussed in Section 1. Section 2 contains description of different types of authorities to be established according to EU law. The implementation of this law in Poland has been presented in Section 3.

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1. MAIN EU DIRECTIVES AND REGULATIONS ON SUPERVISION OF RAILWAY SYSTEM

1.1. Railway Safety Directive

The directive 2004/49/EC [1] on safety on the Community’s railways, which is called also Railway Safety Directive (RSD), has been adopted as a part of the 2nd Railway Package together with:

- Regulation 884/2004 establishing the European Railway Agency (ERA);
- Directive 2004/50/EC on interoperability, which has been exchanged later by the Directive 2008/57/EC; and
- Directive 2004/51/EC on open access for freight services.

The RSD has been amended in 2008 by two directives: 2008/57/EC and 2008/110/EC and later in 2014 by directive 2014/88/EU. The last amendment contains only changes to Annex I, where Common Safety Indicators (CSI) are defined.

The RSD has been adopted in order to develop and improve railway safety as well as improve access to the market for rail transport services. The two goals at first seem not to be connected, but the regulations of the RSD indeed touch both issues. The keyword of introduced changes is harmonisation:

- of regulatory structures (National Safety Authorities);
- of accident investigation procedures (National Investigation Bodies);
- of responsibilities between the actors;
- of national rules through better understanding of their impact (common statistics on railway safety); and
- of principles for the management, regulation and supervision of railway safety.

The RSD should have been implemented in all the MSs until 30 April 2006.

1.2. Directive on single European railway area

The directive 2012/34/EU [3] establishing a single European railway area is based on several documents adopted by the European authorities in the past:


These directives have been updated and merged into one act to ensure clarity of the legislation.

It is possible to distinguish three main parts of the Directive:

- provisions in Chapter II concentrate on the development of the railway system in the European Union in terms of its economy. According to the Directive, infrastructure managers and railway undertakings should be separated from each other to ensure proper competition on the railway market. On the other hand, the Directive states conditions for financing infrastructure managers, for setting limitations of access rights in case of public service contracts etc.;
- Chapter III deals with licences given to railway undertakings. The whole procedure has been described together with entry requirements and licence validity conditions; and
- Chapter IV sets up the rules for the use of railway infrastructure in terms of charges, discounts, allocations of capacity and scheduling.

The directive has been adopted in 2012, but should be transposed only until 16 June 2015, this is why references to repealed directives 91/440/EEC, 95/18/EC and 2001/14/EC are still in use, e.g. on the website of Polish National Safety Authority [8].

1.3. Directive on the certification of train drivers

The directive 2007/59/EC [2] on the certification of train drivers is largely based on joint Agreement concluded by European Transport Workers’ Federation (ETF) and the Community of European Railways (CER) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services. It describes the harmonised certification scheme of train drivers across the EU.
The community certification model is based on two documents:
– licence issued by the Competent authority and recognised in the whole EU; and
– certificates issued by railway undertakings and infrastructure managers, valid on the railway infrastructure specified in the document.

The directive defines the requirements and procedures for obtaining both documents. The provisions regarding the licence and the knowledge of languages have been amended by the directive 2014/82/EU.

1.4. Regulation on passenger rights

The regulation 1371/2007 [5] on rail passengers’ rights has been adopted in order to improve the quality and effectiveness of the rail transport in the EU, as well as to protect common set of passengers’ rights. The provisions of the regulation are based on previous international agreements, first of all - Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV). Similar regulations can be found also in other transport sectors.

Generally the regulation is valid for all rail journeys in the EU. MSs can exclude some types of railway services from its scope, e.g. urban, sub-urban and regional trains or trains which comes from outside the EU. The provisions are related to the following issues:
– information to be provided, together with the implementation of IT applications;
– liability of railway undertakings towards passengers and their luggage;
– obligations of railway undertakings in cases of delay, missed connections etc.;
– the protection of, and assistance to, disabled persons and persons with reduced mobility travelling by rail;
– assurance of personal security;
– handling of complaints; and
– quality monitoring.

Some of the provisions link directly to the CIV regulations which have been added to the regulation as Annex I.

2. TYPES OF SUPERVISION ENTITIES DEFINED IN EU LEGISLATION

2.1. National Safety Authority (NSA)

The RSD obliges each MS to establish a safety authority which is fully independent from any other actor on railway market. Two MSs can agree on establishing one common safety authority for specialised cross-border infrastructures. This possibility has been used for Channel Tunnel.

NSAs can use technical assistance from infrastructure managers and railway undertakings. They are also permitted to access all railway premises, installations, relevant documents, etc. The work of the authority should be carried out in a transparent and non-discriminatory way.

The tasks of the NSA are listed in the Article 16(2) of the RSD and include:
– authorising the placing in service of structural subsystems and non-TSI compliant rolling stock;
– issuing safety certificates and safety authorisations; and
– supervising operation and maintenance of structural subsystems.

Safety authority is responsible for monitoring, promoting, enforcing and developing the safety regulatory framework.

NSA is also mentioned as competent authority in the Article 19 of the directive on the certification of train drivers [2]. In this role, the NSA should fulfil the following tasks:
– issuing, updating, suspending and withdrawing train driver licences;
– ensuring that a register of persons involved in train driver certification process and register of train drivers are published and kept up-to-date;
– establishing national criteria for examiners;
– monitoring the drivers’ certification process and carrying out inspections; and
– ensuring periodic examinations and/or tests.

Some of these tasks can be performed by other bodies, according to the decision of the relevant MS. It has been schematically shown in Figure 1.
Fig. 1. Roles and responsibilities of NSA according to the RSD and the directive [2]: required (solid line) and optional (dashed line)

Functioning of the NSAs is partly regulated on the EU level by a set of documents called Common Safety Methods (CSM):

- CSM for Conformity Assessment (CSM CA), based on Commission Regulations 1158/2010 and 1169/2010. It describes the principles for issuing safety certificates and authorisations contains a set of criteria for safety management systems. These criteria are often presented in graphical form and referred to as “SMS Wheel”; and
- CSM on Supervision (CSM SU), based on Commission Regulation 1077/2012. It contains guidelines for cooperation between the NSAs and infrastructure managers as well as railway undertakings in order to ensure safe railway operation.

There are also other CSMs dealing with risk assessment (renewed by Commission Implementing Regulation 402/2013) and with monitoring of safety performance in railway undertakings, infrastructure managers and entities in charge of maintenance (Commission Regulation 1078/2012).

Both the RSD and the CSMs emphasize the need for cooperation between the NSAs from different MSs to harmonize the decision criteria, supervision schedules for international companies, joint approach to dealing with non-compliance etc. This cooperation is supported by the ERA with quarterly meetings of representatives from all the NSAs (so-called NSA Network).

All NSAs are obliged to send annual reports to the ERA. The reports should contain a description of results and experience from tasks performed in accordance with the RSD, changes in local legislation concerning railway safety and values of Common Safety Indicators (CSI) at MS level.

2.2. National Investigation Body (NIB)

Independent investigation of serious accidents on railways is one of the requirements of the RSD set up in the Article 21. According to the provisions, it should be performed by a specialized body which has at least one permanent investigator. The NIB should be independent from any infrastructure manager, railway undertaking, and any other party whose interests could conflict with the tasks entrusted to the investigating body, including also the NSA. The MS can decide to:
– integrate the NIB with investigation bodies from other sectors as long as it does not endanger its independence; and
– let the NIB investigate all kind of railway accidents and incidents, not only serious accidents. It has been presented schematically in Figure 2.

![National Investigation Body](image)

**Fig. 2.** Roles and responsibilities of NIB according to the RSD: required (solid line) and optional (dashed line)

NIB should be informed by infrastructure managers, railway undertakings and (where appropriate) the NSA about all the safety-related occurrences on railways. As a rule, the investigation should start if the occurrence fulfil the definition of a serious accident – it is a train collision or derailment of trains, resulting in:

– the death of at least one person; or
– serious injuries to five or more persons; or
– extensive damage to rolling stock, the infrastructure or the environment.

In this context, ‘serious injury’ means any injury as a result of accident (excluding attempted suicide) that requires 24 hours of hospitalisation and ‘extensive damage’ means damage that can immediately be assessed by the investigating body to cost at least EUR 2 million in total.

To the category of serious accidents may be included any other similar accident with an obvious impact on railway safety regulation or the management of safety. Additionally, the NIB can decide to start an investigation on any occurrence not classified as ‘serious accident’ if in its opinion it may help to improve safety on local or EU level.

The decision on starting an investigation should be made within one week after the occurrence is reported to the NIB. The investigators should concentrate on understanding the nature of the occurrence, not finding who is to blame. They should be granted the whole access to all relevant documents and premises which are necessary to perform the investigation. The final report should be prepared within one year and contain recommendations for different parties which help to prevent this kind of occurrence from happening again.

Obligations of NIBs towards the ERA include:
– informing about the decision on starting an investigation;
– sending the final investigation report together with the safety recommendations; and
– sending annual reports.

Information about investigations is sent via a dedicated database called the European Railway Accident Information Links (ERAIL). After verification by the ERA, the records of this database are publicly available through the ERA webpage.

The ERA supports the NIBs in their cooperation organizing 2-4 times a year dedicated meetings of representatives from all the MSs. The NIB can also ask any other NIB or the ERA for assistance in carrying out the investigation.

### 2.3. Regulatory body

The regulatory body is newly defined in Art. 55 of the directive 2012/34/EU [3]. The directive sets very strict conditions which should guarantee that the body is fully independent from any other public or private entity incl. infrastructure managers, charging body, allocation body, applicants and any competent authority involved in the award of a public service contract. The requirements are not
limited to the organisation, but apply also to the staff of the body. For example, the situation in which
the head of the regulatory body is appointed by a minister exerting ownership rights over regulated
undertakings, is strictly prohibited.

The directive allows to join the regulatory body with:
– regulatory bodies from other sectors;
– the national competition authority;
– the safety authority (NSA); and
– the licencing authority (for railway undertaking licences).

Joining the authorities cannot compromise the independence of the regulating body. According to
the directive it is not allowed to establish multiple regulatory bodies in one MS.

The regulatory body should act on its own initiative as well as react to complains from other
parties in the focus area of network statements. A network statement is a document prepared by
infrastructure manager which describes the infrastructure, access conditions, charging scheme,
schedules, allocation scheme etc. The regulatory body should ensure that the provisions set up in the
statement are non-discriminatory and all the applicants (railway undertakings) have the same rights
to operate on the network concerned. The body can also be obliged by the MS to comment on business
plans of infrastructure managers.

If applicable, the regulatory body is supposed to check if the infrastructure manager is duly
separated from railway undertakings. The same applies to freight and passenger services if both types
of transport are provided by single railway undertaking.

All the tasks of regulatory bodies have been schematically shown in Figure 3.

![Figure 3](image)

**Fig. 3.** Roles and responsibilities of regulatory body according to the directive [3]: required (solid line) and
optional (dashed line)

The regulatory bodies from different MSs are obliged to cooperate with each other for the purpose
of coordinating their decision-making across the EU. It is especially important if the issues being
handled by the bodies are related to international rail transport services.

2.4. Licencing authority

The authority is newly defined in Art. 3(15) and Art. 16 of the directive 2012/34/EU [3]. The MS
is free to choose an authority to fulfil the requirements stated in the directive as far as it does not
provide rail transport services itself or is dependent of firms or entities that do so.

The licencing authority is responsible for issuing licences to railway undertakings and after
checking if the following criteria are fulfilled:
– good reputation;
– financial fitness;
– professional competence; and
– cover for civil liability.

The exact requirements for these criteria are defined in the directive 2012/34/EU.
The licencing authority may also in any time check if a licenced railway undertaking still meet all the criteria. If the result of the verification is negative, the licence should be suspended. Without the licence a railway undertaking is not allowed to provide rail transport services. However, the licence itself does not entitle the holder to access the railway infrastructure.

Roles and responsibilities of a licencing authority have been schematically shown in Figure 4.

Fig. 4. Roles and responsibilities of licencing authority according to the directive [3]

2.5. National Enforcement Body for Passenger Rights

Regulation 1371/2007 [5] on rail passengers’ rights obliges each MS to designate a National Enforcement Body or Bodies (NEB) which are responsible for enforcement of its provisions. The bodies should be independent of any infrastructure manager, charging body, allocation body or railway undertaking. The bodies should not only react on passengers’ complains, but also check the compliance with the regulation proactively. Enforcement bodies are obliged to cooperate with each other across the EU. Roles and responsibilities of a NEB are schematically shown in Figure 5.

Fig. 5. Roles and responsibilities of NEB for Passenger Rights according to the regulation [5]

3. SUPERVISION OF RAILWAY SYSTEM IN POLAND

3.1. General information

The main legal act regulating issues related to the railway transport is Railway Transport Act [7], latest consolidated version published in 2013 in Polish Journal of Law, position 1594, with further amendments. The act has a wider scope than pure supervision and includes e.g. preparation of investments on railways or provisions regulating the functioning of railway police. On the basis of the Railway Transport Act, further regulations are being published by relevant Ministers.

3.2. Office of Rail Transport (Urząd Transportu Kolejowego)

Office of Rail Transport is established according to the Article 12 of the Railway Transport Act [7] in order to help the President of the Office of Rail Transport to perform his tasks. All the documents are issued by the Office on behalf of the President. The Office is divided into several departments and some supprotive units, which can be roughly assigned to the supervision entities defined by the EU legislation and described in Section 2. All the information about the Office can be found on its website [8].

Department of Railway Safety (Departament Bezpieczeństwa Kolejowego) has the responsibilities of a National Safety Authority. It deals with safety certification and authorisation, risk assessment and train drivers certification process. The Department gathers information on railway safety from the market and prepares reports. It is responsible for monitoring safety recommendations provided by the NIB and for keeping National Vehicle Register (NVR) up-to-date. It supervises the national safety rules and their compliance with EU regulations. In addition to pure NSA responsibilities, the Department of Railway Safety is responsible for the Register of Infrastructure (RINF).
Authorisation the placing in service and supervision of interoperability constituents, another tasks which are assigned by the RSD to the NSA, are performed by the Department of Technical Authorisation and Interoperability (Departament Zezwoleń Technicznych i Interoperacyjności). The Department is also involved in issuing of safety certificates and authorisations, certification process of ECMs and notification of bodies responsible for performing technical assessments. Additionally, the Department cooperates with national consumer protection authority.

Responsibilities given by the directive on single European railway area [3] are fulfilled by the Department of Railway Market Regulation (Departament Regulacji Rynku Kolejowego), which acts as regulatory body and licencing authority. In the supervision of allocation process the Department is supported by a special Train Schedules Unit (Wieloosobowe Stanowisko ds. Rozkładów Jazdy). In addition to what is required by the directive, the Department is responsible for providing non-binding opinions on:
- transportation strategies in the scope of railway passenger transport; and
- public service contracts.

The Department prepares and publishes reports on railway market in Poland.

Passengers’ Right Department of the Office of Rail Transport acts as Polish Enforcement Body for Passenger Rights. The tasks of this Department derive directly from the provisions of the regulation [5]. Additionally, the Department deals with coordination of activities related to passenger information and ticketing between different infrastructure managers, railway undertakings as well as parties from outside the railway system.

All the administration tasks in the Office of Railway Transport, e.g. processing of applications for different kind of accreditation, releasing decisions, preparing legal guidelines – are performed in the headquarters in Warsaw. Day-to-day supervision, audits of safety management system, verification of maintenance documents etc. are in the area of activity of seven branches of the Office, located in bigger cities around the country. The branches are coordinated by the Supervision Department (Departament Nadzoru).

### 3.3. State Commission for Rail Accidents Investigation (Państwowa Komisja Badania Wypadków Kolejowych)

The State Commission for Rail Accidents Investigation is established according to the Article 28a of the Railway Transport Act [7]. It has two main tasks which are performed on behalf of the Minister responsible for transport:
- investigating serious accidents, as required by the RSD; and
- supervising the work of railway commissions, which are set up after each accident and incident on Polish railways.

The supervision involves mostly the analysis of protocols sent by the railway commissions. If it seems necessary, the State Commission may also send its representatives to take part in the work of any railway commission or even to chair it.

At the end of 2014 the State Commission consisted of four permanent investigators and one secretary staff. There is a list established by the Ministry which contains names of experts who may be asked for help in an open investigation [6].

### CONCLUSIONS

Single European railway area is being established by nearly 30 MSs, so inevitably this process is demanding and time-consuming. The legal basis for railway system supervision has been built for more than 20 years. Some of the MSs have been involved in the integration of European railway system from the beginning, others were obliged to implement the changes at once at a later stage together with their access to the EU. What is more, only some new ideas are published in form of regulations, usually directives are used. It means that the implementation across Europe may be slightly different.

In 2015 it is possible to distinguish 5 different regulatory and/or supervision institution types coming from 4 legal documents, one of which is a new consolidated and updated version of several
directives coming from the 90’s. The area of responsibilities of these institutions cover the entire spectrum of railway transportation, from market regulation, through authorisation of new infrastructure, vehicles and parts thereof, up to rights of passengers of trains.

The institutions mentioned in the EU law should be independent from other actors from the railway market, first of all infrastructure managers and railway undertakings. Still, most of the institutions may be combined with each other, which is the case e.g. in Poland. This approach allows to use the same organisational structure and the same staff to check compliance with requirements coming from different directives and regulations. On the other hand, this can lead to misunderstandings if an undertaking is engaged in business activities in many different MSs.

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Abstract
A well-functioning transport system is essential in ensuring economic growth of Member States of the European Union as well as mobility for European citizens. Railway transport takes an important place in this system, as it allows to move many people and a large amount of goods in a safe and secure manner. Unfortunately, for historical reasons, there are still a lot of difficulties in organising rail services across the continent.

In order to use the full potential of the railway system, a single European railway area with uniform technical standards and organisational principles is being created. This paper presents one of the elements of this project – institutions that supervise rail transport in various aspects. Their roles are defined in a number of documents of Community law, characterised in Section 1. In Section 2 types of institutions required by EU law have been presented: a safety authority, an investigating authority, a regulatory body, a licensing authority and an authority responsible for the enforcement of the rights of passengers.

The article in Section 3 contains a description of the activities of the Office of Rail Transport and State Commission for Rail Accidents Investigation in relation to the roles that are performed by them according to the legislation of the European Union.

Keywords: single European railway area, national safety authority, supervision, legal basis

Prawodawstwo Unii Europejskiej dotyczące nadzoru nad systemem kolejowym i jego implementacja w Polsce

Streszczenie
Sprawnie działający system transportowy jest warunkiem zapewnienia państwom członkowskim Unii Europejskiej wzrostu gospodarczego i mobilności dla mieszkańców Europy. Ważne miejsce w tym systemie zajmuje transport kolejowy, pozwalający na przewiezienie wielu osób i dużej ilości towaru w bezpieczny i pewny sposób. Niestety, ze względów historycznych ciągle jeszcze istnieją spore trudności w organizowaniu przewozów kolejowych w skali całego kontynentu.

Sposobem na wykorzystanie pełnego potencjału kolei jest utworzenie jednolitego europejskiego obszaru kolejowego z jednolitymi standardami technicznymi i zasadami organizacyjnymi. W artykule przedstawiono jeden z elementów tego projektu – instytucje nadzorujące różne aspekty transportu kolejowego. Ich role zostały określone w szeregu dokumentów prawa wspólnotowego, scharakteryzowanych w rozdziale 1. Rozdział 2 zawiera opisy typów instytucji wymaganych przez pravo UE: władzy bezpieczeństwa, organu dochodzeniowego, organu regulacyjnego, organu wydającego licencje oraz organu odpowiedzialnego za egzekwowanie przepisów o prawach pasażerów.

W rozdziale 3 artykułu zawarto opis działalności Urzędu Transportu Kolejowego i Państwowej Komisji Badania Wypadków Kolejowych w odniesieniu do ról jakie pełnią w rozumieniu prawodawstwa Unii Europejskiej.

Słowa kluczowe: jednolity europejski obszar kolejowy, krajowa władza bezpieczeństwa, nadzór, podstawy prawne
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