

## **PROCESSES OF RAILWAYS PRIVATIZATION IN CHOSEN EUROPEAN COUNTRIES**

DARIUSZ LISZEWSKI<sup>1</sup>

**Abstract:** Presentation of the organizational changes in railways in chosen European countries is the main objective of the paper. The author found that there are three models of railway functioning in Europe in relation to the ownership. Only the United Kingdom has decided to radically change its railway system, conducting its material privatization. Most of the Member States of the Community limited themselves to merely formal privatization, releasing the structures of departmental units involved in infrastructure management and the transport operations which, although they constitute a legally separate entities, still remain in the public domain.

**Keywords:** privatization, restructuring, passenger railway transport

### **1. Introduction**

The history of railways in Europe dates back to 1820, when in England was the first time, locomotive was used. Initially, virtually in all countries, railway used to be the domain of private initiatives: private investors were the owners of regional rail networks built by them. Only after a few decades, however, it was decided to change the management model of railway, leading to its nationalization and the creation of state-owned enterprises, which were monopolists in the market. Such a step was already taken in Italy in 1905, establishing the Ferrovie dello Stato. Likewise it was done in all major European countries, including Germany (in 1920, where the Deutsche Reichsbahn was founded), France (in 1938 Societe Nationale des Chemins de fer Francais was created, in short SNCF), Spain (in 1941 they founded the Red Nacional de los Ferrocarriles Españoles, in short RENFE) and the UK (in 1948, the British Rail was founded). These units were owners and managers of the entire railway infrastructure, while they also provided the whole of transport services. Such a model of railway industry enjoyed popularity in principle, to the early 90s of the last century [3, 10].

### **2. Changes in railway functioning**

Moving away of passengers from rail to other modes of transport meant that since the late '80s, many countries began to attempt to increase the efficiency of their railways by introducing or strengthening competition [2, 12]. This objective can be achieved using three methods, namely: vertical separation, privatization and deregulation. These methods can be used alternatively; they can also be put together. European countries mostly use vertical separation (which results mainly from the provisions of the EU), which can be achieved by ordering the existing railways to grant access to their lines to other railroads, or independent operators. In most cases, however, it took place through a division of so-called incumbent railway undertakings on independent rail operators (ie. TOCs - train operating companies) and companies engaged in the infrastructure to facilitate the introduction of competition. The second option to strengthen the competitiveness is turning to the private sector. One

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<sup>1</sup> M.Sc. Przewozy Regionalne Ltd.  
dariusz.liszewski@p-r.com.pl  
Wileńska 14a, 03-424 Warsaw, Poland

way around this is to sell (privatize) state railway undertakings, or to make concessions to private companies to operate the railway for 10 or even 50 years. The last option is to increase competitiveness by reducing government control over the prices of transport services and the type of services provided by operators. This approach is used in some Latin American countries, which privatized its railways and, due to the strong competition in the sector, excessive state regulation deem to be completely unnecessary. The biggest controversy raises vertical separation which is contrary to the deregulation and to a lesser extent, privatization, because the division requires the impact of the government, while the other two options reduce this impact. With vertical separation this effect can also be reduced, but only if government regulation and ownership are limited to managing the infrastructure, while the activities of operators are governed by market forces. However, as long as some segments are monopolies, the government will remain involved as a regulator (or the owner). Privatisation can be conducted with vertical separation, and without it, while deregulation argues with vertical division at least because companies have a natural tendency to vertical integration and the division protects just before that [7].

Privatization of railway itself has features in common with the privatization of other sectors of network utilities, such as telecommunications and postal services. C. Schmitt distinguishes between two types of privatization of such sectors: formal privatization and material privatization, while the formal privatization can take two forms. The first of these is to transform departmental agencies, which are part of ministries into public companies subject to public or special law (e.g. France Telecom). The purpose of this form of privatization is to give legal status - created public undertakings have such personality, are autonomous, have their own status and at least partially commercial structure (while ministerial agency is subordinate to the Ministry and has no separate legal personality). Although a public company goals are defined by law and are intended to meet the needs of state, this company has lots of more freedom in its daily activities, than a typical ministerial authority. Public undertaking operates in accordance with the principles of financial accounting and finances its operations through loans or government grants. The second type of formal privatization is the transformation of a public undertaking in the state-owned company which is the subject of private law, e.g. a joint stock company, which is owned by the government (e.g. British Telecom). The company is subject to the same rules as private companies. The characteristic that distinguishes this form from the previous one is the directing of the company for its own good and the maximization of profit. The company is run by fully responsible management, it has its own assets and liabilities and its activities are financed from its own resources. Government influence is indirect, limited in principle, only to the right to property. Without a formal privatization, the shares cannot be sold and material privatization cannot be started [1]. Material privatization consists of a real transfer of ownership and management to the private sector.

Widely underlined objective of privatization is to improve competitiveness. However, to talk about competitiveness, in the market there must operate at least a few companies having equal rights in the fight for customers. The existence of such competition is in the best interest of the state, therefore, it must take care to ensure competitive rules. The state to shape the operation of its rail market can use various models of competition in the market. The OECD identifies three such forms [4]:

- competition in the market between vertically integrated railway companies - it requires the existence of at least two separate railway infrastructures, which may be

their substitutes (e.g. two railways between the same cities) - occurs in the US in freight transport;

- competition in the market between transport operators with regulated access to the railway infrastructure (infrastructure may be owned by one operator) - freight transport in Europe and Australia; market competition can take place in a total vertical separation model, which involves the separation of the operators of the infrastructure (the model preferred by the EU), or a model of third-party access, in which there are vertically integrated facilities, and the railway companies are obliged to allow access to their infrastructure to competing operators (this model is used in some EU member states);
- competition for market share between railway undertakings (within regulated access to the tracks); this model is characterized by competitive tendering and occurs in regional transport in some EU countries.

In the privatization of European rail an important role was played by the European Union, which, through its legislation forced on the Member States the modernization of the approach to the railway industry. Already in 1991 the European Commission announced Directive 91/440 / EEC by which Union countries were obliged to separate the functions of management of railway infrastructure from the transport function. The requirement, however, concerned only the separation of the functions of accounting, which allowed for the maintenance of organizational and institutional unity.

In addition to the requirement for separation of transport services and infrastructure, there were also outlined three main axes that were to be developed in the future. These axes are in turn related to independence from the government in terms of both financial and managerial aspect, to oblige the Member States to reduce railway debt to a level that will not impede sound financial management and establish the right of access to the infrastructure of the companies, established within the Community. It is worth to note regarding the directive, that in 1988, even before the introduction of any EU regulations, Sweden, which is a precursor to European railway restructuring, reformed its railways through the separation of the infrastructure manager and the carrier functions [5, 9, 10].

The second step in the liberalization of the European rail were so-called railway packages, four of which have been declared so far. The first package included: Directive 2001/12, Directive 2001/13 and Directive 2001/14. Directive 2001/12 has changed the provisions of Directive 91/440 and defined the access rights in international freight transport between railway undertakings and infrastructure managers, thereby laying the foundation for the liberalization of rail transport (which occurred in 2007). The directive also required the separation of operations of passenger transport and freight, and defined the fees for the use of infrastructure and licensing. Directive 2001/13 defined the system of licensing of railway undertakings and Directive 2001/14 sets out the conditions for the allocation of railway infrastructure capacity, fees for the use of infrastructure and safety certificates. A very important provision of the first railway package was to order the establishment in each Member State, the national supervisory authority (the regulator), so-called NRA (National Regulatory Authorities). The task of this body was to ensure fair and non-discriminatory access to the rail network and services [1].

In 2004 the second railway package was adopted, which contained 3 directives (Directive 2004/49, Directive 2004/50 and Directive 2004/51) and one regulation

(Regulation 881/2004) related primarily to safety and interoperability, both in relation to the line of conventional and high speed lines (HSR - high speed rail). Directive 2004/49 changed Directive 2001/14 in the allocation of capacities and access charges, extending slightly the powers and authority of the NRA in this respect. Under Regulation 881/2004 the European Railway Agency (ERA - European Railway Agency) was established, which deals with technical issues and security (economic issues reserved for national regulators). The second railway package highlighted the technical compatibility and incompatibility of safety regulations, factors which hinder the creation of a single European rail market, and therefore it was ordered to compensate for these discrepancies.

The Third Railway Package, adopted in 2007, contains two directives (Directive 2007/57 and Directive 2007/58) and two regulations (Regulation 1370/2007 and Regulation 1371/2007). Its main feature is the creation of an international market for passenger services, including cabotage, to 2010. This package also introduces passenger rights and harmonises the way of granting motorman's licenses. The last aspect is particularly important for the ERA, which next to the core business has also to deal with licensing motormen. Directive 2007/58 is of utmost importance for the NRA, as it extends open access and therefore also powers the NRA, on the international market and domestic cabotage, which access may be limited, however, if threatens the balance of the so-called public service obligations (PSOs - Public Service Obligation). Category of public service obligations is introduced in Regulation 1370/2007 - it concluded that the domestic passenger transport cannot currently be run on a commercial basis, and the authorities of the Member States, to ensure the provision of these services, must be provided with appropriate instruments. The main aspect of this regulation is to introduce tendering procedures for PSO no later than in 2019. This task, however, will not lay within the competence of the NRA - Member States are to invoke the so-called competent authority which will be responsible for the execution of this task.

In 2013 the European Commission proposed fourth railway package focusing on three key issues [4]:

- interoperability and standardization while enhancing the importance of the European Railway Agency;
- strengthening the infrastructure managers, including a later division and access to service facilities;
- opening of the national passenger rail market, including access to rolling stock and ticketing systems.

Implementation of these issues is to be accompanied by strengthening the role and powers of national regulators.

Key features of the EU deregulation are thus: separation of infrastructure management from transport activities, competition between carriers (competition in the market in the case of open access and competition on the market for franchising), technical standardization, which allows competition due to low barriers to entry and regulation of the industry.

These key characteristics are generally in line with the EU's set of tools for the creation of single European market in various areas.

Member States are obliged to respect the provisions of the Community, which ensured that even despite many objections; they had to adapt the requirements of the railway

package, following the path of liberalization and privatization of the railways. EU directives do not impose however, ways to achieve goals, which causes the fact that European countries implement the Community requirements in different ways. The only common feature is forced by Directive 91/440 / EEC individuality in accounting of infrastructure management and transport operation. In Europe we are faced with three basic models of institutional rail, which arose as a result of the vertical restructuring of the industry.

In the first model (i.e. the Swedish model) the management of infrastructure and services are fully allocated, as two separate, unrelated entities (or groups of units) deal with them. In the second model (i.e. the German model) units involved in infrastructure management and transport operations operate under the same holding company, however, are its separate parts. In the third model (i.e. the French model) we deal with core competencies separation of infrastructure management and operation of services [8]. The application of these models by selected European countries is shown in Table I.

Table I.

Management models of railway [4]

<b>Swedish model</b>	<b>German model</b>	<b>French model</b>
<ul style="list-style-type: none"> <li>• Great Britain</li> <li>• Finland</li> <li>• Denmark</li> <li>• Lithuania</li> <li>• The Netherlands</li> <li>• Norway</li> <li>• Spain</li> <li>• Portugal</li> <li>• Slovakia</li> <li>• Sweden</li> </ul>	<ul style="list-style-type: none"> <li>• Austria</li> <li>• Belgium</li> <li>• Germany</li> <li>• Italy</li> <li>• Latvia</li> <li>• Poland</li> <li>• Greece</li> </ul>	<ul style="list-style-type: none"> <li>• Czech Republic</li> <li>• Estonia</li> <li>• France</li> <li>• Hungary</li> <li>• Slovenia</li> <li>• Luxemburg</li> </ul>

The separation of infrastructure management and provision of services resulted in the need to develop specific models of management of these areas. In the literature, there are three main ways of managing the railway infrastructure:

- the traditional model - infrastructure is manager by government agency; we are dealing here with direct benefits for the government sector;
- management by the companies (public or private) on the basis of a concession;
- private property.

In all member states of the European Union infrastructure managers were established as domestic monopolies and the most of them are still owned by the state. There are, however, a few exceptions. In Germany and Italy about 20% of the networks is managed by local companies different from the national operator (in Italy all these companies are in the public domain while in Germany they are partly private). Channel Tunnel between France and Britain is under a concession contract, managed by the dedicated private unit. Similarly, the concession for the construction and management of infrastructure Perpignan-Figueres tunnel between France and Spain, was given to a private holding company TP

Ferro. In France, on two LGV lines (lines of great velocity) the formula of public-private partnership was applied and there the infrastructure is managed and maintained by private companies, while RFF, which is the national infrastructure manager, manages the capacity and the access charges, interacting with rail operators [5, 8]. Provision of transport services in competitive conditions can in turn be done in two ways:

- using competitive tendering leading to franchise the exclusive right of action - thus was organized a regional transportation in Sweden and other countries and domestic transport in the UK;
- based on open access, competition takes place on the tracks - open access to the market for domestic services is valid in Sweden, the UK, Italy, Germany, Austria and Hungary [6].

Despite this competition is still difficult. In most countries, domestic transport services markets are still closed, and serviced by state monopolists so the only difference that can be seen compared to the days before the restructuring plan lies in the fact that these companies are not at the same time the owners of the railway infrastructure. However, even in the case of open markets, competition on them is rather difficult. In Sweden, only 10% of income in passenger traffic is generated by private entities. In Germany, apart from few routes, Deutsche Bahn, the national operator, still dominates the long-distance traffic [8].

### 3. Conclusion

In conclusion, despite the strong commitment of the European Union legislature aimed to bring liberalization of the rail market and increase competitiveness in the market, these objectives have been achieved only to a little extent. Only the United Kingdom has decided to radically change its railway system, conducting its material privatization. Most of the Member States of the Community limited themselves to merely formal privatization, releasing the structures of departmental units involved in infrastructure management and the transport operations which, although they constitute a legally separate entities, still remain in the public domain. Despite liberalization, it was also not managed to break the monopoly of state-owned carriers for the provision of rail passenger transport.

Moreover, EU rules, which have contributed to reducing disparities between the railway systems of the Member States and the creation of the single market, de facto hindered the integration by creating new disparities. Each Member State introduces the Union recommendations in its own way, using a variety of possibilities for the organization of the railway transport market, which hinders their international coordination.

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