



SELECTED PROBLEMS OF SHAPING THE STATE TRANSPORT POLICY

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Abstract

Transport policy is one of the basic tools shaping the transport system in the country. Transport is a particularly important area of economy which affects the formation of the quality of life of the whole society, has a huge impact on the natural environment, and at the same time is a special element of integration of the member countries of the European Union. This area has long been covered by comprehensive planning activities, undertaken both at the level of the European Union and at the level of the Member States. The effects of these activities are transport development strategies and programs, transport programs covering particular fields of transport (road transport, air transport and water transport), as well as detailed regulations related to selected issues.

At the European level, transport policy is shaped primarily in primary law. In the Treaty on the Functioning of the European Union, a common transport policy was identified, and then its goals and means were determined. Secondary law is a huge number of documents of various nature: regulations, directives, decisions, resolutions, recommendations, opinions, recommendations. European transport policy is also shaped by some documents that are not binding, in particular by the so-called green and white books.

In Poland, different categories of documents also appear at the national level. Prospects for transport development are set out in the Transport Development Strategy. This document indicates current transport weaknesses limiting development opportunities, and then proposes directions of intervention to limit these weaknesses. The next planning document is the State Transport Policy which assumes an improvement of the quality of the transport system and its development in accordance with the principles of sustainable development. The purpose of the article is to establish the legal basis for shaping the state's transport policy and to indicate the current conditions of this policy.

Keywords: Transport policy, strategies and programs, sustainable development

1. INTRODUCTION - THE IMPORTANCE OF TRANSPORT POLICY

In the modern world transport policy is an extremely important form of activity of state authorities and international organizations. It aims at increasing the efficiency of transport and improving the quality of transport services. In the longer term, it is also a means to improve the economy, to increase a turnover from trade, as well as to increase the comfort of life and as a result of increased social satisfaction. The main purpose of transport policy is to influence the existing transport system through legal and economic measures. Transport policy, similar to other public policies, takes the form of coordinated and planned activities of authorized entities [1]. At the same time this entitlement usually results directly from international, EU or national law.

It should be emphasized that transport is an area that is particularly important for the economy of every country as it has a huge impact on the development of industry, on the natural environment, on the quality of life of society, and also it is an important element of integration of the European Union member states. The development of transport is currently very dynamic, which is related to the progressive expansion of a man in the economic and social sphere, as well as with great progress in the technical development of transport means and the related necessity to modernize and expand the transport infrastructure. The particular

intensification of these processes can be observed in highly industrialized countries, including throughout Europe [2]. The ongoing globalization and integration processes are forcing exceptionally intensive development of international transport [3].

For many years the transport area has been covered by comprehensive policy actions which are undertaken both at the level of the European Union and at the level of individual Member States. Measurable effects of these actions are transport development strategies and policies as well as transport programs and plans covering particular fields of transport (road transport, water transport and air transport). On the other hand, the result of planning activities are systematic legislative changes that adapt transport to constantly changing conditions. Due to the high intensity of the development of European transport - both domestic and international - a major challenge for the EU institutions is the harmonization of individual elements of transport policy throughout the European Union and the coordination of transport policies of individual Member States. Differences in the scope of policy do not constitute obstacles to mutual cooperation, but remain a barrier to integrating national transport systems [4].

This article addresses problems related to the creation of modern transport policy. It draws attention to the legal aspects of shaping the tools and means of influencing the state's transport system. It points to specific types of legal acts that belong to the group of planning acts, analyzes their significance in the legal system of the state, and especially the usefulness for effective and efficient formation of transport policy. In order to make the above findings, documents shaping the transport policy were reviewed. The research covered both acts belonging to the EU system as well as the Polish national system. The collected material was the basis for a critical analysis of planning acts in terms of their subjective and objective scope, the legal form, as well as the way they affect the state's transport system. Based on the collected material, using the synthesis method, necessary generalizations were made about the prospects of further shaping the EU and national transport policy. The research methodology adopted influenced the structure of this study.

2. TRANSPORT POLICY INSTRUMENTS IN EUROPEAN UNION LAW

The need for a uniform transport policy was noticed at the very beginning of the formation of the European Communities. The common transport policy was for the first time clearly identified in the Treaty of Rome in 1957. The regulations at that time provided for the adoption of uniform rules on international transport, transit, transport services in the Community by companies from outside the Union and measures to improve transport safety, whereas for the protection of free competition the possibility of providing state aid to transport companies was limited. In later years, as a result of intensive development of the transport sector, transport policy underwent significant changes, which was reflected in subsequent provisions of the treaties (Maastricht Treaty of 1992, Treaty of Amsterdam of 1997). Particular modifications were made to its scope, a set of instruments used to run it, as well as the decision-making procedures used. The current principles of transport policy have been shaped in the Treaty of Lisbon of 2007 [5].

However, European Union law is a fairly complicated and multi-level system that consists of acts of primary law and secondary law. The primary law are the founding treaties, the agreements concluded between Member States amending and supplementing the founding treaties, as well as the treaties on the accession of subsequent states. Secondary law is created by individual EU institutions from the very beginning of the existence of this organization, and therefore acts of secondary law are quite different in the subject of regulation, legal character and their addressee. This group of documents includes in particular: regulations, directives, resolutions, recommendations, opinions, and sometimes also agreements or regulations. All this means that currently the legal basis for transport policy in the European Union are over 600 documents with various subject and subject scope, different legal force and inconsistent binding nature.

The main issues of pan-European transport policy were shaped primarily in primary law, supplemented and developed by detailed regulations of secondary law. The area of transport is an autonomous area, clearly

distinguished in the Treaty on the Functioning of the European Union [6] (hereinafter TFEU), excluded from the scope of operation of general norms on the free movement of services (Articles 56-52 TFEU).

It belongs to the so-called shared competences with the Member States. (Article 4 (2) points g and h TFEU). This means that the Union is acting in accordance with the principle of subsidiarity, and therefore only if and to the extent that the objectives of the intended action cannot be sufficiently achieved by the Member States at central, regional and local levels, and if the size or an impact of the proposed action is better achieved at Union level (Article 5 (3) of the Treaty on European Union - hereinafter the TEU [7]).

The regulations of art. 90-100 TFEU refer directly to the transport policy. It should be noted that these provisions do not define transport or a common transport policy. They only set the main directions of transport activities, quote appropriate legal action procedures and designate relevant competences for Union bodies. In order to achieve the objectives set in the treaty law, also a large number of secondary law documents were issued, referring to all transport departments, ordering, inter alia, safety in transport, development of transport infrastructure, market harmonization, competition on the transport services market. It is worth emphasizing that one of the features of secondary law is dynamic and open character. It is constantly evolving with the EU setting new goals and taking over new powers by EU institutions. Secondary law is becoming more and more extensive, and at the same time more and more dispersed in many documents.

It seems that such a traditionally built system of sources of law is not enough. The reason for this is the necessity of strategic planning of many undertakings in the long-term perspective, covering even the next decades. This is related to the specificity of transport infrastructure. The long waiting period for the full implementation of infrastructural projects and the return of investments undertaken, as well as the vast area where these projects are implemented, justify the need for undertaking prior consultative and planning activities verifying the real possibilities of introducing appropriate changes in legislation. In key matters, it seems to be pointless to undertake unchecked ad-hoc actions, securing only the most urgent challenges. In the era of such intensive development of transport on a global scale, which can be observed today, these dilemmas are also reflected through the system of sources of law, as well as through the procedures for their establishment. The permanent practice in European transport policy is therefore documents of a non-binding nature, called green and white books, which are the expression of a planned and orderly implementation of more complex undertakings.

Green and white books appeared in the EU legal system from the very beginning. They belong to the group of consultative documents [8] prepared by the European Commission for the purpose of presenting views on a specific field, and they often constitute the initial stage of legislative changes. The task of the green book is to present the problem in order to gather initial opinions which are the starting point for further legislative work. The White Paper is the result of consultations and proposes specific solutions related to one of the EU policies. It is often treated as an informal program of upcoming changes. None of the above documents is binding and may be changed at any stage.

Particularly noteworthy is the last of the white transport policy books presented on 28 March 2011, which is entitled *Plan to create a single European transport area - striving for a competitive and resource-efficient transport system*. It contains proposals of the European Commission regarding the future direction of the European Union's transport policy and covers various branches of transport (from road and maritime transport to air transport). The most important goal was to reduce greenhouse gas emissions by at least 60 % by 2050 compared to 1990 levels, and by 2030 by around 20 % compared to the level from 2008.

The White Paper deals with transport in a holistic way and covers all branches of transport. It draws attention to the reconstruction of the transport structure, declares the problem of transport capacity particularly in aviation, and points to the need to improve the efficiency of aircraft. As a particularly important issue, the solution sees a change in the approach to the relevant fuels, proposing to reduce the number of cars with conventional drive (2030), and then their total elimination (2050). It promotes the development of modern and

ecological transport infrastructure in the field of rail, sea and inland waterway transport, capable of gradually taking over the weight of cargo transportation. It promotes intelligent air traffic management and the use of information systems in transport. It recognizes the need to increase the resilience of the transport system in the event of natural disasters in order to preserve the full mobility of passengers. It also underlines the need to reduce the number of road fatalities (up to the total elimination of such casualties in 2050), which would place the European Union on the spot as a global leader in safety and security in all transport areas. The annex contains a rather extensive list of initiatives that the Commission considered necessary to create an effective transport area in the European Union [9].

The White Paper presents proposals of the European Commission relating to future directions and priorities of the EU transport policy. It is a set of systematized proposals for changes that have been deemed to be important as a result of previous public consultations and submitted for further consideration. The 2011 White Paper belongs to a group of planning acts. However, unlike a typical planning document, it does not contain any schedule of actions, nor a calendar of implementation of the proposed solutions, nor does it define the principles of evaluation and evaluation. It raises the issue of financing the proposed solutions to a small extent. This document does not belong to the system of sources of European Union law, adopting it in this form is the expression of the procedure of wide public consultations, usually taking the form of a green or white book. Therefore, there is no valid binding force for formal sources of law. Nevertheless, it can be said that the White Paper is an integrated vision of the direction in which European transport will be heading until 2050. It may also be at this stage an indicator of changes that should be initiated in individual countries of the European Union.

3. POLISH TRANSPORT POLICY

An example of a planning act relating to transport policy in Poland is the *State Transport Policy* [10]. It is a document whose preparation resulted directly from the provisions of art. 4 par. 2 g of TFEU and its assumptions are based on the 2011 white paper of transport policy. The document was developed in the Ministry of Infrastructure as the *State Transport Policy for 2006-2025*, and on June 29, 2005 it was approved by the Council of Ministers [11].

The State Transport Policy for the years 2006-2025 assumes the improvement of the quality of the transport system and its development in accordance with the principles of sustainable development. It is an example of a planning act with a fairly high level of generality, which justifies the long-term planning perspective. This document in the introductory part indicates trends and problems affecting the shape of transport policy in the forecasted period, and on the basis of these, determines the prospects for transport development as an economic unit. Among the trends described by the authors of the document, one can find: a further increase in the importance of motorization and the share of road transport in the overall transport structure and a sharp increase in the importance of air transport, as well as trends relating to transport safety as one of the internal security areas, including growing the demand of transport system users for comfort and safety, a large number of accidents and their victims, as well as the growing environmental burden of negative effects of transport operations. Important issues requiring a solution in the adopted time perspective are infrastructural as well as technical, organizational and also economic issues.

The following parts of the document indicate common goals of the state transport policy, including improving transport accessibility and quality, supporting the competitiveness of the Polish economy, improving the efficiency of the transport system, integration of the transport system - in the branch and territorial system, improving safety, limiting the negative impact of transport on environment and living conditions. The last of the listed objectives clearly direct attention to transport safety. After making the general assumptions, the authors of the document were tempted to present the most important directions in the development of transport over the coming years. Among the ten universal priorities, there were also those concerning the improvement of

safety in a direct (reduction of accidents) or indirect (improvement of roads, modernization of railways, improvement of the quality of transport in cities, modernization of transport infrastructure).

In the further part of the document, directions of development and activities necessary for an implementation in the period covered by the forecasting as well as planned tasks are divided into particular modes of transport: road, rail, air, sea, inland waterway and intermodal transport. In each case, a lot of space is devoted to the issues of transport safety. The distinction of these issues is certainly a testimony to the fact that these are the key issues important for the proper development of transport. However, an improvement of safety in a given area of transport requires undertaking differentiated actions which are a response to specific threats. Rail transport, therefore, indicated the need to modernize the infrastructure by introducing modern control systems and supporting the activities of the infrastructure manager and rail carriers to improve the personal safety of travelers. In air transport the main task was to maintain the highest safety standards, including protection against terrorist attacks and an effective action in crisis situations. Due to the special threat to road safety participants, a separate chapter is devoted. The ultimate goal was to strive for the total elimination of fatalities and serious injuries in road accidents, while the specific objectives were to create the basis for effective and long-term actions for road safety, shaping a conscious participant of traffic, protection of pedestrians, children and cyclists, construction safe road infrastructure, as well as reducing the severity of road accidents. In the field of road safety, it is also foreseen that the provisions of the policy should be specified in separate road safety programs, in particular these programs should define the scope of system and sector measures for road safety. Currently, these programs contain goals and tasks in the area of improving road safety, repeating them following the Transport Policy, as well as a detailed task to be carried out [12].

Security in transport is a multidisciplinary issue, hence it is stressed that its assurance should actively involve central institutions subordinated to ministers competent for internal affairs, justice, finances, health or defense, but also self-governments and social and non-governmental organizations. Only then can the actions taken be coherent and properly coordinated [13].

A separate problem clearly perceived by the authors of the Transport Policy of the State are threats to the environment, to which the development of transport, and especially of some of its departments, such as road transport, contributes. The progressing changes in this area cause an increase in the emission of pollutants and the noise intensity within the highly frequented transport arteries, as well as the occupation of valuable natural areas for the construction of road infrastructure. As a trend compliant with global and EU tendencies, the use of experiences from other countries in the development of transport infrastructure was pointed out, in particular the application of the principles of sustainable development of the transport system and the use of innovative technologies to minimize these risks. For their closer concretization, the priorities were identified, defining the directions of actions to eliminate the problem. Among them, the need to create long-term strategies and plans as the basis for rational action, formulating transport policy principles, also at the level of local government units, supporting the development of other modes of transport outside road transport, taking into account environmental protection in the design and construction of road infrastructure, or dissemination of innovative solutions was emphasized.

The detailed rules for the implementation and monitoring of transport policy were also formulated. It should be stated that these are only framework principles, postulated both in the national development strategies and in the national security strategy. The instruments of transport policy implementation include current adjustment of the law to changing conditions, effective and consistent national development planning at all levels of public administration, financing the transport sector on the basis of financial planning principles and public administration at all levels in accordance with the principles of division of tasks and competences and coordination. However, monitoring of the implementation of transport policy is supposed to consist in periodic analyzes of achieving objectives and possible modification thereof. Analyzes should be prepared at least every five years, and should be based on formulated measures of achievement of objectives and procedures of project compliance.

4. CONCLUSION

Transport is one of the key areas of the economy of the modern state, therefore for its proper functioning, it is important to formulate an effective development plan, and then its consistent implementation. The State Transport Policy is a strategic document prepared at the highest level - at the level of government administration it has the form of a resolution of the Council of Ministers. It should be included in planning acts. In the Polish legal system, politics, being a governmental document, is not a source of universally binding law. A different situation would occur if the policy was passed, for example, in the form of a law or regulation [14]. Documents created by the Council of Ministers in the form of resolutions are only internal, they bind entities subordinated to the Council, for other entities they have primarily information dimension.

Planning documents, taking the form of policies, usually contain phrases that are quite broad and indeterminate. The planning standards included in them can be both informative, imperative and affecting [15]. Information standards contain various types of forecasts, making it easier for recipients to make their own decisions, mandatory norms bind recipients legally, impact standards take up an intermediate place between the previous two types, they establish a system of incentives to implement the objectives set in the strategy. Their goal is to guide the development of an organization in the future. They cause that such actions cease to be an accidental set. The assumptions which the policies are based on are only some predictions, so their failure cannot be subject to the responsibility of the entity obliged to act. There are still too many objective factors which the final implementation of the assumed goals depends on.

Policies set the integration and communication platform for the cooperation of several entities. These are usually programmed rather than operational documents, indicating the assumptions and priorities, and not the procedures and measures. They allow focusing on the essence of the problem, look at the implications of multiple issues and determine the most important directions of action, postponing specific issues to the next stages. Policies are a form of planning that has grown out of state management and public administration. They can be an effective tool for planning development at both EU and national level, although their role will be different in both cases. In the first one they will be a consultation tool, in the second one they will fulfill primarily the information function. However, both in the EU system and in the national system there will be less frequent acts that bind the recipients, as it would require the inclusion of policies into a formal system of sources of law, which in turn would take away their planning function.

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