

**Transport and Environment:  
Vessels, aircrafts, trains and lorries – equal treatment before the law in  
view of their environmental impact?**

**Commissions: TLC and EEC**

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**National Report of Poland**

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## DESCRIPTION OF THE WORKSHOP

Vessels, aircrafts, trains and lorries – Equal treatment before the law in view of their environmental impact?

The aim of the workshop is to verify whether the four main means of transport, vessels, aircrafts, trains and lorries, are treated reasonably equally before the law in view, inter alia, of their shipping volumes in relation to their emissions, their impact on/danger for the environment by accidents/collisions, the transport of hazardous goods etc., or if there is – for whatever reasons – a regulatory overkill with regard to one or few of the means of transport.

## QUESTIONNAIRE

### Legislation for Means of Transport regarding Emissions

1. By which national rules is the normal operation of vessels, aircrafts, trains and lorries with respect to emissions governed?

The rules applicable to emissions from normal operation of vessels, aircrafts, trains and lorries are dispersed across different Acts of the Polish legal system as well as European legislation (please see section 2 below). As far as the domestic rules are concerned, the main area of environmental legislation that applies here include:

- Environmental Protection Law Act of 27 April 2001 (*ustawa Prawo ochrony środowiska z dnia 27 kwietnia 2001 roku*)<sup>1</sup>,

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<sup>1</sup> *Journal of Laws of the Republic of Poland* of 2013, item 1232 (consolidated version), as amended.

- Prevention of Sea Pollution from Ships Act of 16 March 1995 (*ustawa z dnia 16 marca 1995 roku o zapobieganiu zanieczyszczeniu morza przez statki*)<sup>2</sup>,
  - Transport of Dangerous Goods Act of 19 August 2011 (*ustawa o przewozie towarów niebezpiecznych z dnia 19 sierpnia 2011 roku*)<sup>3</sup>,
  - Act on the Management of Greenhouse Gases emissions of 17 July 2009 (*ustawa o systemie zarządzania emisjami gazów cieplarnianych z dnia 17 lipca 2009 roku*)<sup>4</sup>,
  - Act of 12 June 2015 on the Greenhouse Gases Emissions Trading System (*ustawa o systemie handlu uprawnieniami do emisji gazów cieplarnianych z dnia 12 czerwca 2015 roku*)<sup>5</sup>.
2. Are international and/or European rules (if applicable) fully implemented in your country?

As far as European rules are concerned, there are several EU pieces of legislation that serve the purpose of regulating the air pollution from engine-propelled vehicles. The following pieces of legislation are of particular relevance:

- Regulation (EC) No 715/2007 of the European Parliament and of the council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information<sup>6</sup>,
- Regulation (EC) No 595/2009 on type approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information amending Regulation (EC) No 715/2007 and Directive 80/1269/EEC, 2005/55/EC and 2005/78/EC<sup>7</sup>.

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<sup>2</sup> *Journal of Laws of the Republic of Poland* of 2015, item 434 (consolidated version), as amended.

<sup>3</sup> *Journal of Laws of the Republic of Poland* of 2004, No 227, item 1367, as amended.

<sup>4</sup> *Journal of Laws of the Republic of Poland* of 2015, item 2273 (consolidated version), as amended.

<sup>5</sup> *Journal of Laws of the Republic of Poland* of 2015, item 1223.

<sup>6</sup> *Official Journal L171* 29.06.2007.

<sup>7</sup> *Official Journal L 188* 18.7.2009.

Due to the nature of the European Union Regulations, they are directly applicable and effective throughout the European Union and do not require to be transposed to the domestic legislative system by any additional legal measures.

3. Do national rules provide stricter or less strict requirements than international and/or European regulations (if applicable)?

The Polish legal system usually does not provide for stricter requirements than international and/or European regulations. The so-called “gold-plating” of legislation transposing European Union norms is the approach that has risen several concerns of industry in Poland in the past and in most cases related ideas are being rejected by the legislators (with scarce exception discussed under section 3 in part 2).

4. What are possible consequences if the requirements set forth in the rules are not fulfilled?

In case of the requirements set forth in the rules with respect to emissions are not fulfilled, there is a threat that the approval to introduce a given product such as an engine-propelled vehicle on the market might be withdrawn. Furthermore, excessive emissions may lead to higher fees for the use of the environment which are based on the level of gases and dust released into the air. This is due to the fact that the “polluter pays” principle is built deeply into the Polish environmental protection law.

5. If you compare the existing rules for the different means of transport, would you say that there are particularly strict rules for certain means of transport?

The national rules for different means of transport do not seem biased towards any of them. In fact, it could be stated that in the light of Polish legislation concerning the regular normal operation of various means of transport with respect to the emissions, they are treated equally.

However, it might be argued that since the external costs related to their impact on the environment and the human health differ, it should be reflected somehow in the existing legislation which is not entirely the case.

## Legislation for Means of Transport regarding Accidents/Collisions (including Hazardous Goods)

1. Which national rules apply to prevent accidents/collisions and in case an accident/collision happened to prevent and minimize their impact on the environment?

The rules applicable to preventing accidents or collisions as well as the specific provisions regarding these events and their impact on the environment are scattered throughout the Polish legal system. The aim of this part of the questionnaire is to systematise an unintuitive set of rules concerning prevention and neutralisation of risks as regards the transport sector, particularly in the field environmental damage or threats of damage.

Transport law in Poland comprises distinct sets of rules applying to various means of transport. Hence, there is no single legal act including all the provisions relevant to this area of law. Due to the fact that regulations on accidents or collisions constitute one of the elements making up transport law and no *corpus iuris* for transport services is present in the Polish legislation, the analysis of applicable rules requires a horizontal approach. It should be noted that Polish transport law is complemented by a significant number of executive regulations adopted under the national laws presented below, which mostly concern technical matters.

The following legislation applies to preventing accident or collisions in (inland and maritime) vessel transport within the Polish legal order:

- Inland Shipping Act of 21 December 2000 (*ustawa z dnia 21 grudnia 2000 roku o żegludze śródlądowej*)<sup>8</sup>,
- Maritime Equipment Act of 20 April 2000 (*ustawa z dnia 20 kwietnia 2004 roku o wyposażeniu morskim*)<sup>9</sup>,

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<sup>8</sup> *Journal of Laws of the Republic of Poland* of 2013, item 1458 (consolidated version), as amended.

<sup>9</sup> *Journal of Laws of the Republic of Poland* of 2004, No 93, item 899, as amended.

- Maritime Code Act of 18 September 2001 (*ustawa z dnia 18 września 2001 roku Kodeks morski*)<sup>10</sup>,
- Maritime Safety Act of 18 August 2011 (*ustawa z dnia 18 sierpnia 2011 roku o bezpieczeństwie morskim*)<sup>11</sup>.

The following legislation applies to preventing accidents in road transport within the Polish legal order:

- Road Traffic Act of 20 June 1997 (*ustawa z dnia 20 czerwca 1997 roku Prawo o ruchu drogowym*)<sup>12</sup>,
- Road Transport Act of 6 September 2001 (*ustawa z dnia 6 września 2001 o transporcie drogowym*)<sup>13</sup>.

The rules applicable to preventing accident or collisions in rail transport within the Polish legal order are formulated in the Railway Transport Act of 28 March 2003 (*ustawa z dnia 28 marca 2003 roku o transporcie kolejowym*)<sup>14</sup>.

The rules applicable to preventing accidents in aviation within the Polish legal order are formulated in the Aviation Act of 3 July 2002 (*ustawa z dnia 3 lipca 2002 roku Prawo lotnicze*)<sup>15</sup>.

Prevention and minimisation of environmental impact the accidents/collisions are taken into consideration (with varying intensity) in the foregoing laws. In addition to these, Polish legislation offers a set of more specific rules regarding their impact on the environment which are as follows:

- Environmental Protection Inspection Act of 20 July 1991 (*ustawa o Inspekcji Ochrony Środowiska z dnia 20 lipca 1991 roku*)<sup>16</sup>,
- Prevention of Sea Pollution from Ships Act of 16 March 1995 (*ustawa z dnia 16 marca 1995 roku o zapobieganiu zanieczyszczeniu morza przez statki*)<sup>17</sup>,

<sup>10</sup> *Journal of Laws of the Republic of Poland* of 2016, item 66 (consolidated version), as amended.

<sup>11</sup> *Journal of Laws of the Republic of Poland* of 2015, item 611 (consolidated version), as amended.

<sup>12</sup> *Journal of Laws of the Republic of Poland* of 2012, item 1137 (consolidated version), as amended.

<sup>13</sup> *Journal of Laws of the Republic of Poland* of 2013, item 1414 (consolidated version), as amended.

<sup>14</sup> *Journal of Laws of the Republic of Poland* of 2015, item 1297 (consolidated version), as amended.

<sup>15</sup> *Journal of Laws of the Republic of Poland* of 2013, item 1393 (consolidated version), as amended.

<sup>16</sup> *Journal of Laws of the Republic of Poland* of 2013, item 686 (consolidated version), as amended.

- Atomic Act of 29 November 2000 (*ustawa z dnia 29 listopada 2000 Prawo atomowe*)<sup>18</sup>,
- Environmental Protection Law Act of 27 April 2001 (*ustawa Prawo ochrony środowiska z dnia 27 kwietnia 2001 roku*)<sup>19</sup>,
- Act on Prevention and Remediation of Environmental Damage of 13 April 2007 (*ustawa o zapobieganiu szkodom w środowisku i ich naprawie z dnia 13 kwietnia 2007 roku*)<sup>20</sup>,
- Transboundary Movement of Waste Act of 29 June 2007 (*ustawa o międzynarodowym przemieszczaniu odpadów z dnia 29 czerwca 2007 roku*)<sup>21</sup>,
- Transport of Dangerous Goods Act of 19 August 2011 (*ustawa o przewozie towarów niebezpiecznych z dnia 19 sierpnia 2011 roku*)<sup>22</sup>.

As regards a potential applicability of the Seveso III Directive (2012/18/EU), it should be remembered that it does not apply to *inter alia* the transport of dangerous substances and directly related intermediate temporary storage by road, rail, internal waterways, sea or air, outside the establishments covered by this Directive, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards (Article 2(2)(c)). The foregoing conclusion applies equally to Polish instruments aimed to prevent major industrial accidents.

2. Are international and/or European rules (if applicable) fully implemented in your country?

In many instances, yes. A significant number of relevant international and European rules have been adopted in form international agreements or directly applicable and effective EU regulations. Hence, they do not require any further implementation besides national references or rules providing for sanctions in case of non-compliance. The foregoing Polish legislation includes provisions establishing technical preconditions or specifications based *inter alia* on:

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<sup>17</sup> *Journal of Laws of the Republic of Poland* of 2015, item 434 (consolidated version), as amended.

<sup>18</sup> *Journal of Laws of the Republic of Poland* of 2014, item 1512 (consolidated version), as amended.

<sup>19</sup> *Journal of Laws of the Republic of Poland* of 2013, item 1232 (consolidated version), as amended.

<sup>20</sup> *Journal of Laws of the Republic of Poland* of 2014, item 1789 (consolidated version), as amended.

<sup>21</sup> *Journal of Laws of the Republic of Poland* of 2015, item 1048 (consolidated version), as amended.

<sup>22</sup> *Journal of Laws of the Republic of Poland* of 2004, No 227, item 1367, as amended.

- European Agreement concerning the International Carriage of Dangerous Goods by Road of 30 September 1957 (as amended),
- International Convention for the Prevention of Pollution from Ships of 17 February 1973 (as amended),
- Regulation concerning the Carriage of Dangerous Goods by Rail of 9 May 1980 (as amended),
- Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (as amended),
- Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area of 17 March 1992 (as amended),
- European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways of 26 May 2000 (as amended),
- Commission Regulation (EU) No 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007.

In the case of international agreements, they have been complemented by a noticeable number of protocols, the vast majority of which are a part of the Polish legal order now. However, it cannot be honestly said that the foregoing rules have been fully implemented in Poland.

Nevertheless, a substantial number of applicable rules have been established in EU directives which require implementation. Poland has not avoided difficulties associated with the processes of implementation, and therefore, it has been subject to the EU infringement procedures conducted by the European Commission. Interestingly, however, suspected violations of EU law in the field of preventing accidents and their impact on the environment have been rectified and cases were closed, for instance the proceedings regarding the implementation of:

- Directive 2004/35/EC (on environmental liability with regard to the prevention and remedying of environmental damage) during which the European



Commission issued a formal notice and a reasoned opinion but did not ask the European Court of Justice to open a litigation procedure,

- Directive 2006/87/EC (laying down technical requirements for inland waterway vessels and repealing Council Directive 82/714/EEC) during which the European Commission issued a formal notice and a reasoned opinion but did not ask the European Court of Justice to open a litigation procedure.

Unfortunately, publicly available databases provide plainly statistical information and do not elaborate on details of the cases. The confidentiality of documents related to infringement proceedings impedes any reconstruction of the European Commission's rationales towards ensuring Member States compliance with EU law. It also has to be kept in mind that the European Commission enjoys substantial discretion in initiating infringement proceedings and it usually does not pursue minor implementation problems unless they have an impact on the EU internal market freedoms or the EU environmental policy. However, in the case of Poland obstacles were clear and have been overcome. The foregoing allows us to state that relevant rules established in EU directives have been adopted in Poland at least in a satisfactory manner.

3. Do national rules provide stricter or less strict requirements than international and/or European regulations (if applicable)?

As mentioned above, the relevant international agreements and EU regulations form an integral part of the Polish legal order. Hence, the main role of national law is to establish clear references to relevant provisions and ensure their enforcement. Polish transport law is no exception to that, because it envisages that standards and procedures should be followed in accordance with "international agreements", "directive X" or "regulation Y", for instance:

- Navigation on Polish inland waterways is allowed only for vessels to the extent and conditions specified in the international agreements concluded between the Republic of Poland and the state of the nationality of the vessel (Article 15(1) of the Inland Shipping Act),
- If the vehicle does not meet all the requirements stipulated in the Directive 2007/46/EC (**establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units**

**intended for such vehicles**) and the vehicle manufacturer cannot obtain an exemption from certain technical requirements, the vehicle shall be considered as an incomplete one (Article 70d(8) of the Road Traffic Act),

- The airworthiness of the aircraft as well as the technical conditions of its engines, propellers, parts and accessories is examined in the course of their design, production and operation within the scope and under the terms of Regulation (EC) No 216/2008, Commission Regulation (EC) No 1702/2003 and Commission Regulation (EC) No 2042/2003 (Article 46 of the Aviation Act).

Hence, the national requirements are fully compatible with the foregoing rules.

In the case of EU directives, the relevant Polish laws on transport mostly makes use of the copy-paste or reference implementation techniques. Interestingly, however, this changes in the field of environmental law where more stringent requirements are sometimes adopted.

An example worth mentioning in the questionnaire is the implementation of the Environmental Damage Directive (2004/35/EC) in Polish law which provides for a number of more stringent rules than the Directive. The Directive has been transposed into the Act on Prevention and Remediation of Environmental Damage of 13 April 2007. The examples of the more stringent approach are as follows:

- the “damage to protected species and habitats” in Poland includes not only those protected under the Habitats Directive (92/43/EEC) and the Birds Directive (2009/147/EC) but also those protected solely under the national legislation, namely the Nature Conservation Act of 16 April 2004<sup>23</sup>,
- under the Environmental Damage Directive, competent authorities may take the necessary preventive and remedial measures themselves while in accordance with Polish law they are required to take such measures in some instances, for instance when an operator liable cannot be identified or an immediate action is necessary because of a threat of causing an irreversible damage to the environment,
- in terms of requesting for action, the Polish legislation grants the right to submit a notification on environmental damage or threat of environmental damage to everyone and not only to persons affected as EU law stipulates,

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<sup>23</sup> *Journal of Laws of the Republic of Poland* of 2015, item 1651 (consolidated version), as amended.

- further responsible parties are foreseen in Poland comparing to EU law. Joint liability of the polluter and the owner of land where environmental damage or threat has occurred is envisaged, if the land owner has given its consent to the damage or threat.

Hence, more stricter requirements have been adopted in Poland regarding prevention of the impact of accidents or collisions on the environment. However, they constitute a minority of national provisions within the field of law relevant to this questionnaire. Nevertheless, the national rules at hand do not differentiate between various means transport. Hence, in the light of the Polish legislation concerning prevention and remediation, vessels, aircraft, trains and lorries are treated equally. A more thorough analysis of this phenomenon is provided in Section 5.

4. What are possible consequences if the requirements set forth in the rules are not fulfilled?

There are two types of possible consequences of non-compliance: administrative and criminal. Certainly, in the case of an accident/collision instruments of civil liability (both contractual and tortious) remain available. Each type of liability fulfils a different role by using different means to achieve compliance. Hence, they do not preclude each other, but quite the opposite – they are complementary and may be applied interchangeably (depending on the facts of the case).

The administrative sanctions for non-compliance with certain provisions included in the foregoing Polish legislation are as follows:

- a negative response from a competent authority in case of an application for a certificate of approval for a given mean of transport,
- confiscation of documents entitling to use a given mean of transport,
- vehicle or vessel detention,
- an obligation to take remedial actions in order to mitigate, restore or replace damaged elements of the environment, or to provide an equivalent alternative – at violator’s own expense,
- administrative penalties in case of:

- aircrafts up to 10 000 PLN (approx. 2 500 EUR),
- transport of dangerous goods up to 10 000 PLN (approx. 2 500 EUR).
- trains up to 2% of the company's annual revenue,
- vehicles up to 50% of sales value resulting from placing the vehicle, parts or equipment on the market or 40 000 PLN (approx. 10 000 EUR),
- vessels up to equivalent of 1 000 000 units of Special Drawing Rights defined and maintained by the International Monetary Fund (approx. 5 500 000 PLN).

The criminal sanctions for non-compliance with certain provisions included in the foregoing Polish legislation are as follows:

- a (penalty) fine in case of:
  - vehicles up to 2000 PLN (approx. 500 EUR),
  - inland shipping, aircrafts, trains and transport of dangerous goods up to 5000 PLN (approx. 1250 EUR),
  - non-compliance with provisions of the Act on Prevention and Remediation of Environmental Damage up to 5000 PLN (approx. 1250 EUR),
  - maritime equipment up to 100 000 PLN (approx. 25 000 EUR).
- restriction of liberty, such as community service in case of aircrafts, sea pollution from ships and the crimes against environment envisaged in the Criminal Code of 6 June 1997 (*ustawa z dnia 6 czerwca 1997 roku Kodeks karny*)<sup>24</sup>.
- imprisonment in case of aircrafts, sea pollution from ships and the crimes against environment envisaged in the Criminal Code.

In conclusion, there is a noticeable differentiation between the various means of transport in the field of sanctioning non-compliance. However, the most dissuasive criminal sanctions apply horizontally, regardless of the means of transport involved. Conversely, the environmental impact is the key factor in such cases. The catalogue of

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<sup>24</sup> Journal of Laws of the Republic of Poland of 1997, No 88, item 553, as amended.

administrative penalties portrays certain inequalities but aviation that seems to be an advantaged means of transport in this field may be subject to the dissuasive criminal penalties.

5. If you compare the existing rules for the different means of transport, would you say that there are particularly strict rules for certain means of transport?

The general rules on accidents/collisions in the Polish legal system are primarily based on relevant international and European provisions that do not observe environmental concerns to a great extent. With respect to the relevant Polish legislation the following conclusions may be made:

- legislation concerning maritime transport seems to be the most focused on environmental issues, especially as regards dumping into sea as well as oil and air pollution,
- inland shipping and rail transport rules provide for a broad definitions of an “accident” which includes damages to the environment,
- the Aviation Law Act and rules regarding road traffic mostly target on emissions and noise rather than on an environmental impact of accidents.

In the case of transport of dangerous goods, it should be stressed that there is only one law regarding this topic in Poland, namely the Transport of Dangerous Goods Act which encompasses vessels, trains and lorries. With regard to aircrafts similar provisions are envisaged in an executive regulation adopted under the Aviation Law. However, each of them refers to the relevant international and European rules. Hence, any comparative examination has to focus on the content of the foregoing milestones of this issue, rather than national (Polish) laws.

Similar conclusions can be reached in relation to prevention or minimisation of the environmental impact of accidents/collisions. The point of departure for relevant Polish legislation is the concept of “using the environment” which applies to *inter alia* each means of transport. All things considered, as regards the legal position of each means of transport before the law in view of their environmental impact in Poland, it can be reported that they are treated equally, despite certain dissimilarities regarding the legal response towards non-compliance which after all do not result in evident disparities.

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