

# Management of railway infrastructure - national and European comparative analysis

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## **Abstract**

*On November 12, 2016, in Romania the Law no. 202/2016 on the integration of the Romanian railway system into the single European railway area come into force after the 2012/34/EU Directive of the European Parliament and of the Council of 21 November 2012 on the establishment of the single European railway area was adopted in 2012. It is later adopted in Strasbourg on 18 April 2018 and will enter into force on 02.05.2018 The Regulation 643/2018 on rail transport statistics. Statistics on freight and passenger rail transport are needed to enable the Commission to oversee and develop the common transport policy as well as the transport elements of policies on trans-European regions and networks. Under Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways, each Member State of the European Union must establish a national safety authority. In Romania, the Romanian Railway Safety Authority - ASFR<sup>2</sup>, was set up as a national body responsible for the tasks related to railway safety.*

**Keywords:** railway infrastructure, Community's railways, European railway area, trans-European regions and networks, railway safety.

**JEL Classification:** K23, K33

## **1. Introduction**

In order to continue the efforts to establish a single market for rail transport services, initiated by Council Directive 91/440/EC of 29 July 1991 on the development of the Community's railways, it was necessary to establish a common regulatory framework for railway safety. To date, Member States have developed safety standards and standards mainly at national level, based on national technical and operational concepts. At the same time, differences in principles, approach and culture have made it difficult to overcome technical barriers and carry out international transport operations.

All those operating the railway system, the IM<sup>3</sup>/RU<sup>4</sup>, should be fully accountable for system security, each for its own part and cooperate in the implementation of risk control measures. Member States should make a clear distinction between this immediate responsibility for the safety and the task of NSA<sup>5</sup>s to provide a national regulatory and performance control framework for operators.

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<sup>2</sup> By Law no. 55/2006 of 16/03/2006 on railway safety (transposing Directive 2004/49/EC).

<sup>3</sup> IM – Infrastructure managers.

<sup>4</sup> RU – Railway operators.

<sup>5</sup> ANS – Autoritatea Națională de Siguranță (National Safety Authority).

## 2. The management of the railway infrastructure in Romania

In Romania, on September 15, 1998, the Government Decision no. 581/1998<sup>6</sup> came into force regarding the establishment of the National Railway Company C.F.R. - S.A. through the reorganization of the Romanian National Railway Company<sup>7</sup>. According to art. 1 par. (2) of Government Decision 581/1998<sup>8</sup>, C.F.R. is a Romanian legal person, is organized and operates in accordance with the in force legislation and with the statute stipulated in Annex no. 1 which forms an integral part of this judgment.

Thus, C.F.R. ensure the management of the railway infrastructure and make it available to the railway undertakings<sup>9</sup> in accordance with the law, the development and modernization of the railway infrastructure in Romania in accordance with the European standards in order to ensure the compatibility and interoperability with the European rail transport system<sup>10</sup> and the organization, coordination and control of railway infrastructure management, operation, maintenance and repair activities<sup>11</sup>.

Also, C.F.R. make railway infrastructure operators available on a non-discriminatory basis on the basis of the access contract. The foreign railway transport operators and the international groups carrying out the railway transport are accepted for circulation on the public railway infrastructure, under the conditions of the law and of the international agreements and conventions to which Romania is a party<sup>12</sup>.

The infrastructure charge shall be paid in accordance with the terms and conditions set out in the access contract. C.F.R. may temporarily suspend the access to infrastructure for railway operators exceeding the payment deadlines if the delay in payment is longer than 3 working days. In such cases, at the request of the CFR, the Ministry of Transport may suspend or cancel the license of the railway operator (Article 12 of the Government Decision no. 581/1998)<sup>13</sup>. The tariff for the use of the public railway infrastructure, hereinafter referred to as TUI, applies for access to the public railway infrastructure according to art. 12 paragraph (2) and (3) of the Government Decision no. 581/1998 on the establishment of the

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<sup>6</sup> Published in the Official Gazette, Part I no. 349 of September 15, 1998.

<sup>7</sup> Hereinafter referred to as C.F.R.

<sup>8</sup> Amended by the following acts: Corrigendum 1999; Government Decision no. 1199/2002; Government Decision no. 589/2006; Government Ordinance no. 1/2007; Government Decision no. 1108/2010.

<sup>9</sup> Article 6, letter (a) of the Government Decision no. 581/1998, as subsequently amended and supplemented.

<sup>10</sup> Article 6, letter (b) of the Government Decision no. 581/1998, as subsequently amended and supplemented.

<sup>11</sup> Article 6, letter (c) of the Government Decision no. 581/1998, as subsequently amended and supplemented.

<sup>12</sup> Article 12, paragraph (1) of the Government Decision no. 581/1998, as subsequently amended and supplemented.

<sup>13</sup> For details see Cătălin-Silviu Săraru, *Cartea de contracte administrative. Modele. Comentarii. Explicații*, C. H. Beck Publishing House, Bucharest, 2013, p. 413.

"C.F.R." - SA National Railway Company through the reorganization of the Romanian National Railway Company, with subsequent modifications and completions<sup>14</sup>.

C.F.R. may sanction until it prohibits access to the railway infrastructure of the beneficiary of an access contract for non-payment of overdue debts with overdue payment<sup>15</sup>.

The concrete elements of the public railway infrastructure can be found in Annex 2 of the Government Decision no. 581/1998, modified by the Government Decision no. 589/2006<sup>16</sup>.

Taking into account the provisions of Commission Implementing Regulation (EU) 2015/171 of 4 February 2015 on certain aspects of the licensing procedure for railway undertakings and the provisions of Art. 25 par. (1) of the Law no. 202/2016 on the integration of the railway system in Romania into the single European railway area, on July 27, 2018 came into force the Government Decision no. 361/2018 on the approval of the procedures for granting licenses in the field of railway transport

In Romania, the Romanian Railway Safety Authority - ASFR<sup>17</sup> was set up as the national body responsible for railway safety tasks, and at European level there are other such railway safety monitoring and control bodies, such as: Public Railway Safety Authority (France)<sup>18</sup>, The National Railway Safety Authority (Italy)<sup>19</sup>, the Railway Safety Department (Greece)<sup>20</sup>, the Terrestrial Transport Safety Agency (Spain)<sup>21</sup>, the Public Agency for Rail Transport (Slovenia)<sup>22</sup>, the Federal Ministry for Transport, Innovation and Technology (Austria)<sup>23</sup>, Executive Agency for Railway Administration (Bulgaria)<sup>24</sup>, Institute for Mobility and Land Transport (Portugal)<sup>25</sup>, Transport Council/Railway Council (Sweden)<sup>26</sup>, National Transportation Authority (Hungary)<sup>27</sup>, Railway Regulatory Office (United Kingdom)<sup>28</sup>.

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<sup>14</sup> *Idem*, p. 408.

<sup>15</sup> Decision no. 4648/2012 of the High Court of Cassation and Justice published on www.scj.ro from November 22, 2012.

<sup>16</sup> Annex no. 2 "The concrete elements of the public railway infrastructure" to the Government Decision no. 581/1998 regarding the establishment of the "C.F.R." National Railway Company - S.A. through the reorganization of the Romanian National Railway Company, published in the Official Gazette of Romania, Part I, no. 349 of 15 September 1998, as subsequently amended and supplemented.

<sup>17</sup> By Law no. 55/2006 of 16/03/2006 on railway safety (transposing Directive 2004/49/EC).

<sup>18</sup> EPSF - L'Établissement Public de Sécurité Ferroviaire.

<sup>19</sup> ANSF - Agenzia Nazionale per la Sicurezza delle Ferrovie.

<sup>20</sup> ΑΣ - Ασφάλεια Σιδηροδρόμων.

<sup>21</sup> ASTT - Agencia de Seguridad del Transporte Terrestre.

<sup>22</sup> AŽP - Javna Agencija za Železniški Promet.

<sup>23</sup> BMVIT - Bundesministeriums für Verkehr, Innovation und Technologie.

<sup>24</sup> ИаЖ - Изпълнителна агенция "Железопътна администрация".

<sup>25</sup> IMTT - Instituto da Mobilidade e dos Transportes Terrestres.

<sup>26</sup> J/T - Järnvägsstyrelsens/Transportstyrelsens.

<sup>27</sup> NKH - Nemzeti Közlekedési Hatóság.

<sup>28</sup> ORR - Office of the Rail Regulator.

## 2. The management of the railway infrastructure in France

The railway system is currently undergoing major technical and institutional developments at both national and European level. Over the last decade, new players have emerged alongside existing operators, new infrastructure is being planned, new types of exploitation are being developed, and many private freight companies are circulating in the network. Passenger transport activity will be similar in the medium term<sup>29</sup>.

Faced with this profound change, it has become essential to have a national security authority capable of ensuring the coherence and security of the system, contributing to the interoperability of European networks, while guaranteeing fair treatment of actors. 2006 is the year when EPSF was created. EPSF's scope of intervention covers the national rail network<sup>30</sup>.

This field of action evolved in early 2015, with the publication of the January 28<sup>th</sup> decree, which establishes the list of networks with operating characteristics comparable to those of RFNs and consequently leads to the application of these networks, the security rules in force on RFN. The EPSF competencies are thus extended to the main railways ports.

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*Positioning EPSF in the security system* - Rail transport is a complex way, the security of which can be controlled as long as the responsibility of each of the actors involved and their roles are clearly identified. In France, railway operators implement their equipment, train personnel, define operating instructions and instructions in accordance with operational regulations and documentation.

## 3. The management of the railway infrastructure in England

The Office of Rail and Road (ORR) is a non-ministerial government department responsible for the economic and safety regulation of Britain's railways, and the economic monitoring of Highways England.

ORR regulates Network Rail by setting its activities and funding requirements for each Control Period, ensuring train operators have fair access to the railway network, and enforcing compliance with its network license. ORR also regulates High Speed 1 and the Channel Tunnel. It is the competition authority for the railways and enforces consumer protection law in relation to the railways<sup>31</sup>.

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<sup>29</sup> <http://www.securite-ferroviaire.fr>, consulted on 1.10.2018.

<sup>30</sup> Hereinafter referred to as RFN

<sup>31</sup> Our functions | Office of Rail and Road - <http://orr.gov.uk/about-orr/what-we-do/our-functionsorr.gov.uk>, consulted on 1.10.2018.

From April 2015 ORR assumed responsibility for monitoring Highways England's management of the strategic road network – the motorways and main 'A' roads in England – and advising the Secretary of State for Transport on the levels of funding and performance requirements for each Road Period<sup>32</sup>.

ORR was established as the *Office of Rail Regulation* on 5 July 2004 by the Railways and Transport Safety Act 2003, replacing the Rail Regulator. It became the Office of Rail and Road on 1 April 2015 following ORR's appointment as Monitor for Highways England under the Infrastructure Act 2015<sup>33</sup>.

„*Network*” Rail – the owner and operator of most of the railway network in England, Scotland and Wales – operates under a network license. ORR holds „*Network*” Rail to account through the network license which includes conditions relating to its management of the railway network, information provision and safety obligations.

ORR is also responsible for setting „*Network*” Rail's outputs and funding requirement for each Control Period, including the access charges paid by train and freight operating companies to Network Rail for the use of its infrastructure. ORR then holds „*Network*” Rail to account against the delivery, performance and service levels set out in its final determination.

ORR is concerned with the regulation of „*Network*” Rail as the monopoly owner of much of Britain's railway infrastructure. It does not play a direct role in regulating fares (responsibility for this lies with the Department for Transport).

High Speed 1- ORR regulates the High Speed 1 line between St Pancras and the Channel Tunnel. This line is operated by HS1 Ltd, and is separate to the rest of the national railway network operated by Network Rail, but ORR regulates it in much the same way. This includes holding HS1 to account for its performance, service and value for money for passengers and the freight industry.

*Rail – Safety* - ORR regulates health and safety for the entire mainline rail network in Britain, as well as London Underground, light rail, trams and the heritage sector. ORR has a team of more than 100 rail health and safety inspectors and professionals who have powers of enforcement. Their remit is to ensure that the railway is safe, and is kept safe, at a reasonably practicable cost.

Fair access and fair treatment - a primary role for ORR is to enforce consumer law and compliance with the conditions contained in Network Rail's and train operators' licenses, to help ensure that all rail users get the service to which they are entitled.

Highways England operates, maintains and improves England's strategic road network, operating under a license (managed by the Department for Transport). ORR monitors and enforces the performance and efficiency of Highways England against the outputs set out in the government's Road Investment

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<sup>32</sup> Infrastructure Act 2015 - [www.legislation.gov.uk](http://www.legislation.gov.uk), consulted on 1.10.2018.

<sup>33</sup> Office of Rail Regulation to be re-named Office of Rail and Road – see <http://orr.gov.uk/highways-monitor/news-and-media/email-alerts/2015/office-of-rail-regulation-to-be-re-named-office-of-rail-and-road>, consulted on 1.10.2018.

Strategy and license, and advises the Secretary of State for Transport on the funding levels and performance requirements for each Road Period.

*Statutory duties* - In carrying out its railway functions, ORR must discharge its statutory duties, which are its formal objectives. These are laid down in section 4 of the Railways Act 1993, and include the protection of the interests of users and the promotion of competition, efficiency and economy in the provision of railway services.

ORR's duties as the Monitor for Highways England are set out in section 12 of the Infrastructure Act 2015. These require that ORR must exercise its functions in the way it considers most likely to promote the performance and efficiency of Highways England. ORR also has a role within The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016.

*Public law obligations* - like other public authorities, ORR must comply with the rules of administrative law, and is amenable to judicial review, so it must act lawfully, rationally, proportionately and in accordance with the relevant rules of procedure. Although operationally independent of central government as a non-ministerial government department, it is still covered by legislation such as the Freedom of Information Act 2000.

#### 4. Conclusions

The main actors in the Union's rail system, infrastructure managers and railway undertakings should be fully accountable for the safety of the system, each for its own part. Whenever appropriate, they should cooperate in the implementation of risk control measures. Without prejudice to the responsibility of infrastructure managers and railway undertakings for the development and improvement of railway safety, other actors, such as entities in charge of maintenance, manufacturers, transporters, consignors, consignees, bulk carriers, bulk hoists, chargers, maintenance service providers, holders, service providers and contracting entities should not be prevented from assuming responsibility for their own products, services and processes. Each actor in the Union's rail system should be accountable to the other actors for the full and accurate communication of all relevant information in order to check that the vehicles are fit for operation. In particular, this concerns information on the status and history of a particular vehicle, the maintenance file, the traceability of the loading operations and the consignment notes<sup>34</sup>.

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<sup>34</sup> Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on rail safety (OJ L 138, 26.5.2016).

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