

Office of Rail Transport

<https://utk.gov.pl/en/supervision-over-railwa/a-des-of-the-supervisio/6061,A-description-of-the-supervision-process.htm>

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A description of the supervision process

Supervisory proceedings conducted by the President of the Office of Rail Transport (UTK) may take the form of inspection proceedings, administrative proceedings or clarification proceedings in addition, a number of measures are undertaken to promote the culture of safety.

I. Inspection proceedings

The inspection procedure is primarily governed by two legislative acts:

- the Regulation of the Minister of Transport of 12 March 2007 on the method of inspection used by the President of the Office of Rail Transport;
- the provisions of section 5 of the Act on the Freedom of Economic Activity.

In their essence, inspection proceedings aim at establishing the actual state of affairs with regard to the subject of the inspection.

Inspection proceedings can be divided into three stages: the institution, the inspection proper and the conclusion. Specific rules governing the course of the inspection proceedings pursuant to special regulations are discussed in the final section.

The institution

As a rule, inspection proceedings are instituted on the initiative of the President of UTK. However, the Regulation on the method of inspection used by the President of the Office of Rail Transport additionally provides for the possibility to commence an inspection at the request of a railway undertaking, an infrastructure manager or a side-track user. An inspection will usually be preceded by the appropriate notification, the delivery of which marks a period of 7-30 days within which the inspection should start. At the request of the inspected entity, the inspection may also begin earlier. The commencement of inspection proceedings is recorded in the inspection register.

The inspection proper

In the course of the inspection proceedings, authorised UTK employees verify the compliance of the railway-related business activities carried out by the inspected entity with the regulations in force. The inspection findings are made, *inter alia*, on the basis of:

- Documentation certified for conformity by the head of the inspected entity (a person(s) authorised to make declarations of intent and entered in the KRS) or a representative of the inspected entity, authorised to act on the company's behalf before the Office of Rail Transport. Not certified photocopies are not accepted.
- Oral or written clarifications by persons representing the inspected entity or the company's employees, submitted at the request of the inspected entity;
- Clarifications by persons representing the inspected entity or by its employees, submitted at the request of the inspected entity;
- Visual examination and an assessment by an expert.

The conclusion

The inspection concludes with an inspection report describing the actual state of affairs, as established in the course of the proceedings, including the specification of any irregularities found. The inspection report should be drawn up within 7 days of the date on which the inspection ended (a non-binding deadline). A party to the proceedings may lodge objections in writing as to the findings included in the report. Collecting the inspection report does not amount to signing it. The said objections should be lodged within seven days after collecting the report, on the penalty of disregarding them. For instance, for a report collected on Monday, objections may be lodged no later than by the next Monday – in person or by registered mail. In exceptional cases (e.g. connected with the report's volume), the above seven-day period may be extended at the request of the inspected entity. With objections duly lodged, the relevant authority is entitled to undertake additional inspection measures, and, having examined the objections, reject them or accept them partially or in full. Where the inspected entity's objections are found legitimate, the authority draws up an annex to the inspection report, submitting it for approval to the inspected entity.

Inspections conducted pursuant to special regulations:

- Inspection proceedings conducted by the President of UTK often concern issues that are directly related to the safety of rail transport, including the safety of passengers and freight transport. In the event of obtaining information on any existing direct threat to human life, health or natural environment, the inspection by the President of UTK commences with limited formal obligations arising from the inspection purpose. The inspection conducted upon obtaining information on any threat to human life, health or natural environment is conducted with the following exceptions:

1. No inspection commencement notification is provided;
2. Inspection activities may be only undertaken on the presentation of an identification

card, but without any authorisation;

3. Inspection activities may be conducted in the absence of the entity being inspected or a person authorised by it;
 4. Such an inspection may be conducted simultaneously with a regular inspection preceded by a notification;
 5. No restrictions as to the inspection duration are applied.
- The regulations in force also define specific exceptions applied in the event of inspecting moving vehicles, transport users or freight carried under the Railway Transport Act of 28 March 2013. Such inspections are carried out with the following exceptions:
 1. No inspection commencement notification is provided and no entry is made to the inspection register;
 2. Inspection activities may be only undertaken upon the presentation of an identification card, but without any authorisation;
 3. Inspection activities may be conducted in the absence of the entity being inspected or a person authorised by it;
 4. A simultaneous inspection of several vehicles is allowed;
 5. No restrictions as to the inspection duration are applied.

II. Administrative proceedings

Administrative proceedings conducted by the President of the Office of Rail Transport differ from their inspection-related counterparts. The provisions that govern the course of administrative proceedings are set out in the Act of 14 June 1960 – the Code of Administrative Proceedings. Findings made through inspection activities can constitute a premise for instituting administrative proceedings by the President of UTK. The assessment and remarks included in post-inspection statements are not binding on the administrative proceedings and their qualification is subject to change.

In administrative proceedings, the entities entered into the National Court Register, including limited-liability companies and joint-stock companies, may be represented by their statutory bodies. In most cases, the board acts as a statutory body, represented by two members.

In principle, the evidence gathered in administrative proceedings must be submitted in the original version. Photocopies may be submitted instead of the original versions, provided that they have been certified by a notary public or by a professional proxy appointed for this

purpose, i.e. a solicitor, a barrister, a patent agent or a tax advisor.

The decision issued in the first instance by the President of the Office of Rail Transport may be appealed against by the addressee by submitting, within 14 days, a motion to reconsider the case. The motion does not have to provide a detailed justification, as the implication that the party is dissatisfied with the decision issued will suffice.

III. Clarification proceedings

With a view to inspecting the compliance with the binding regulations, decisions and orders regarding rail transport, the President of the Office of Rail Transport conducts clarification proceedings based on correspondence. In connection with its statutory duties, UTK may request that rail market entities provide any information necessary to inspect and monitor the rail sector. The letter requesting the provision of information specifies the information-submission deadline. The statutory period for information submission may not be shorter than 3 days. Failure to provide information may result in a financial penalty imposed in the administrative mode, the amount of which is determined on the basis of the entity's revenue. If the information requested contains personal data held by the entity concerned, the legal basis for their dissemination is provided by Article 23, Par. 1, Point 2 and Point 4 of the Act of 29 August 1997 on the protection of personal data (consolidated text, Journal of 2002, No. 101, Item 926). Under the reference regulation, the processing of personal data is allowed only when it is deemed indispensable to exercising the power or fulfilling the duty arising from the legal regulations, and when it is necessary to perform certain public objectives defined by law.

IV. Activities aimed at promoting a culture of safety

The President of the Office of Rail Transport also conducts supervision through various activities promoting a culture of safety, by organising and participating in training sessions and seminars, and information campaigns conducted using various means of communication (both electronic and direct).

Supervision criteria

The inspection activities are based on the requirements and criteria arising from legal acts adopted at the national and EU levels. Links to the collections of the most-important documents in this area can be found below.

- National acts

<http://utk.gov.pl/pl/akty-prawne/227,Akty-Prawne-obowiazujace-w-Urzedzie-Transportu-Kolejow-ego.html>

<http://isap.sejm.gov.pl/>

- Community acts

<http://utk.gov.pl/pl/wymagania-wspolnotowe/prawo-wspolnotowe>

<http://eur-lex.europa.eu/homepage.html?locale=pl>