

**Mieczysław Kornaszewski**

Dr hab. inż., prof. nadzw. UTH Radom

Prodziekan Wydz. ds. dydakt. i studenckich Uniwersytetu Technologiczno-Humanistycznego im. Kazimierza Pułaskiego w Radomiu

**Przemysław Ciszak**

Mgr

Polskie Koleje Państwowe S.A.

**Henryk Zielaskiewicz**

Dyrektor Biura Logistyki

PKP S.A. Centrala

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**Railway sidings as a freight generator from the perspective of legal provisions**

**Abstract:** The paper characterizes conditionings of demand on railway cargo carriages in Poland. Advantages of geographical location of Poland were shown from the perspective of international freight corridors scheme. Historic intermodal freight volumes were visualized and taken in reference. The authors took an effort to define notions for a set of elements of logistic infrastructure with substantial meaning for functioning of railway transportation. Key focus was put on features of railway sidings and operational issues linked to their usage. Subjective law provisions and regulations of high significance were quoted and commented. Reasonableness of offering grants from European Union public funds for creation or amelioration of railway reloading facilities was proven in the context of EU transport policy aimed at support for modal shift to environmentally friendly shipping solutions.

**Keywords:** Rail transport services; Logistics infrastructure; Railway sidings; Act on rail transport

**Introduction**

Railway, next to sea and inland water transport, is the most ecological mode of transport. The European Union places emphasis on the improvement of connections included in the transport corridors, using environmentally friendly modes of transport. Such perception of railways is conducive to its development and increases the chance of introducing regulations that will significantly improve its competitive position in relation to road transport. As a result, the transport of containers and swap trailers and bulk cargo on Polish roads could be significantly reduced in favor of the transport of goods by rail. Currently, the freight transport market is dominated by road transport. Poland is a country with an exceptionally large advantage of road transport over rail, which is growing every year. The activities of our country's transport policy should be aimed at the development of railways as an essential component of the national transport system, which is a component of the European rail system. In view of the

growing problems with road congestion and the lack of drivers, this may improve the quality of transport and logistics services for goods. Our country thanks to its good location in the middle of the European network of transport corridors, has a chance to become the central node of the European transport system network. In Poland, due to its location, important transport corridors intersect, including four pan-European corridors, i.e. I, II, III and VI, and three rail transport corridors such as 5, 8 and the newly created 11. also the one connecting the Scandinavian countries with the Adriatic ports such as Trieste or Koper. The Amber Corridor was created on the initiative of 14 cities located along Corridor IV; is an example of the growing need to develop the line and point infrastructure enabling the provision of logistics services. Transport infrastructure is an essential element of economic development. Besides, the location of our country, through which the most important routes of the Silk Road run, where intermodal units are the basic segment of cargo, favors the development of this type of transport and logistics services. In Poland, intermodal transport plays a much more modest role in the rail transport system than in Western EU countries. In recent years, however, a significant increase in the transport of this cargo segment has been visible. Year-on-year increases are in the order of a dozen or so percent and, analyzing the period from 2012, in some years they exceeded 20%. One of the factors hampering its development is the very strong dominance of road transport alongside the shoulder of activities aimed at increasing the containerization of cargo. Road haulers are very determined to defend their own position and interests, they lower the prices of door-to-door transport. Along with the development of the terminal infrastructure, a good prospect for the development of intermodal transport with the use of Polish seaports is noticeable.

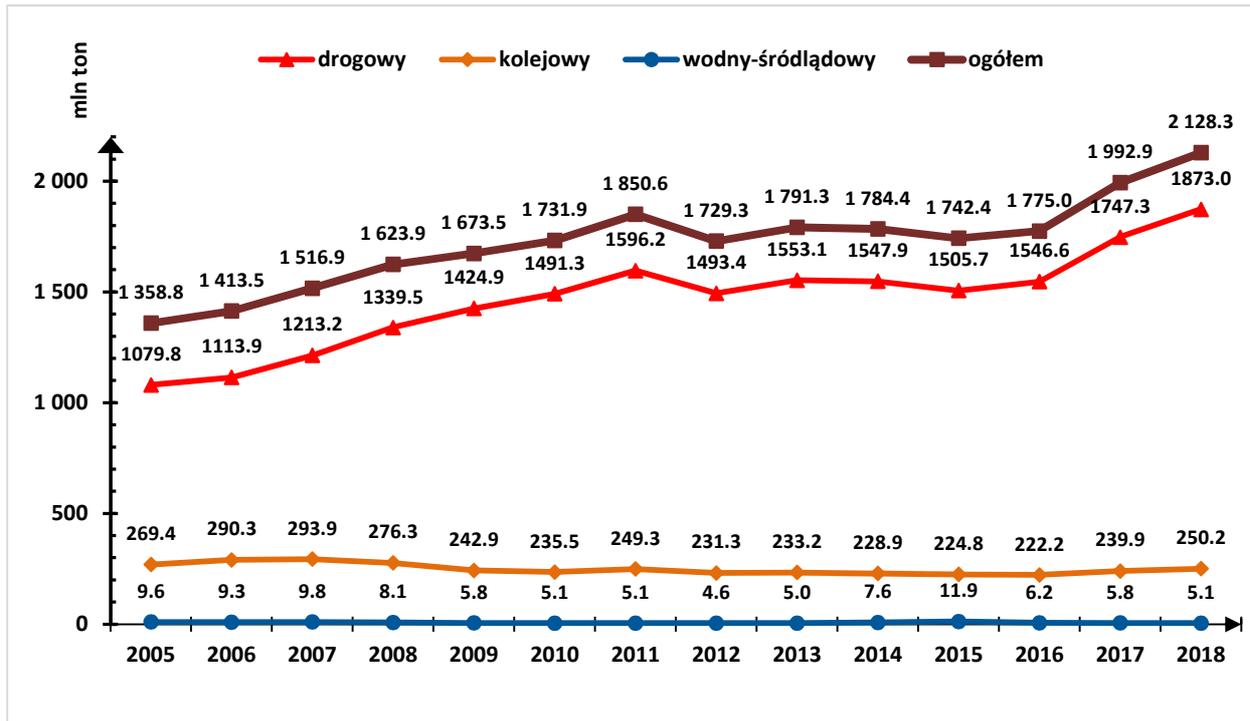
As stated in the White Paper on Transport of 28 March 2011, *“Investments in transport infrastructure have a positive impact on economic growth, create wealth and jobs, increase trade, geographic accessibility and citizens' mobility. They should be planned in a way that maximizes the positive impact on economic growth and minimizes the negative effects on the environment.”* The development of transport brings the markets closer together, makes it possible to increase production, and thus precedes economic growth. The development of transport activates the areas around its infrastructure. New industrial plants as well as economic and service areas are being built along the roads and junctions. Developed and efficient transport is, therefore, a condition and factor that dynamics economic growth. The development of transport is possible thanks to investments, both in the modernization of the existing infrastructure and the construction of new infrastructure facilities. Infrastructure development should be ahead of transport development in relation to the needs, and therefore be ahead of transport needs. This is due to a long period of construction of infrastructure facilities.

### **The freight transport market in Poland**

The last few decades of rail transport in Poland have seen a decline in the market share of this mode of transport. In the years 2001-2016, the share of rail transport in the transport market, when averaged, can be described as stagnation. In the last two years, i.e. in 2017 (approx. 240 million tonnes) and in 2018 (approx. 250 million tonnes), there were significant increases in the transport of this segment, but in the same years, the increase in road transport was several

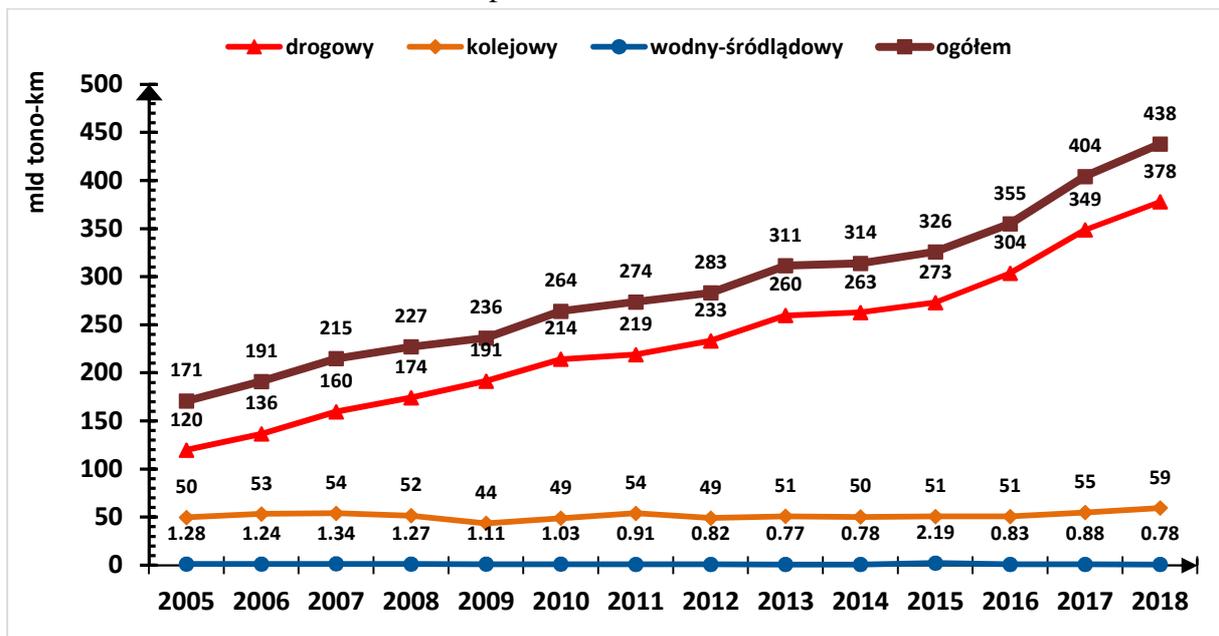
times higher. The period since 2001 has also seen an increase in the costs of railway companies related to running their business (the rates of access to railway infrastructure and fuel and energy prices are increasing), it is also a change in the organizational structure of railways in Poland, market liberalization and the emergence of new carriers and infrastructure managers. The former state-owned enterprise Polskie Koleje Państwowe was commercialized pursuant to Art. 3 of the Act of September 8, 2000 on commercialization and restructuring of the Polish State Railways state enterprise, and then pursuant to Art. 14, 15 and 19, respectively, transport companies (including PKP CARGO S.A., PKP Intercity), PKP PLK S.A. as the railway infrastructure manager and other companies from the PKP S.A. Group (including PKP Informatyka). There was also a change in the structure of transported goods by reducing the mass transport of, among others coal, building materials, metallurgical products.

Due to costs, the transport of loads in the wagon system, the so-called dispersed transport. On the other hand, intermodal transport is developing. Due to the domination of the land transport market by road transport, it resulted in the creation of new production, storage, and distribution sites, by adapting their locations to the road infrastructure. The legal conditions of the rail transport sector have a large impact on the functioning of the market. For many years, the European Union has been striving to develop ecological transport branches in its policy, but does the recently fashionable slogan of "sustainable development" have a direct impact on the effects it should have? The undertaken actions should make the state of sustainable economic development in which the needs of the present generation can be satisfied without diminishing the chances of future generations to meet them and, following the content of this idea, the EU transport system should improve environmental conditions, taking into account the expected quality of life for the present and future societies (including human health). Changes in the organization of the development of new transport technologies and the market share of individual modes of transport should strive to significantly reduce its harmful impact on our environment. Among the sectors of the economy, transport ranks third in terms of its negative environmental impact. The concept of sustainable development in relation to transport appeared and was defined already in 1987 in the WCED report - "Our Common Future", and was adopted in EU documents and legislation. However, in relation to the effects of the European Union's actions within the framework of the idea of sustainable development, it can be considered that in its areas of unsustainable development functions perfectly or, in a more gentle way, the measures taken did not bring the expected results. This is confirmed by the fact that road transport dominates throughout the European Union, although its share in the transport market in individual EU countries differs.



1. The mass of goods transported inland in Poland in terms of branches (million tonnes)

Source: Prepared on the basis of GUS data



2. Transport performance in inland transport in Poland in terms of sectors (billion tkm)

Source: Prepared on the basis of GUS data

The policy of a number of Member States, including Poland, has resulted in the fact that the currently built transport system is definitely conducive to the development of road transport, and the ecological railway is being gradually pushed out of the market, which causes the environmental conditions and quality of life of the society to deteriorate. The fight against air pollution should focus not only on emissions from coal combustion but also on reducing emissions from transport. A clear example of a large degradation of the transport sector is the

Polish inland water transport, which until the end of the 90s of the last century was still significantly used for the transport of coal and other loose materials. The dynamic development of road transport, which did not incur the costs of access to transport infrastructure, and therefore was preferred by the state, resulted in the disappearance of this mode of transport. For several years, activities have been carried out to restore the infrastructure of waterways, which will consume huge financial resources and will last several dozen years. The White Paper assumes that it is necessary to ensure a structural change that enables rail transport to compete effectively on the market and to take over more freight transport over medium and long distances. It also indicates the need for significant investments to extend or modernize the railway infrastructure, which should lead to an increase in the capacity of the railway network. In the cited Paper, one can also come across the provisions that no major change in the transport sector will be possible without supporting the development of an appropriate network and its intelligent use. It is also about planning in a way that maximizes the positive impact on economic growth as well as minimizes the negative effects on the environment. Western European countries are slowly but gradually changing their transport systems to a multi-modal approach, creating transport systems that use various branches and means of transport in the created supply chains.

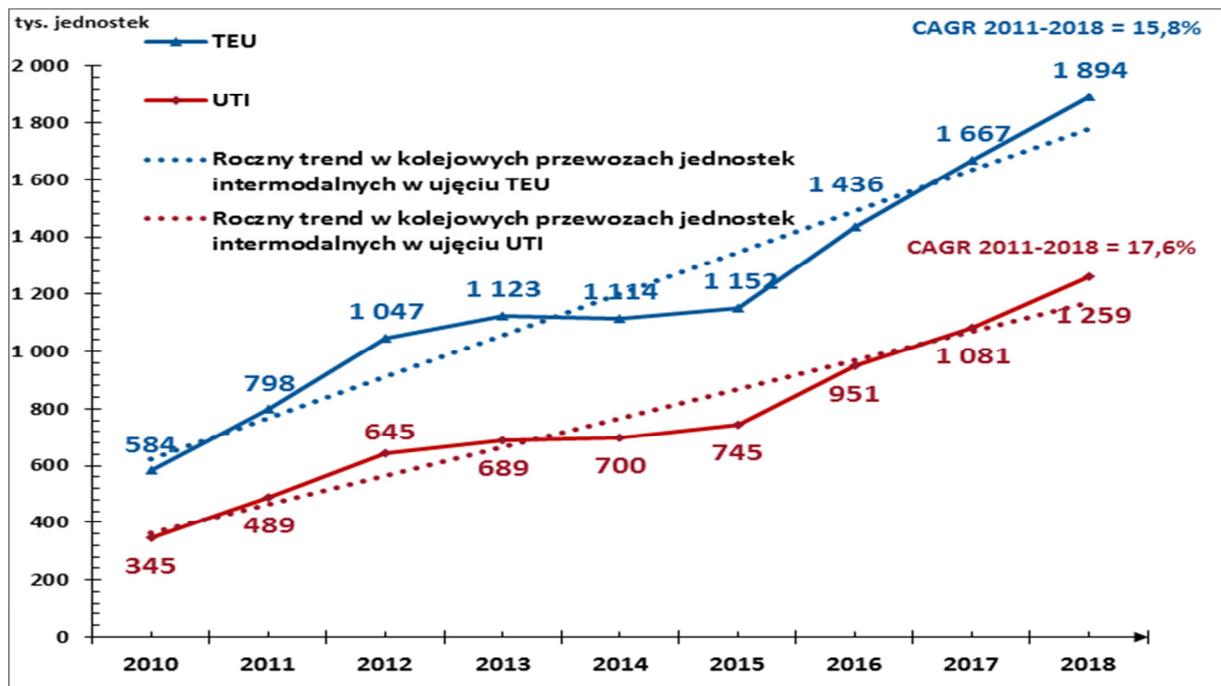
In Poland, however, a unimodal approach has been implemented for several years.

Despite the investments carried out on the railway network, there are also activities with a completely different direction and effects, where the company dealing with the maintenance of railway lines pursues a policy of adjusting the railway infrastructure to the current needs, e.g. by reducing the number of stations and loading points, and even by closing railroads. The infrastructure manager does not include in its investment plans a significant increase in rail freight in the future. Closing stations, especially on lines dedicated to mixed traffic, i.e. passenger and freight traffic, causes limitations in the line capacity. Meanwhile, the stations with adjacent sidings are traffic generators. The liquidation of currently unprofitable railway lines may allow for solving temporary problems with incurring the costs of these lines, but in the long run, it is an irreversible cut-off from the development of the railway network, both in terms of railway lines and transshipment infrastructure, which will certainly make it impossible to take actions allowing to regain customers for freight (but also passenger transport in certain areas), and thus resume effective rail traffic. For several years, activities have been carried out in Poland to change the approach and reactivate closed railway lines, especially for passenger traffic. Development programs for point railway infrastructure, such as intermodal terminals, loading points, and railway sidings are being prepared. In order to halt downward trends in rail transport, the transport policy of the European Union supports the development of intermodal transport. This transport segment is developing very well in our country. Despite the fact that the growth rate of these transports in recent years, comparing year to year in both transport performance and in weight, was more than ten percent, it does not stop the downward trend in the share of rail transport in the total transport market.

In 2018, the weight of intermodal units transported by rail amounted to 17.02 million tonnes, increasing by 15.9% compared to 2017. In the first half of 2019, 7.96 million tonnes of cargo were transported. This result is better than in the corresponding period in 2018 by 1.2

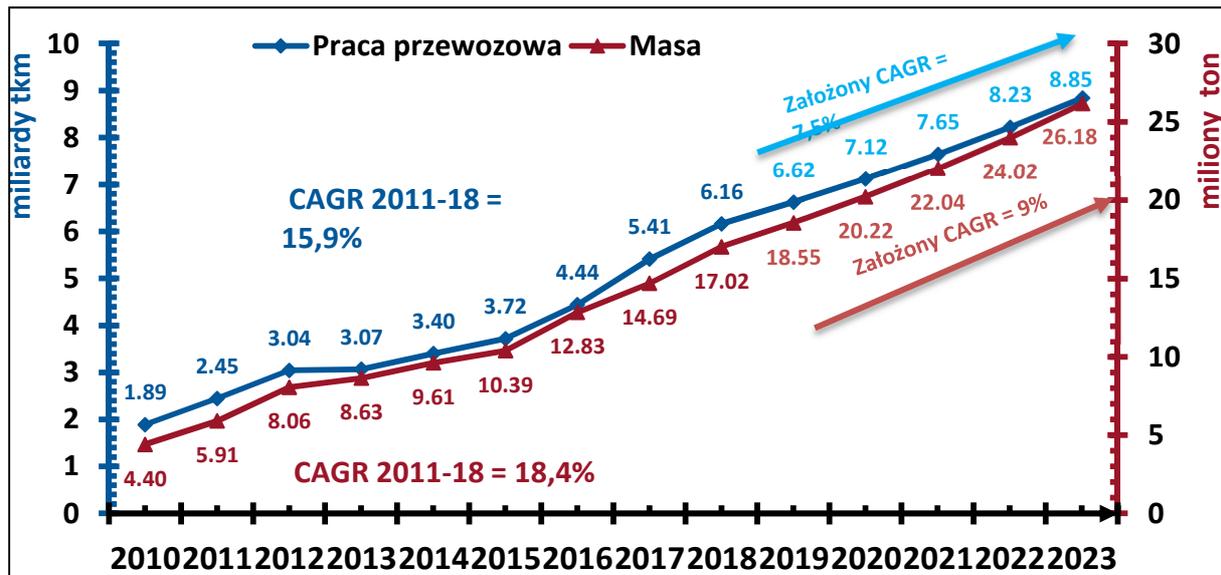
million tonnes. In the same period, the relative increase in transport performance was slightly lower - in 2018 it amounted to 6.16 billion net tkm, increasing by 13.9% compared to 2017. In the first half of 2019, transport performance was performed at the level of 3.22 billion net tkm, and in the same period of 2018 it was 2.86 billion net tkm.

In 2018, an increase in the number of intermodal UTIs transported by rail was recorded by 16.5% compared to 2017. During this period, the transports in question, expressed in TEU units, increased by 13.6% y/y. Comparing 2018 to 2017, it can be seen that there was a similar relative increase in rail transport of intermodal units measured in UTI and TEU compared to the relative change in the weight of cargo transported. The weight per TEU increased in 2018 by 2% y/y, while the weight per UTI increased by 3% on average.



3. The number of transported intermodal units in TEU and UTI between 2010-2018

Source: Own study



4. The volume of intermodal transport in 2010-2018 expressed in terms of weight and transport performance and forecast until 2023

Source: Own study

The increase in the transport of intermodal units was significantly influenced by the development of the terminal infrastructure, implemented thanks to the support of EU funds. In the logistics processes of the twentieth century, an important role was played by the standardization of cargo spaces by introducing palletization and then the container as the basic loading unit. Currently, a similar role can be played by the digitization of supporting processes and those taking place in transport processes. The development of integrated multimodal transport chains also seems to be an important direction of changes in logistics. However, point infrastructure in the form of loading points, railway sidings, and conventional terminals is necessary for the development of multimodal transport that does not use intermodal units..

The transport market is regulated by a number of legal provisions at the national, EU, and international level. However, when introducing any regulations in the field of rail transport, it should not be carried out in isolation from the conditions existing in competitive modes of transport, in particular road transport. Regulations that do not take into account the operating conditions of the entire transport market, may have a positive impact on competition within the railway industry to some extent, but lower its competitiveness within the land transport sector. Therefore, a de lege ferenda postulate should be formulated that the concept of the relevant market in relation to the transport of goods should be defined in relation to rail and road transport jointly, and in addition to unify the regulator's supervision over this market, so as to ensure equal competition between rail and car carriers.

It is also worth paying attention to the fact that in the current legal state, carriers/logistic operators operating in the field of road transport may have any number of point infrastructure (logistics, distribution and warehouse centers, etc.), without having a legal obligation to share this infrastructure with other carriers or setting the imposed margin level, thanks to which they can provide services to a larger logistics chain, independently affecting the quality. As a consequence, the entire service may be cheaper due to the lack of an

additional entity imposing its profit margin on the cost of services. Meanwhile, the regulations of the Act of March 28, 2003, on rail transport impose on entities with the above-mentioned facilities (including cargo terminals) the obligation to make them available and use the services provided in these facilities, on equal and non-discriminatory terms..

### **Railway cargo infrastructure - legal regulations.**

One of the basic conditions for the development of freight rail transport and increasing its share in the transport market is the appropriate quality line infrastructure. A point infrastructure dedicated to rail freight is also a very important element of the transport system. It should be emphasized that the provisions of the Act on rail transport distinguish between the concept of the railway infrastructure, which includes, inter alia, railway lines, and the concept of a service infrastructure facility. The first of them is defined in Art. 4 point 1 of the Railway Transport Act, by reference to Annex 1 to the Act, which contains a list of railway infrastructure elements. The definition of a service infrastructure facility is included in Art. 4 point 51 of the Rail Transport Act, which in turn refers to sec. 2 and 3 of Annex 2 to the Act.

Taking into account the above distinction, the broadly understood infrastructure that generates cargo flows can include logistic centers, railport terminals, conventional and container terminals, generally accessible loading points, and railway sidings, the latter facilities being classified as railway infrastructure under the provisions of the Act on rail transport, although they are subject to slightly different legal requirements than railway lines.

The siding infrastructure plays a very important role, especially in mass transport. As defined in Art. 4 point 10 of the Act on Rail Transport, a railway siding is a railway road designated by the infrastructure manager, connected directly or indirectly with a railway line, used for loading, maintenance or parking of railway vehicles or for moving and connecting railway vehicles to traffic on the railway network.

It should be noted that the entity managing a railway siding has the status of a railway infrastructure manager, which, however, if it does not manage a railroad other than a railway siding, it is defined in accordance with Art. 4 point 10a of the Railway Transport Act, as a user of a railway siding. This status determines in particular the obligation of the user (manager) of the siding to make it available, which results directly from Art. 5 sec. 1 point 1 lit. e of the Rail Transport Act, according to which the tasks of the infrastructure manager include, inter alia, provision of railroads, and the provision of related services. This is also confirmed by the provision of Art. 3 sec. 6 of the Act on Rail Transport, which does not mention the provisions of Chapter 6 in the catalog of provisions of the Act, which do not apply to railway sidings, which, a contrario, means that these provisions governing the principles of providing access to railway infrastructure also apply to railway sidings.

The act on rail transport defines in art. 4 point 1c the concept of private infrastructure, which is the railway infrastructure used exclusively to meet the own needs of its owner or its manager, other than passenger transport. The above concept also applies to railway sidings. As regards infrastructure that meets the above conditions, the obligation to make it available to other entities on an equal and non-discriminatory basis does not apply. It results from the provision of Art. 3 sec. 3 of the Act on Rail Transport, which, among the provisions of the Act, which do not apply to private infrastructure, excludes, inter alia, the provisions of Chapter 6. The fact of exempting private infrastructure from the obligation to provide it means, however, that such infrastructure is not exempt from the real estate tax, which results from Art. 7 sec. 1 point 1 lit. an of the Act of 12 January 1991 on local taxes and fees (Journal of Laws of 2019, 1170, as amended), according to which land, buildings, and structures included in the railway infrastructure are exempt from real estate tax within the meaning of the provisions on rail transport, which is made available to rail carriers. Moreover, pursuant to

Art. 8 of the Rail Transport Act, a land occupied for railway infrastructure is exempt from fees for perpetual usufruct.

For a full picture of the point cargo infrastructure, it is necessary to characterize other objects in which flows of cargo for rail transport are generated.

The concept of a freight terminal has been defined in Art. 4 point 36c of the Act, according to which it is a building structure or a complex of building structures including a railroad, equipped with loading devices, enabling the loading or unloading of wagons or the integration of various types of transport in the field of goods transport. This facility is indicated in sec. 2 point 2 of Annex 2 to the Act on Rail Transport, as one of the types of service infrastructure facilities. In other words, a freight terminal is a spatial object of service infrastructure equipped with such elements as track and road systems, storage yards, warehouses, and reloading devices together with the land on which they are located. They enable the loading and unloading of wagons and the integration of various modes of transport in the load handling process.

Depending on the segment of the cargo handled, terminals are divided into conventional and intermodal. In addition to terminals, there are loading points on the rail network, which, unlike terminals, are generally not equipped with reloading facilities, do not have assigned employees and the permanent organization of reloading work is not defined. These points are most often managed directly by the infrastructure manager.

A logistics center is a spatial and functional facility with infrastructure and organization in which logistic services related to the receipt, storage, distribution, and issuance of goods as well as accompanying services are provided, supplied by economic entities independent of the sender or recipient. A logistics center may consist of several transshipment terminals connecting various modes of transport in the transport process. One of the terminals should be an intermodal terminal.

In organizational terms, a logistics center is an independent economic entity with a separate area connected with the transport environment (mainly the road network and railway lines), infrastructure (roads, squares, parking lots, engineering structures and buildings), equipment, personnel, and organization, providing logistic services (transport, transshipment, storage, separation and completion, procurement and distribution functions) under ad hoc orders or continuous contracts with external companies.

The division of the railway logistics infrastructure is presented in the figure below.



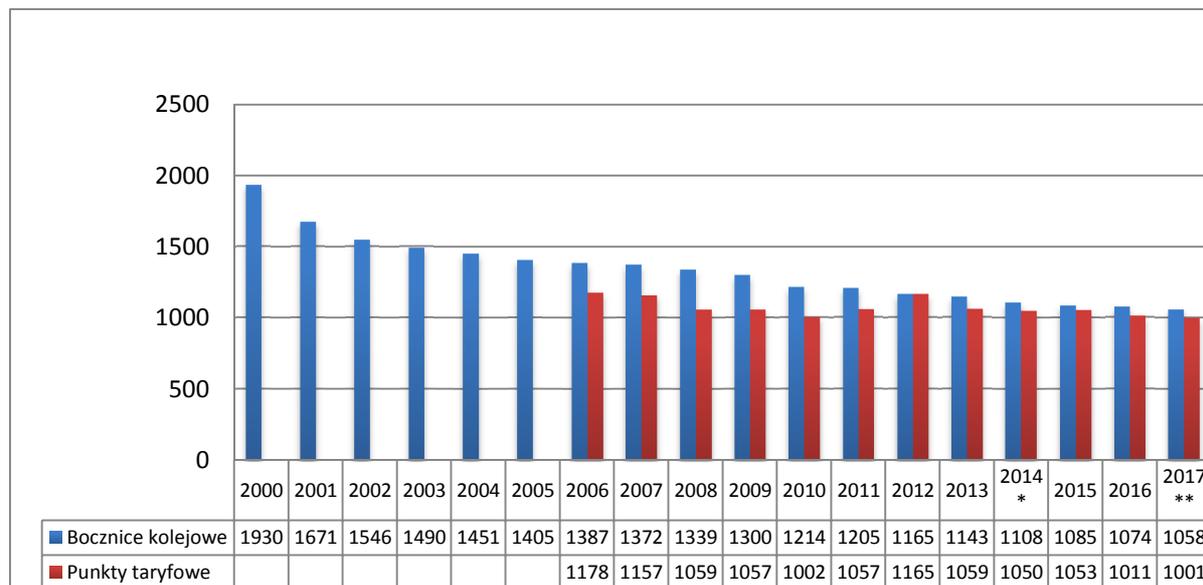
### 5. Logistics infrastructure in rail transport

Source: Own study

#### Railway sidings

In order to reverse the unfavorable tendencies of the decrease in the share of rail transport on the transport market, correlated activities should be carried out in the scope of the development of both line and point infrastructure. In the current financial perspective, i.e. for the years 2013-2020, large funds of approximately PLN 70 billion have been allocated to the modernization of line infrastructure. As a result of the investments carried out, its condition will improve significantly, and the transport capacity of the railway network will also increase. However, in order to achieve the expected effect in the form of increasing freight transport, it is necessary to create a well-developed network of points where shipments can be loaded onto rail transport. Important generators of cargo flows are large industrial plants, logistic and technological parks as well as industrial well-urbanized areas, e.g. in special economic zones. Due to the current division of the transport market and the domination of road transport on it, newly emerging industrial areas in Poland are served primarily by road transport. They are created on the main road routes without access to the railway infrastructure. As a result of changing technologies, also in the field of energy generation, older production plants with railway sidings are closed. The number of railway sidings in Poland has dropped by about 40% over the last several years. The decrease in the number of

railway sidings is shown in the table below, containing data on the number of sidings and tariff points served by PKP CARGO S.A., the largest rail freight carrier in Poland.



\* a numerical list of tariff points included in the TDF as of 23.12.2014

\*\* a numerical list of tariff points included in the TDF as of 06.07.2017

## 6. Number of railway sidings and tariff points served by PKP CARGO S.A.

Source: PKP CARGO S.A. own study

There are several reasons for the decrease in the number of sidings, we can classify them into several basic areas.

1. High construction and maintenance costs.
2. Legal regulations in the field of their commissioning, as well as subsequent operation, including long-term and costly procedures for obtaining documentation enabling the operation of sidings.
3. Market conditions, inter alia, low competitiveness of rail transport due to high costs of access to the railway infrastructure and difficulties in the regular running of trains due to repairs of railway lines.

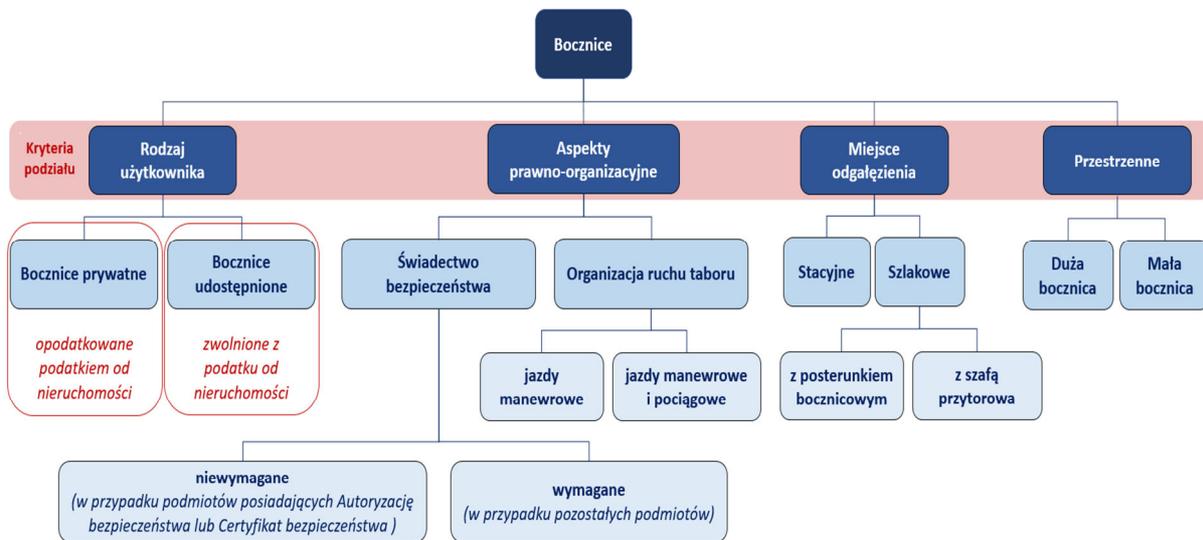
Railway sidings, depending on the connection with the railway line infrastructure and due to the nature of the services provided as part of the siding, can be divided into:

- Station sidings branching off from the station tracks,
- line sidings which branch off by the access track from one or two-track tracks of a given line.

We can also divide railway sidings due to:

- type of user,
- legal and organizational aspects,
- points of connection of the infrastructure manager to the network,
- size and area of land occupied by the siding,

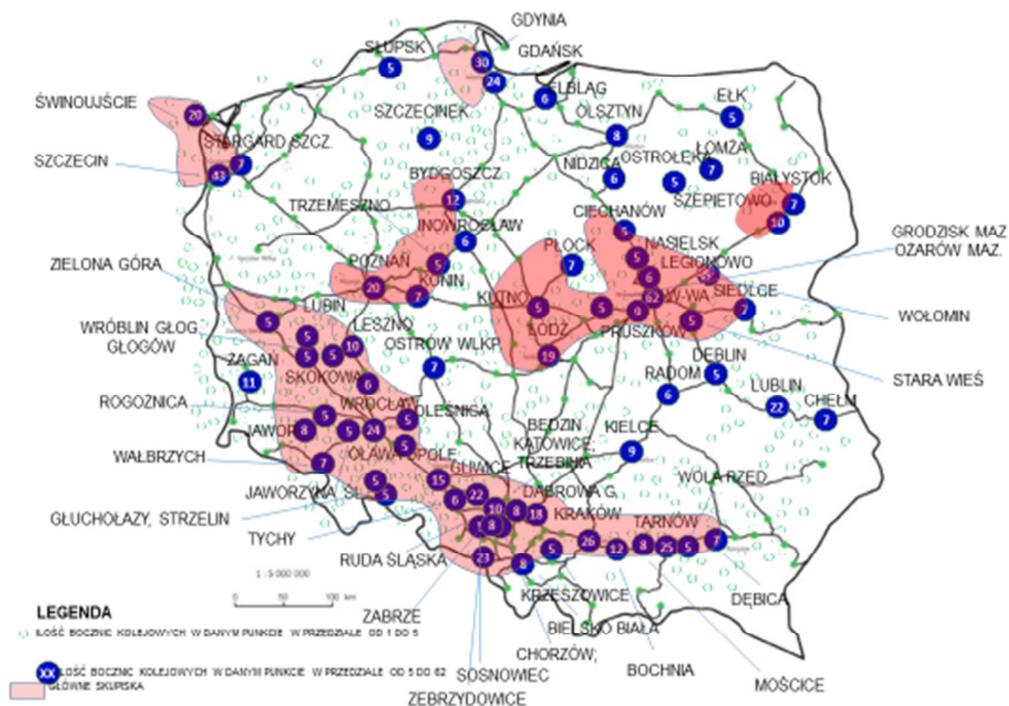
- density of railway infrastructure in the area occupied by the siding.



### 7. Division of railway sidings

Source: Own study

The distribution of sidings in our country is irregular and the largest clusters of them occur in places where heavy industry, mines, chemical and petrochemical plants developed in the post-war period, and in the area where large cargo flows such as seaports and shipbuilding industry were generated.



### 8. Illustrative map of the main clusters of railway sidings in Poland

Source: Own study.

**Binding legal regulations regarding the operation of railway sidings**

As it has already been discussed earlier, the legal status and principles of the operation of railway sidings in Poland have been regulated in the provisions of the Act on Rail Transport, which in this respect has properly implemented EU regulations, in particular the provisions of Directive 2012/34 of the European Parliament and of the Council. EU of November 21, 2012, on the creation of a single European railway area.

The above regulations define the basic rights and obligations of users of railway sidings, including in particular the prohibition of combining the functions of a railway infrastructure manager and a railway undertaking, resulting from Art. 5 sec. 3 of the Act, as well as the obligation to make this infrastructure available to railway carriers. In this respect, as mentioned earlier, sidings having the status of private infrastructure are an exception. However, it should be noted that recital 12 of Directive 2012/34 / EU indicates that private lines and sidings, branching off from the station and route tracks, such as sidings and company lines, are not part of the railway infrastructure, and the managers of such infrastructure should not be subject to obligations imposed on railway infrastructure managers by this Directive. However, non-discriminatory access to such lines and sidings, irrespective of their ownership, should be guaranteed, where they constitute access tracks to service facilities which are necessary for the provision of transport services and where they serve or may serve more than one end customer.

The duties of the manager (siding user) include, in particular, pursuant to Art. 5 sec. 1 point 1 lit. b and c granting a railway track and dismantling the status of a railway siding, as well as performing other duties in the scope of maintenance and access.

The operation of railway sidings, including the performance of obligations of users of railway sidings, especially in the field of railway safety, is subject to the supervision of the President of the Office of Rail Transport, in accordance with the provisions of Art. 14 of the Act. In this regard, the provision of Art. 17 sec. 1 of the Act imposes on the users of railway sidings an obligation to meet technical and organizational conditions ensuring safe railway traffic management, safe vehicle operation, fire protection, and environmental protection. Moreover, sec. 1b of the same art. 17 of the Act additionally imposes the obligation to develop internal regulations in order to meet the requirements specified in par. 1.

With regard to railway sidings, however, it is not required to have a safety authorization by the user of the railway siding, and a safety certificate is a sufficient document, pursuant to Art. 17d paragraph. 3 of the Act. The requirement to be met by a siding user to obtain a railway siding safety certificate is set out in Art. 19 paragraph 3. The Act provides for a severe sanction for the lack of a siding certificate, namely in accordance with Art. 66 sec. 1 point 2 lit. c of the Act, the manager who operates the railroad without the required document referred to in Art. 17d, and therefore also in the absence of a railway siding certificate, the President of UTK imposes a fine of up to 2% of the annual revenue.

As can be seen from the above, legal regulations, including numerous obligations and legal risks related to the use of railway sidings, constitute a significant barrier to the development of this type of infrastructure.

Although intermodal transport in Poland is developing relatively well compared to other segments of rail transport, this development should be mainly due to the support of EU aid funds for infrastructure, handling equipment, and rolling stock related to intermodal transport. Aid funds for this purpose could be obtained from three programs, i.e. OPI & E up to 50%, ROP up to 80% and CEF, where the amount depended on whether the project was included in the national or general envelope, co-financing only at the level of 20%.

Therefore, in the new financial perspective, programs under the EU funds supporting the development of railway sidings should be launched. Support for the development of siding should take place in several aspects:

- legal,
- financial,
- organization,
- technological.

The development of siding in a number of Western European countries is supported by various programs to facilitate construction and then their operation. If we want the railways in our country to start regaining the freight transport market, much wider activities are needed than just in the field of intermodal transport development. Actions aimed at building various types of logistics infrastructure and supporting the development of rail transport of other cargo segments, such as hazardous materials or the so-called general cargo or piece loads.

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