

Memorandum of Understanding on the development of the South East Europe Core Regional Transport Network

Working Group Railways and Intermodality

**Report to the Steering Committee
- Draft of 22 January 2007 -**

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1 Introduction

The Ad-hoc Working Group Railways and Intermodality prepared the present report in response to the Steering Committee's mandate of April 2006. The report reflects discussions in four subsequent meetings held between June 2006 and June 2007. The report presents a set of conclusions at the end of the individual chapters, as appropriate. The report suggests a roadmap for market opening in chapter 8.

Rail reform is necessary even without the EU rail acquis or a future membership in the EU, but the prospect of EU membership can act as a catalyst for rail reform. The EU rail directives leave much leeway for implementation at national level, perhaps even too much to maintain the consistency and interoperability that still exists for the railways in this region. There is need for more commonality and coordination among the states and the railways in the region. Rail reform also has an institutional aspect. In fact, previous accessions have proved that the administrative capacity is a key and first requisite for reform, maybe even more so than legislation.

2 Review of Rail Reform and participants' strategies

Railways in the West Balkans carry about a quarter of 1990 transport levels. Despite considerable staff reductions, the states provide high financial transfers, in the range of more than one percent of GDP. Some railways are not able to recover staff costs from market income. However, most West Balkan states have seen increasing rail freight volumes in recent years, while passenger services are declining.

The state of rail reform can be summarised as follows:

- The countries of the region have established regulatory bodies as part of a ministry, but none have opted for independent bodies. Their effectiveness has yet to be proven, given that there are no independent railway undertakings yet.
- As regards separation of essential functions, i.e. allocation of capacity and setting infrastructure usage charges, all railways execute these functions within the same legal entity. Croatia set up a holding model mid 2006, where assets, essential functions and staff were allocated to the four daughter companies, all of which are owned by small holding. Macedonia has plans to separate essential functions by mid 2007. As to the other participants essential functions are exerted in the same unit as transport services.
- Most participants state that they have separate accounts for infrastructure management and provision of transport services¹. Separate accounting for passenger and freight services can only be assumed where different legal entities for the provision of such services exist, i.e. Croatia. A third aspect in this context is separation of accounting for services with or without state compensation.

¹ Directive 2001/12/EC requires three types of separate accounting: (1) infrastructure management and provision of transport services, (2) passenger services and freight services and (3) services with and without state compensation for public service obligations.

- National administrations and railways in the region exchange experience at different levels. But full benefits could only be reaped when rail reform and market opening were implemented simultaneously, which is mostly not the case and discourages front-running.
- There is no railway company that has been divested of the debts accumulated in the past. Servicing those debts remains a heavy burden, especially in a future competitive market.
- Few countries compensate their railways for public service obligations, thus leaving them with a loss making business, where turnover and service quality decline.
- There are no foreign railway undertakings, neither from inside nor from outside the region. Railways operate as monopolies and thus there is no competition on the track, but only with other transport modes.
- Several railways or railway undertakings have multi-annual business plans. Business plans of railway undertakings and infrastructure managers along international corridors should be consistent.
- Most countries have repeatedly updated their railway legislation, with a partial attempt to align to EU law. However, an effective competition of railway undertakings, with efficient regulators and financially stable railways are not yet come into place in any country of the region.

With regards to the different countries/territories, the following elements can be added:

Albania: The state compensates public service obligations for passenger transport. Government adopted a national transport plan. A regulatory body has been set up. An infrastructure master plan has been adopted. The railways have adopted a five year business plan.

Bosnia-Herzegovina: The country adopted a new railway law in 2001 and 2005. Railways are vertically integrated, accounts of infrastructure manager and railway undertaking are separate. Rail freight operation is financially balanced. The state is preparing a scheme to divest debts. The state launched a twinning project with France mid 2006 financed by the EU Commission. A regulatory body has been established.

Croatia The incumbent railway was transformed into a holding and four daughter companies, i.e. infrastructure management, traction, passenger transport and freight transport. Staff and assets were assigned to them. Rail safety law is in the process of amending. A network statement has been in preparation for more than one year, with works still en route.

Macedonia: A new law was adopted in 2005. Infrastructure management and transport service are planned to be separated into two independent entities in mid 2007. Plans are being made for divestment of debts, a contract on compensation for public service obligations (with support of the World Bank).

Montenegro: State prepares privatisation of railway undertaking. There are plans to set up a regular rail passenger service on the line to Albania.

Serbia: The state adopted a new railway law in 2005. Licensing and issuing safety certificate of domestic operators is under preparation. The railways are vertically integrated, but there are plans to establish a holding model. Railways reduced staff from 32,000 to a present 22,000. The plan is to reduce the number of employees of the incumbent to 19,000 persons by end 2006. A twinning project with Austria and Germany started in mid 2006. The ministry has launched a capacity building project under the EU's CARDS program. There is no network statement at present. A project on setting up public service contracts is in preparation with financial support of the EBRD. The state is concluding several bilateral agreements with neighbouring states on different rail border crossings, like the one with Bulgaria at Dimitrovgrad. There is a five year rolling business plan for the state railways. The World Bank is supporting a project to prepare calculation of infrastructure access charges and network statement. A regulatory body is in the process of being established. Railway Directorate is being established in order to perform regulatory, controlling and expert tasks in compliance with Railway Law. Main duties are creating of technical regulations, issuing of licences and safety certificates, international cooperation... Rail freight saw a 30% increase in 2006, mostly transit of container trains, while passenger traffic continues to decline.

Kosovo (UNSCR 1244): Holding model established. A railway law was adopted in early 2006. Rail freight is increasing. A draft on establishing a regulatory body is being adopted. Works on a network statement have not started.

3 Border Crossing

Border crossing procedures involve about 4 different authorities, which are subordinate to an equal number of different national ministries, on each side of an international border. Consequently, coordination and collaboration are crucial in order to simplify procedures and cut delays of trains at borders. The working group being composed of experts delegated from transport ministries, it is self-evident that recommendations on non-transport topics, such as customs, health and security can only be very general.

Under the project ZEUS, a consortium of railway companies including Deutsche Bahn daughter Railion had set freight service between Germany and Turkey, using a single locomotive, which is able to run under all the different current systems. The travel time between Cologne and Istanbul was 3.5. days one way, or 7 days for a round trip. After the end of the test phase, these travel times could not be maintained. The ZEUS project has demonstrated the potential of integrated infrastructure management.

The Council of the European Union gave a mandate to the EU Commission in November 2006 to negotiate visa facilitation for the West Balkan states, except Croatia. Negotiations were envisaged to last some 8 months. Within the framework of ECMT and UN ECE a number of agreements relevant to visa and customs procedures at border crossings have taken effect, or are under preparation.

The states in the region are signatories to these two organisations. Within the UN ECE's TER project border stopping times for trains are recorded every year in June to see how they evolve. TER also undertook an analysis to assign time losses to different border activities. UN ECE and ECMT held a one day workshop in Geneva on 17 November 2006 dedicated to border crossing.

Customs is of key importance at external borders of the EU and on borders between third countries. The simplified transit procedure is not possible for railways outside the EU. The candidate countries HR and BG should join the EU EFTA transit agreement, like Romania has already done. The other states should implement customs and transit procedures in line with the EU's New Customs Transit System (NCTS). When acceding, they will have less difficulties in joining the EU customs code and transit procedures.

OTIF reported at the UNECE Working Party on Railways at their session in November 2006 that the common CIM/SMGS consignment note is now in use on a number of east-west corridors and is recognised by both customs and transport authorities.

- Electronic data exchange

The Technical Specification on Interoperability concerning telematics application for freight (TAF-TSI) is a Commission regulation defining interfaces between IT systems of different railways, but also forwarders. The purpose is tracking and tracing of rail freight and the interface with customs. The interfaces were designed in such a way that railway can continue using their existing IT systems, where they already exist, to a large extent.

Paper work at borders and the absence of pre-arrival and pre-departure information of trains is a key problem of border stopping times. Moreover, tracking and tracing of wagons and consignments is crucial for rail's ability to compete with road, in particular on transport of high value goods.

Railways starting from a low level of computerisation have an advantage in that they can purchase and implement TAF compatible applications from the beginning, thus minimising interface problems.

SEDP recommends a step-wise approach: It starts with a business plan for freight transport in a corridor, then it connects the existing telematic applications along this corridor.

Conclusions:

As regards the data collection of stopping times at border crossings, the working group recommends the SEETO secretariat supplement own data collection with activities running in parallel, notably under the UN ECE's TER project and the UIC.

Customs procedures should be implemented in conformity with the EU's New Customs and Transit System (NCTS), and states with candidate status for EU membership should accede to the EU customs agreement.

Any computer systems introduced by railways in SE Europe to deal with these issues should be compatible with the Technical Specifications for Interoperability on telematics applications for freight (TSI-TAF), even though a joint approach reaps more benefits. Depending on the specific design, a TAF TSI implementation project along one of the SE European corridors could spur transport service and quality.

4 Institutional setup and administrative capacity

The present section outlines the legal basis² and the roles of the main institutions at both national and European Level in the European Railway area. In the times of self-regulated national railway monopolies, those functions were often executed by the railways themselves. Now, this self-regulated system is replaced with a set of contractualised relationships between different actors, while certain functions of arbitration are taken over by the state and assigned to authorities.

Where the essential functions, ie. capacity allocation and infrastructure charging, are not separated from the provision of rail transport services, the state has to take them away from the infrastructure manager and confer them to an 'allocation body'.

With regards to all these institutions, the EU rail directives leave to Member States large decision making powers on the way they wish to organise them, and especially whether they set up different agencies or combine some or all of the following functions within a single authority. Member States should make use of this flexibility, but at the same time the experience made over the last ten or so years in the EU has shown that some set-ups work better, and others do not.

Certain states in the region could consider establishing joint authorities on the bases of international agreements. Few examples exist to date, and the Channel tunnel authority, set up jointly by Britain and France is one of them. Consequently, it is difficult to come up with clear recommendations. States concluding such agreements have to ensure they will not conflict with EU legislation. At the same time, joint authorities would have to meet the same requirements of efficiency and independence.

a) The regulatory body

Each Member State of the European Union and each state of the European Economic Area has to set up a Regulatory Body. Its main task is to ensure a fair and non-discriminatory access to the rail network and services. The legal basis for the creation and competence of the Regulatory Body can be found in Article 10.7 of Directive 2001/12/EC and in Articles 30 and 31 of Directive 2001/14/EC.

- Organisational independence and administrative capacity

The Regulatory Body is a body independent from any infrastructure manager, charging body, allocation body or applicant. It is independent in its organisation, legal structure, funding and in its decision making. Decisions taken by the Regulatory Body are subject to judicial review.

For the functioning of the regulatory body it is important that it has sufficient staff number and a mix of different qualifications and an own budget. The Regulatory Body shall have the right to request relevant information from the infrastructure manager, applicants and any third party involved within the Member State concerned, which must be supplied without undue delay.

- Main tasks

The Regulatory Body shall be an appeal body in relation to decisions taken by an infrastructure manager or a railway undertaking regarding discriminatory access conditions.

² The relevant legal norms can be found in directive 91/440/EC as last amended by directive 2004/49/EC and directive 2001/14/EC.

Any applicant for infrastructure capacity or interested party may lodge a complaint with the Regulatory Body if it feels that it has been treated unjustly, has been subject to discrimination or injured in any other way.

The Regulatory Body shall ensure that the charges set by the infrastructure manager are non-discriminatory. It shall supervise any negotiation between an applicant and an infrastructure manager on the level of the charges and intervene if necessary.

The Regulatory Body shall monitor the competition in the rail services market. In its monitoring function it shall decide on complaints or on its own initiative on appropriate measures to correct undesirable developments.

- Co-operation

At European level and with the help of the European Commission, the Regulatory Bodies exchange information about their work and decision-making principles and practices with the aim to develop a common approach in order to avoid conflicting decisions. So, do national competition authorities and both networks decided to cooperate with one another.

Regulatory bodies should cooperate with national competition authorities. In fact, a few Member States mandated rail regulation to their competition authorities. Nevertheless, both functions are different and one agency will not make redundant the other. Regulation of the rail market is much more detailed than regulation of other sectors of the economy.

The right to launch procedures on the own initiative of regulatory bodies has shown to be very useful in opening the market for rail services. For fear of discrimination, new entrant rail operators will be reluctant to file complaints against the incumbent railway.

b) The licensing body

In 1995 the Council of Ministers adopted directive ([95/18/EC](#)), which set common criteria for the licensing of railway undertakings established in the European Union. Railway undertakings are required to hold a license when operating trains. To obtain an operating licence the railway undertaking must meet a number of specific conditions (requirements in respect of good repute, financial standing and professional competence plus civil liability). Railway undertakings apply for a license in the Member States where they are established.

With the implementation of Directive [2001/13](#), Member States must notify the Commission of all [railway licences](#), be it the issuing of new license, the suspension or change or revocation of existing licenses. The Commission has adopted a standard format under which Member States should notify this data to the Commission, which then puts this information in a publicly accessible web site.

Operating licenses have to be valid all over the EU. When a railway undertaking that holds a license issues in another Member State, the licensing body does not issue a new license, but should only inform that railway undertaking about national insurance requirements and whether it considers a particular coverage as sufficient. This latter check is often carried out together with the infrastructure manager, when the latter receives an application for capacity.

c) Safety authority and Accident Investigation Body

Railway safety is a new competence of the European Union, introduced by the [Directive 2004/49/EC](#) on safety on the Community's railways etc., a part of the so-called second railway

package. The Directive establishes a framework for the regulation and management of safety on the railways of Europe.

It requires Member States to establish a national safety authority and an independent investigation body for accidents. Railway undertakings and infrastructure managers are granted safety certificates and safety authorisations by their national authorities. Common safety targets and common safety methods will be developed to allow for stronger harmonization, in particular of national safety rules.

The national safety authorities are established or are currently being built up with the implementation of the Safety Directive in national legislation. They have a variety of tasks related both to safety and to interoperability, for example:

- to authorise the putting in service of railway subsystems (such as vehicles);
- to issue, amend and revoke safety certificates for railway undertakings and safety authorisations for infrastructure managers;
- to check that railway undertakings and infrastructure managers are operating according to legal requirements;
- to monitor, promote, develop and enforce the safety regulatory framework.

According to the Safety Directive the safety authorities shall exchange experience to harmonise their decision-making criteria with the support of the Agency. This is the basis for the establishment of this network.

Comment [MSOffice1]: This is a first time that you mention Agency and it should be stated the whole name (which agency you refer to). I believe European Railway Agency.

The investigation bodies are established or are currently being built up with the implementation of the Safety Directive in national legislation. They are obliged to exchange views and experience with the support of the Agency. The aims of this exchange are in particular:

- to develop common investigation methods;
- to draw up common principles for the follow-up of safety recommendations in investigation reports; and
- to adapt investigations to the development of technical and scientific progress.

The Network meets regularly to exchange information on ongoing investigations and on methodological issues. It will establish internal task forces to elaborate certain subjects in more detail. The reports of the bodies on occurrences that are investigated and the investigation reports will be published on this website

d) National Notified Bodies

National notified bodies, among other things, accept rail equipment according to the technical specification of interoperability (TSI).

e) European Railway Agency

The Agency submits draft recommendations – on safety as well as on interoperability – to the Network of National Notified Bodies for discussions and opinions. Depending on the subject the Network will be convened in different configurations, for example for safety and

interoperability, where detailed reports from the different working groups will be discussed. The Network may establish internal task forces to penetrate certain subjects in more detail.

- Conclusions

The working group recognises the establishment and functioning of the bodies described in the present section as essential for the starting up of a competitive rail service market in the states of the west Balkan and their integration into the European Railway Area. Where separation of essential functions is weak, e.g. because of a holding model, strong and efficient regulation is even more important for competition on the track.

Where joint authorities are established, they have to satisfy the same standards of independence and efficiency. International agreements must not conflict with requirements of EU legislation.

EU law requires cooperation of regulatory authorities in different states. In states with small networks and little traffic, their regional cooperation is crucial for success.

Railway undertakings established in the EU should be allowed to lodge appeals with regulatory bodies in the west Balkans, where they feel unfairly treated, and the same should hold for Balkan railways in the EU.

5 Network Statements

Following preparatory works of the working group, transport ministers adopted a declaration at the meeting in Brussels on 1 December 2006. That declaration set out the strategy for developing network statements, including their importance for the sector in the region. The present section of this report is based on that declaration.

Only when access conditions, including the charges for the use of the rail, are published well in advance, railway undertakings will be aware of the conditions they have to satisfy in order to run trains. Therefore EU law already requires EU infrastructure managers to consult users and publish comprehensive information well before the beginning of each time table period in the form of a network statement.

Network statements are an essential element for permitting access to their national railway networks and rail terminals. Since infrastructure managers in the west Balkans do not yet have network statements, considerable economies can be reaped if documents as comprehensive as network statements are developed jointly rather than in isolation for each infrastructure manager. A single network statement, or at least network statements presented in a single format, will significantly facilitate their understanding by the users, in particular for international railway undertakings, and reduce the cost of translation.

EU infrastructure managers have assembled and published best practice information on network statements in conformity with EU legislation. Railways in the region should draw full benefit from the experience available.

A common network statement can be the starting point for a regional cooperation of regulatory bodies, both among themselves as well as with their national infrastructure managers in the process of checking the conformity and updating them on a permanent basis.

A common network statement will help safeguard and enhance the legal and technical interoperability of the different rail networks; it can provide an early warning system where a loss of interoperability is at stake.

Drafting a network statement is time consuming. It should be targeted to the users, i.e. new entrant and foreign railways. Regulatory bodies should accompany the process and they should be staffed appropriately as well as set up a regional cooperation to find common positions with regards to a network statement.

EBRD gives funds to HS to draft a network statement. The work is now starting. CER was concerned that giving such funds to only one of the IMs only risks diverging network statements to be drafted.

Conclusions:

Rail infrastructure managers in the different countries should to join together and start a programme for developing a common network statement for the west Balkans in conformity with the EU rail acquis and the formats developed among infrastructure managers in the EU. If a common network statement is not feasible immediately, at least apply the common RNE format should be applied. Infrastructure managers should collaborate with their national rail regulators and consult with the users. Progress should be reported to the Working Group on Railways and Intermodality. A complete set of network statements in a common format should be published by end of 2008.

6 Charging for the use of infrastructure

To be filled after meeting of 23 January 2007.

7 Coordination with other platforms

"ARGE corridor X" is a cooperation of infrastructure managers along this rail corridor between Germany and Thessaloniki. It started in 2001. The final date of delivery was postponed from end of 2006 to end of 2008. Network statements are a deliverable in the ARGE Corridor X's programme. However, the ARGE will not develop a network statement, but only expects that as input from the regional infrastructure managers to provide theirs so that it can present them along corridor X. The links with RailNet Europe and the new Memorandum of Understanding of June 2006 of the states along corridor X need still developing.

Representatives of the Community of European Railways (CER) reported on the progress of work and conclusions of working groups and platforms they maintain for their regional member railways.

The World Bank updated the working group regularly on programmes on financing infrastructure and soft measures in the region.

8 Road map for rail market opening

The conclusions and recommendations made in the previous chapters could be implemented by end of 2008, but they will not achieve integration into the EU rail market, and not suffice to create a competitive high quality service market such that rail can exploit its full strengths with regards to the other modes. A road map will also allow synchronising market opening between the different countries.

Currently, certain concerns exist in the regions as to the ability of railways to stand competition with EU railways. At the same time, rail is under pressure from competing modes, mainly sea transport and trucks, to provide a competitive, high quality service or otherwise disappear from the market. As a reasonable compromise, the working group suggests to a three step road map, as follows:

- A first phase would be to accept more operators in each country, even if the governments will put the condition that up to the moment of EU accession the new operators must be local private companies. It will create the competitive national market and will put pressure on the existing state owned railways to implement restructuring strategies in order to avoid the decrease of their market share. These private operators could attract fresh capital for rail, in the form of investments into interoperable wagons and sidings. This phase requires that institutions to safeguard non-discriminatory access are in place, including valid network statements published and consulted with stakeholders, competent regulatory bodies and independent safety authorities awarding safety certificates. In line with experience in the Member States, such freight undertakings might be spin-offs of big industrial companies or of ports transporting goods on own-account. In addition, urban passenger operators might choose to exploit heavy rail infrastructure in the proximity of their home agglomeration, or extending services to neighbouring cities.
- A second phase would be to accept free access only for the operators licensed in the Western Balkan countries. It would protect the local railway operators in front of much stronger international operators, but it would create a competitive regional market and the quality of transport services will increase. Existing technical interoperability could be exploited, and (former) state railways will offer seamless transport across borders, thus overcoming a major problem of today, i.e. delays and additional costs for locomotives and staff as a result of borders.
- A third phase, before full EU membership, could consist of accepting free access with EU neighbouring countries on reciprocity, based on special agreements of each government. Possible conflicts with WTO rules, regarding reciprocity, have to be respected.

| | | Step 1 | Step 2 | Step 3 |
|--------------------|--|--------------------------------------|--|--|
| | Alignment to EU railway legislation: Legal and institutional prerequisites | Domestic rail service market opening | Intra-regional market opening (West Balkans) | Intra-regional market opening for international rail transport (SE Europe) |
| To be completed by | 31/12/2008 | 31/12/2008 | 31/12/2009 | 31/12/2010 |

MoU participants should update the working group on progress in market opening and any obstacles observed. They will also brief the working group on the development of their rail service markets, in particular activities of new entrant railways.

The regulatory bodies of the region will set up a regional cooperation starting in 2008. Meeting at least twice a year, they will exchange views regarding all aspects of their work, e.g. handling of appeals, track access charges, conformity of network statements, etc.