

## REGULATORY BODIES IN SEETO PARTICIPANTS IS THERE A MARKET REGULATOR? EVALUATION OF HIS ROLE!

V. Evmolpidis

Team Leader and Senior RW Expert in RW Infrastructure Access

## RAILWAY LAWS IN SEETO PARTICIPANTS: ALIGNMENT OF LAWS WITH EU DIRECTIVES AND SWOT ANALYSIS

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## 1. Introduction, sources of information, meetings held

- Objective: demonstrate the actual progress of SEETO Participants in creating the necessary INDEPENDENT Regulatory Bodies for the implementation and monitoring of implementation of railway reform, vis a vis EC RW Directives and particularly 2001/12,13,14
- The Consultant reviewed the RW laws in Participants and discussed on them in meetings with officials in Ministries and regulatory bodies during missions in October, November and December 2008
- The Consultant focuses in this presentation to the existence and actual role of the Regulatory Authority as Market Regulator foreseen by Directives enabling fair and non-discriminatory access to infrastructure

## 2. Comparative presentation of the situation in SEETO Participants

### 1. General Introduction

Institutions required by EU Directives

- Regulatory Authority (Dir. 2001/12, 14)
- Licensing Body (Dir. 2001/13)
- Safety Authority (Dir. 2004/49)
- Accident Investigation Body (Dir. 2004/49)
- Notifying Body (Dir. 1996/49)

→ All institutions should be independent in order to act in a fair and non-discriminatory way

## 2. Comparative presentation of the situation in SEETO Participants

### 2. What is the meaning of independent?

- It has its own financing and organisation, not related to Ministries
- The BOD and managers are appointed through an open public procedure. Not appointed by MoT or government. Can not be dismissed before end of term.
- Accountable to Parliament
- Makes decisions in an objective way, which is fair and non-discriminatory for any RU applicant and/or IM
- Should not take directions from Ministers

## 2. Comparative presentation of the situation in SEETO Participants

Participant	Regulatory Body formed (RB)(Directive 2001/12/EC and Directive 2001/14/EC)	currently responsible authority for regulating market and/or issuance of licenses	Licensing body (Directive 2001/13/EC)	Safety Authority (Directive 2004/49)	Accident investigation body formed (Directive 2004/49)	Notifying body (Directive 96/48)
Albania	NO	MT	NO	NO	NO	NO
BH	YES, but with authority on int and interterity operations	Respective MT of each entity	Yes	Yes	Yes, but entities follow other procedures	NO
Croatia	NO, as of Jan 2009	MT	NO	NO, as of 2009	NO	NO
former Yugoslav Rep. of Macedonia	NO, as of Jan 2009	MT	NO, as of Jan 2009	NO	NO	NO
Montenegro	YES	MT	Yes	NO	NO	NO
Serbia	YES	MT	Yes	NO	NO	NO
referred (under UNSCR1244/1999)	NO	MT	No	NO	NO	NO

## 2. Comparative presentation of the situation in SEETO Participants

- Albania: the Ministry of Transport, that caters for rest too
- Bosnia & Herzegovina: Regulatory Board for appeals, but also licensing and safety certification. Railways Public Directorate for access charges
- Croatia: Rail Market Regulatory Agency (in creation)
- former Yugoslav Rep. of Macedonia: Agency for Railway Traffic and Transport (in creation)
- Montenegro: Directorate for Traffic
- Serbia: Directorate for Railways, but mainly licensing and safety certification body. Limited regulatory functions
- Kosovo: To be created



## 2. Comparative presentation of the situation in SEETO Participants

### 1. Albania

- According to the Law, this can be the MOT or the Albanian Railways (!) or the Railway Inspection Directorate.
- An independent Regulatory Body does not exist.
- But the Director of Railway Inspection Directorate mentioned that they are responsible for the implementation of the RW Law and the regulations.



## 2. Comparative presentation of the situation in SEETO Participants

### 2. Bosnia & Herzegovina

- There is the Regulatory Board for Railways at State level foreseen in Article 23 of Railway Law. It is a licensing and safety certification body. They also investigate accidents. But this is the Body foreseen in the Law for appeals related to: NS; Criteria for NS; procedures and results for capacity allocation; criteria to determine access fees; amount and structure of fees; decisions for granting access to infrastructure; other cases of access to infrastructure
- These authorities remain on paper
- Entities follow their own procedures



## 2. Comparative presentation of the situation in SEETO Participants

### Bosnia & Herzegovina (continued)

- Also BIH Railways Public Corporation was created 10.5 years ago, by Dayton Agreement, Annex 9.
- It can be considered as having some Regulatory authorities at State level
- It is responsible for the allocation of international paths and inter-entity traffic; preparation of timetables in cooperation with entity RW's; establishing institutional cooperation between entity RW's, harmonization and setup of TAC according to criteria; track with entity RW's interoperability on Pan-European corridors;
- Most of these authorities also remain on paper
- In entities, regulatory authorities exercised by MoT's



## 2. Comparative presentation of the situation in SEETO Participants

### 3. Croatia

- The RW Law of 2003 foresees the Regulatory Body in articles 27 and 28
- As of July 2007, the Act on "Rail Market Regulatory Agency" was enacted. The Agency to be established will be independent
- The procedures for public announcement and fulfillment of BOD and managerial positions initiated in last quarter of 2008. 3 members assigned for 5 years by Parliament
- Candidates to be selected and actual operation expected till June 2009
- Both Laws fully aligned with EU Directives



## 2. Comparative presentation of the situation in SEETO Participants

### Croatia (continued)

- Its Activities:
  - Settlement of RU complaints to IM decisions for: NS; Criteria for NS; procedures and results for capacity allocation; criteria to determine access fees; amount and structure of fees; decisions for granting access to infrastructure; other cases of access to infrastructure
  - Supervise any negotiations between IM and RU on amount of fee to access infrastructure
  - Control quality of services by RU
- Decisions of Regulatory Body final. Discontented party can apply to an Administrative Court



## 2. Comparative presentation of the situation in SEETO Participants

### Croatia (continued)

- Parties should appeal to RB orders in 15 days and the RB should reply in 30 days
- Agency cooperates with similar agencies in other countries
- Members of BOD and managers and their immediate families should not have any interest in entities in rail market, neither participate in their management
- The Agency is financed for 3 first years by State. After, own budget through compensations for rail market regulation duties
- An annual financial plan and an annual report necessary



## 2. Comparative presentation of the situation in SEETO Participants

### 4. former Yugoslav Republic of Macedonia

- RW Law of 2004 foresees Regulatory Body in Article 47. Law aligned with relevant EU Directives.
- Law on “Agency for Railway Traffic and Transport” voted in Jan. 2008 and came to power on 1 January 2009. The Agency will be independent
- The procedures for public announcement and fulfillment of BOD and managerial positions initiated in December 2008.
- Managing Board will consist of 3 members which will be decided by Parliament. Managing board is responsible to take decision for director position by public invitation. Director will be chosen on public invitation. MB and Director assigned for a period of 4y +1y (extension).



## 2. Comparative presentation of the situation in SEETO Participants

### former Yugoslav Republic of Macedonia (continued)

- The Agency operational in the first months of 2009
- Its Activities:
  - Settlement of RU complaints to IM decisions for: NS; Criteria for NS; procedures and results for capacity allocation; criteria to determine access fees; amount and structure of fees; decisions for granting access to infrastructure; other cases of access to infrastructure
  - Control quality of services by RU
- Decisions final. Unsatisfied party can apply to initiate a legal procedure
- Agency obliged to apply rules for Competition Protection. Competition Protection Law applies to all matters not covered by Agency Law. Should give technical help and expertise to Competition Protection Commission



## 2. Comparative presentation of the situation in SEETO Participants

### former Yugoslav Republic of Macedonia (continued)

- Parties should appeal to RB orders in 8 days and the RB should reply in 15 days
- Agency cooperates with similar agencies in other countries
- Members of BOD, the Director and their immediate families should not have any direct or indirect interest in entities in rail market and should be clear of any conflict of interest
- The Agency is financed for 1 year by State. Thereafter, the Agency should establish its own financial resources
- An annual financial plan and an annual report necessary



## 2. Comparative presentation of the situation in SEETO Participants

### 5. Montenegro

- There is no reference in railway law to a regulatory authority
- But, the “Regulation about organisation and modality of the work of State Administration” enforced in 2006, foresees in Article 42, the creation of Directorate for Traffic, which is an independent institution acting for the Government of Montenegro.
- This Directorate was initially created for road transport



## 2. Comparative presentation of the situation in SEETO Participants

### Montenegro (continued)

- It has been given extended authorities some of which concern regulatory issues for RW; such as allocation of slots and using of railway infrastructure; acceptance of time tables
- Neither the Law nor the Decree for the Directorate for Traffic have clear reference to appeals against decisions of Directorate for Traffic
- Appeals can be made to the Ministry (and not to Court) but the relevant procedure is not specified



## 2. Comparative presentation of the situation in SEETO Participants

### 6. Serbia

- The Directorate of Railways considered as Regulatory Authority but with limited regulatory functions. Appeals to its decisions should be addressed to the Ministry of Infrastructure
- Mainly licensing and safety certification body
- Considered "independent" but management assigned by Government
- The revenues of the Directorate are >90% from the government and the rest from certification and licensing revenues.
- They are preparing regulations the Infrastructure Directorate has to satisfy. 9 regulations prepared 6 enacted. Regulation prepared for NS.

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## 2. Comparative presentation of the situation in SEETO Participants

### 7. Kosovo (under UNSCR1244/1999)

- Regulatory Authority foreseen in Law but not organized yet.
- They expect creation of Authority in 2009.
- It will be independent!
- It will also act as licensing body, safety authority and accident investigation body
- The BOD assigned by Parliament, but Chairman and Deputy Chairman proposed by Government
- Financing by the Government

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## 3. What is the role of a market regulator and is there one in any Participant?

### According to EU Directive 2001/14

The Regulatory Authority (Market Regulator)

- Can be in the Ministry responsible with transport matters or other body
- Has to be independent of any IM, charging body, allocation body or railway operations applicant.
- Its decisions are final. Legal framework should allow for Appeals against such decisions by the Courts of Justice
- Appeals can also be addressed to a separate and official and independent appeal body (if existing in a country)

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## 3. What is the role of a market regulator and is there one in any Participant?

### According to EU Directive 2001/14 (continued)

- Appeal possible by applicants if consider themselves being discriminated by IM or RU for: Network Statement, criteria in NS, path allocation process and results, track access charging scheme, level or structure of TAC, safety certificate enforcement, monitoring safety standards and rules,
- Data to be requested from IM should be provided without delay
- The Regulatory Body decides on complaints and takes action to remedy them in 2 months from receipt
- The national Regulatory Bodies should exchange information about their work and decision making principles and practices for the purposes of coordinating their decision making principles across the EU,
- The EC supports them in this task

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## 3. What is the role of a market regulator and is there one in any Participant?

### Is there such a Regulatory Authority in Region?

- the immediate answer is no
- at present only 3 RB's exist: Bosnia & Herzegovina, Montenegro and Serbia but for various reasons do not satisfy the criteria of the Directives or do not really have actual regulatory authority
- the RB's in Croatia and former Yugoslav Republic of Macedonia fully comply with Directives but are in the process of being established now
- no RB in Albania
- Project in Kosovo (under UNSCR1244/99) to establish one

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## 3. What is the role of a market regulator and is there one in any Participant?

### ... but even if there was one

- Its activities would be limited because the railway market is closed in all Participants
- Applicants to enter the market are either non-existent or not sufficiently motivated
- National RU's are not properly licensed
- Track access charges not adopted
- IM's would have difficulty to provide required information
- They may not be provided with full appeal authority
- They may not be properly financed to maintain independence
- ....his activities will be limited if all RB's in the Region are not created

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## 4. Conclusions

- Actually there are no Participants who have established all Institutions required by EU Directives. In many ways this is understandable, since even if in most cases the Directives have been transposed to local laws, they are not being implemented properly or at all
- There are only two Participants where a Market Regulator, as required by EU Directives (2001/14) has been foreseen by Law. But even these two are not functional yet. They will be functional in mid-2009
- In other Participants, the Regulatory Authority is either the MoT or a "body" that is neither independent nor has full authorities.
- With a few exceptions, the existing Institutions are in practice not independent



## 4. Conclusions

- Too many institutions are required and too few people to "man" them in Participants
- Since the RB as Market Regulator is responsible to monitor the competition in the rail services market, it can act as policy instrument to enhance the usage of railways versus road or other transport modes.
- The creation and operation of independent and fully empowered RB's in Participants will enhance the role of railway in transport market.
- The proper implementation of EU Directives in Participants will improve the reliability and objectiveness of rail transport and increase its –already limited- flexibility



## 4. Conclusions

- Harmonisation of EU Directives' implementation and of establishment of an open railway market not possible without coordination and communication among IM's and RB's in the Region and in neighbouring EU MS
- Opening the railway market in a fair and non-discriminatory manner is at risk without harmonisation
- Establishment of full compliance with EU Directives by 2010 may be at risk



**Thank you for your attention!**

