

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: to demonstrate degree of alignment of RW laws in SEETO Participants vis a vis EC RW Directives and particularly 2001/14
- The Consultant reviewed all RW laws in Participants and discussed them in meetings officials in Ministries and railway companies during the missions carried out in October, November and December 2008
- The Consultant has prepared a SWOT analysis whereby the strengths, weaknesses, opportunities and threats of the RW laws in Participants are evaluated at regional level concerning the implementation of EU Directives and the access to infrastructure in a fair and non-discriminatory manner



2. Comparative presentation of RW laws

1. Albania

- Law 9317 of 18/11/2004
- The Law caters for private or public RW operators and infrastructure owners from Albania. Foreign operators allowed on reciprocal basis, but only if one end of transport is in Albania
- Law not aligned with EC Directives, not even, 91/440.
- Infrastructure and operations not separated neither as entities nor as accounts (integrated company)
- Most by-laws and decrees, foreseen in the Law still not issued
- There is plan to amend the Law in 2010, to incorporate all Directives including Dir. 2008/57



2. Comparative presentation of RW laws

Albania (continued)

- Due to lack of signalisation, not practical to allow third RU to access the network.
- Access charges are foreseen, but not calculated yet. There is TA provided
- Path allocation foreseen
- PSO foreseen and implemented
- No independent Regulatory Body foreseen. Currently all authorities at Ministry level
- No network statement foreseen, but there is a draft NS that has been prepared

...and the market is closed!



2. Comparative presentation of RW laws

2. Bosnia & Herzegovina

- There are 3 Laws, due to the peculiarity of Statehood
Law on RW in BiH (Official Gazette 52/2005)
Law for FZBiH for the Federation of BiH (OG 48/2001)
Law for ZRS for Republic of Srpska (OG 58/2001 amended twice by OG 113/2005 and OG 59/2008)
- FZBiH and ZRS are being promoted as the only IM and RU in the scope of respective integrated companies
- State and entity Laws not harmonised and not aligned with Dir. 2001/14 and only partly with Dir. 91/440
- Non-discriminatory access to infrastructure foreseen at State level, but in practice only operators from 2 entities can run on respective infrastructure, and even this is not very evident in the entity Laws



2. Comparative presentation of RW laws

Bosnia & Herzegovina (continued)

- Readiness to separate accounts in FZBiH but not done yet. No separation in ZRS
- Federation Law: All RU should have license and safety certificate, but no one has yet
- Srpska Rep. Law: With 2008 law, 5 more years non-licensing of incumbent RW (infrastructure, operations)
- Access charges foreseen in both entities and partly implemented. In RS access charges were foreseen in the recent amendment to the Law
- PSO foreseen and implemented to cover losses



2. Comparative presentation of RW laws

Bosnia & Herzegovina (continued)

- BiH RW Public Corp. created according to Dayton Agreement (1997). Some Regulatory authorities but for international and inter-entity operations only (path allocation, timetables, TAC according to common criteria)
- Regulatory Board of BiH RW: mainly for licenses, safety, accidents. No licenses or certificates granted yet. It is the body assigned to receive appeals for access related issues
- Entity RW's should address the Public Corporation and the Regulatory Board, but that does not happen yet.

...and the market is closed!



2. Comparative presentation of RW laws

3. Croatia

- Railway Law adopted in 2003. Follows EU Directives. Several more Laws issued to provide complete alignment with 1st and 2nd EU RW package
- According to this Law, HZ was separated in 2005 into 4 companies: HZ Infrastructure, HZ Passengers, HZ Cargo, HZ Traction.
- In Sept. 2006 the Holding Company was also created to which all 4 above companies belong
- Workshops belong to the last three companies
- Law on Railway Safety adopted in 2007
- Law on Agency for Regulation of the Market enacted in 2007. Staffing and BOD in process of establishment. Operational until June 2009. Appeals will be submitted to RA. 2nd level appeals to the Court
- Law on Safety Agency in power as of Jan. 2009.



2. Comparative presentation of RW laws

Croatia (continued)

- Accident Investigation Body formed as a result of reorganizing the Ministry
- The RU and IM have been licensed automatically by Law for 5 years. All debt of infrastructure and operator assumed by the State.
- Unknown if in 5 years the financial position of RU will allow its licensing
- Track Access Charges foreseen and calculated but not implemented. A lump sum amount charged every year.
- They would like to open up the railway market but no one in the Region is doing so. Access to local lines possible even today. Opening the market on reciprocal basis also possible
- Elements for specifying the amount of TAC must be balanced in relation to IM of EU member states
- PSO foreseen and implemented

...but the market is closed!



2. Comparative presentation of RW laws

4. former Yugoslav Republic of Macedonia

- There is the Railway Law (2004), the Law for (regulatory) Agency (OG7, Jan.08), the Law for the Transformation of the Railways (OG29/05), the Law for Railway Transport Safety (2007) and the Law on Contract for RW Transport (2007)
- Almost all requirements of the first EC railway package Directives have been implemented
- Infrastructure (IM) and Operations (RU) are separate companies
- Passenger and freight operations accounts have not been separated yet in RU
- An independent Agency for Railway Traffic and Transport has been established as of Jan. 1 2009. Staffing and BOD pending
- Non-discriminatory access to infrastructure foreseen
- Access Charges foreseen. Study completed. Ministry Decision for TAC pending. Currently AC calculated as % of RU turnover



2. Comparative presentation of RW laws

former Yugoslav Republic of Macedonia (continued)

- No license or safety certificates issued till now.
- IM is licensed automatically according to RW Law.
- The RU has first to resolve the debt problem to be licensed
- Network statement foreseen but not published yet
- PSO foreseen and implemented
- The Agency is a body receiving appeals (after 1/1/2009). Second level appeals should be addressed to Courts.
- The RU has appealed (to MOT) against level of lump sum amount for Access Charges and the amount was reduced from 50% of turnover to 40%.
- No intention to privatise the RU although the Law on Transformation allows that

...but the market is closed!



2. Comparative presentation of RW laws

5. Montenegro

- The Railway Law was issued in March 2004 (enforced since Jan. '05) and is mostly aligned with Dir. 2001/14
- Complemented by the Railway Safety Law in Dec. 2007
- Alignment with EU Directives almost complete
- Infrastructure (IM) and Operations (RU) are separate companies, since June 2008
- PSO foreseen, but goods transport can constitute PSO!
- The Ministry of Transport with the Directorate for Traffic acts as a licensing body and partly as Regulatory Body (path allocation and timetables approval).
- In reality there are no independent RB, AIB, NB and SB.



2. Comparative presentation of RW laws

Montenegro (continued)

- Passenger and freight operations accounts have not been separated yet in RU (Railway Transport of Montenegro)
- In the Law there is no clear reference to appeal procedure against decisions of Directorate for Traffic
- Appeals can be made to the Ministry (and not to Court) but procedure is not specified
- No reference to the Network Statement, but is being prepared (recently adopted)
- Track Access Charges foreseen. TA is being provided
- Ready to open the market and privatise RU

...but the market is closed!



2. Comparative presentation of RW laws

6. Serbia

- Law since 1/3/2005 (18/2005) and Decree (2005)
- Separation of accounts (operations –passenger/freight- and infrastructure) foreseen in Decree (not implemented)
- Separate entities foreseen for infrastructure and operations, but not implemented
- Track Access Charges foreseen, study done, not approved. No implementation. Competition with road considered
- PSO foreseen, but some freight categories included
- Path allocation in non-discriminatory way foreseen
- 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



2. Comparative presentation of RW laws

Serbia (continued)

- The Directorate of Railways is an “independent” body but liable to the Government which provides the financing. It is basically a licensing body, but no licenses issued yet. Nevertheless it has some regulatory authority concerning decision upon complaints against rejected, modified or supplemented proposals for concluding a contract for RI utilisation. Also to establish international cooperation for RW traffic.
- Policy of MoI for opening of the market: 1st step: domestic operators, 2nd step: operators from SEETO neighbors, 3rd step: any third party

...but the market is closed!



2. Comparative presentation of RW laws

7. Kosovo (under UNSCR1244/1999)

- The Railway Law (03/L-076 of June 2008) is quite well adapted to EU Directives
- Several by-laws and decrees are pending
- Separation of accounts for Infrastructure and Operation Directorates exists, even if the separation of assets between the two Directorates not completed yet. TA needed.
- Independent Regulatory Authority foreseen but not organized yet. Expected in 2009. It will be independent
- The Regulatory Authority will act as market regulator and also as Licensing Body, Safety Authority and Accident Investigation Body



2. Comparative presentation of RW laws

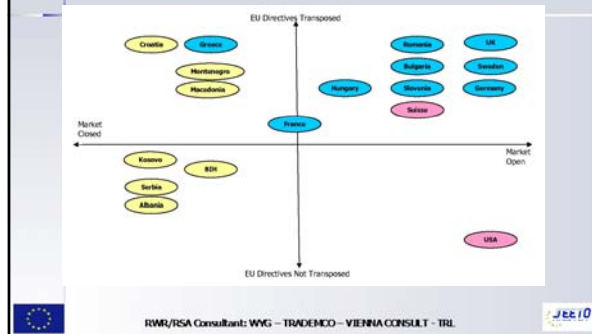
Kosovo (under UNSCR1244/1999) (continued)

- Track Access Charges foreseen, but not calculated yet
- Licensing of ID and OD granted automatically by Law
- PSO foreseen and implemented
- Great willingness to comply with EU Directives and open up the market

...but the market is closed!



3. SWOT Analysis-Regional Level



3. SWOT Analysis-Regional Level

Strengths

- Max. alignment: Croatia, former Yugoslav Rep. of Macedonia, Montenegro (separate companies implemented)
- Medium alignment: Kosovo (under UNSCR1244/99), Bosnia & Herzegovina (state) but no implementation
- Open access to infrastructure foreseen but not implemented.
- Reciprocal access foreseen in Albania, Serbia, Croatia
- Regulator exists: Bosnia & Herzegovina but no real authority, former Yugoslav Rep. of Macedonia and Croatia: to be active mid 2009
- All other institutions in place: Serbia, Croatia, former Yugoslav Rep. of Macedonia. Independence is plausible
- Access charges foreseen in all Participant laws
- Croatia: TAC should be coordinated with IM of other countries
- Montenegro, Serbia: Level of TAC should consider competition with road
- TAC in Rep. of Srpska follows proposal of study, even if it is not endorsed

3. SWOT Analysis-Regional Level

Weaknesses

- Existing laws not implemented at all or properly
- Railway market closed, even on reciprocal basis
- Minimum alignment: Serbia, Bosnia & Herzegovina, Albania: Not even account separation
- Necessary by-laws or decrees, not prepared yet in Albania, Serbia, Kosovo (under UNSCR1244/99)
- No regulatory authority: Serbia, Albania, Kosovo (under UNSCR1244/99), Montenegro
- Other institutions in Ministry: Albania, Bosnia & Herzegovina (entities), Kosovo (under UNSCR1244/99), Montenegro
- Appeals on decisions to Ministry: Serbia, Albania, Montenegro, Kosovo (under UNSCR1244/99)
- Some freight categories considered PSO: Serbia, Montenegro
- IM (ID) and RU (OD) either not licensed, or licensed by law

3. SWOT Analysis-Regional Level

Weaknesses (continued)

- TAC very high (former Yugoslav Rep. of Macedonia) and arbitrary (former Yugoslav Republic of Macedonia, Croatia, BiH Federal entity),
- National Budget does not cover maintenance and development costs except in Serbia, Rep. Srpska entity in BiH, Croatia
- RU's in former Yugoslav Rep. of Macedonia and HZ Freight in Croatia may go broke
- Licensing of RU's doubtful, due to financial difficulties
- Passenger and freight accounts not separated in RU in former Yugoslav Rep. of Macedonia and Montenegro
- Entity RW's do not obey requirements at State level in Bosnia & Herzegovina
- Even entity railways in the State of Bosnia & Herzegovina not allowed open access to reciprocal railway infrastructure

3. SWOT Analysis-Regional Level

Opportunities

- Proactive behavior from Albania, former Yugoslav Rep. of Macedonia, Kosovo (under UNSCR 1244/99), Montenegro
- Positive for privatisation and/or concession: Albania, Montenegro
- Big networks with a lot of opportunities (including transit) for open access enhancing role of RW's: Croatia, Serbia
- Small networks with specific transit opportunities: Montenegro, former Yugoslav Rep. of Macedonia,
- Montenegro: IM should consider SEA and protect environment
- International and entity trains have priority in Bosnia & Herzegovina and the entity RW's talk to each other
- Starting from very low level, Albanian RW may only get better with full compliance to EU Directives

3. SWOT Analysis-Regional Level

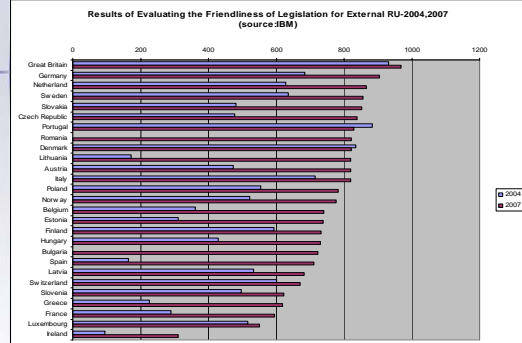
Threats

- Too small RW networks in Albania, former Yugoslav Rep. of Macedonia, Kosovo (under UNSCR 1244/99), Montenegro
- Lack of sufficient experts to "man" RU and IM and the required institutions and the regulator
- Desire to open the market low in Bosnia & Herzegovina, Croatia, Serbia ("if the others do not open the market, why should we" syndrome)
- The States do not provide enough funds to maintain and develop RW infrastructure
- RU's may be financially not suitable to be licensed
- Required institutions either not in place or not independent or with limited authorities or authorities on paper
- Not harmonized track access charges and level of reform
- IM's do not speak to each other
- RW's in Albania at risk (signalization, very low level)

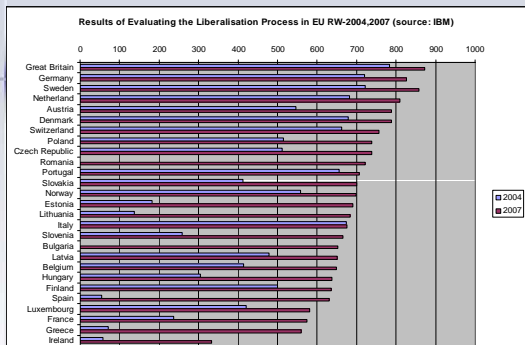
4. Conclusions

- Considerable discrepancy and time differential in implementing EU Directives in Railways. But this is not unique to the Region. Same is true for EU MS (two charts that follow!)
- This differential is partly explained by difference of phase in position of Participant for EU membership
- Even in Participants where RW laws are aligned, their implementation fails-often linked to non EU membership

4. Conclusions



4. Conclusions



4. Conclusions

- IM and RU do not speak to each other at regional level (or even in the same Participant)
- Too many institutions are required and too few people to "man" them in Participants
- Participants with small RW networks are more proactive but also have more difficulties
- Considerable discrepancy in implementing track access charges both in level and in methodology of calculating. Often arbitrary amounts
- Track access charges depend on willingness of Participant government to finance maintenance and development of RW's

4. Conclusions

- The Directives have been created to improve the competitiveness of Railway as a mode and not to maintain existing railway companies
- Harmonisation of EU Directives' implementation and of establishment of an open RW market not possible without coordination/communication among IM's in Region and in neighbouring EU MS
- This is even more important on Corridors X,Vb,Vc
- Opening the RW market in a non-discriminatory and fair manner is at risk without harmonisation
- Quick steps needed to establish full compliance with EU Directives if the target of 2010 is not to be missed.

Thank you for your attention!