

## Working Group Railways and Intermodality

Established under the Memorandum of Understanding on the

Development of the South East European Core Regional Transport Network

### **2<sup>nd</sup> Interim Report to the Steering Committee**

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Annex 1: Mandate of the Ad-hoc Working Group

Annex 2: Membership of the Ad-hoc Working Group

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## 1. Introduction

The Ad-hoc Working Group Railways and Intermodality prepared the present 2<sup>st</sup> report to the Steering Committee in response to the Steering Committee's mandate of April 2006. The mandate is attached to this report. This report reflects discussions in meetings held since mid 2006, when the working group was established. Moreover, it presents a set of conclusions/recommendations at the end of the individual chapters, as appropriate.

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.

The Working Group suggests the Steering Committee to continue the work under the existing mandate. Among other things, it is proposed to report on the progress of the national infrastructure managers on developing network statements, as required under the Declaration on Railways, which the ministers and the Commission Vice President signed in Brussels on 1 December 2006. The Working Group would also like to reinforce exchange of information on the various technical assistance projects, many of which are set up and executed in isolation from one another. Technical assistance is considered vital for advancing rail reform. Other focuses could be infrastructure charging and border crossing, items which the present report starts to tackle.

## 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, except in Croatia, are declining.

The state of rail reform can be summarised as follows:

- Croatia, the the former Yugoslav Republic of Macedonia and Montenegro have set up regulatory bodies functionally independent from the ministry, endowed with decision making powers, budget and own personnel employed on a full time basis.
- As regards the independence of essential functions, i.e. allocation of capacity and setting infrastructure usage charges, from railways, the the former Yugoslav Republic of Macedonia and Montenegro have unbundled their infrastructure managers. 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. Kosovo has adopted a law that requires unbundling and after some years of standstill, the government took again the initiative in late 2009 to implement unbundling.

Railways in Bosnia and Herzegovina and Serbia still work as integrated companies, essential functions not being independent.

- Most participants state that they have separate accounts for infrastructure management and provision of transport services<sup>1</sup>. 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. After the formation of two independent companies in June 2009 Montenegro has separated accounts for passenger and freight service. A third aspect in this context is separation of accounting for services with or without state compensation.
- In case of unbundling, the States will be able to trace funds they make available to either infrastructure manager or operations, whereas this legal obligation is not ensured in case of holdings and integration of operations.
- 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.
- Government of Montenegro decided to take over larger part of the debts and financial obligations accumulated up to the 31<sup>st</sup> December 2008 in existing railway companies and implement their recapitalization, as well their conversion into the enlargement of state package of shares in all joint stock companies. It amounts to app. €138.2 million (out of which €107.5 million in the Railway Infrastructure and €30.7 million in the Railway Transport). Croatia and the the former Yugoslav Republic of Macedonia have also divested their incumbent's historic debts, whereas Serbia has not done so. Servicing those debts remains a heavy burden, especially in a future competitive market.
- Croatia and the the former Yugoslav Republic of Macedonia compensate their passenger operators for transport operations, on the basis of yearly allocations. Serbia transfers a lumpsum, calculated on the financial needs of integrated Serbian railways.
- 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. There is no competition on the track or for the track in any of the seven networks. Croatia has laid the legal basis for domestic market opening and allows foreign operators on the basis of reciprocity if they get established in Croatia. No operator has made use of this option yet.

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<sup>1</sup> 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.

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

Albania: The state compensates public service obligations for passenger transport. The existing national transport plan is being reviewed by a foreign consultant company. The regulatory body has not been set up yet. An infrastructure master plan has not been adopted yet. The railways have updated the five year business plans of the business units for their internal use and investment subsidy.

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. Croatia amended its market access legislation, ie the Railway Act and the Act on the railway regulator, in mid 2009, to ensure the functional independence of the infrastructure manager and to strengthen its rail regulator, who is appointed by Parliament since then. The regulator's first decision concerned the approval of the appointment of a new CEO of the infrastructure manager. Rail safety law is in the process of amending its railway law and staff the railway safety authority. Croatian state railways have been divested of their historic debt on 1 January 2007. HZ Infrastruktura has published its network statement in both Croatian and English language. The network statement is subject to improvement, in particular as regards terminal information.

The FYR of Macedonia: A new law was adopted in 2005. Infrastructure management and transport service were unbundled into an infrastructure manager and a transport operator for freight and passenger services. A contract on compensation for public service obligations (with support of the World Bank) has been prepared, for the time being, on an annual basis. The Macedonian rail regulatory body is appointed by Parliament, however the law has not been implemented to exercise all functions, including own initiative investigations and complaint handling. The law for an independent safety authority is being prepared, but not yet adopted.

Montenegro: Infrastructure manager has prepared and published Network Statement in March 2009. Information in the Network Statement applies for the preparation of the Time Table 2009/2010 except Chapter 6 - Charges, which applied since the 1<sup>st</sup> of January 2009. The tender commission for future privatization, which was formed in March, together with the advisor for the privatization of preparation tender documents for privatization of some parts of the railway system. As a result of the last phase of restructuring is planned publication of tenders for privatization and / or private-public partnership for privatization of sam parts of railway system. First tender will be published in October 2009 for the sale of the company MONTECARGO (freight operator). Railway market is open for foreign operators. There are plans for complete reconstruction railway line Bar – Belgrade in cooperation with Serbia and Italy. Also, there are plans to set up a regular rail passenger service on the lines Podgorica - Niksic and Podgorica - Tuzi (border with 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): Kosovo Railways' infrastructure management and operations are integrated in the form of a joint stock company including divisions for infrastructure and commercial operations, the accounts of which are not separate. The number of staff has been reduced such that revenues cover the operational expenses. The government finances some infrastructure and rolling stock projects. It gives also compensation for rail passenger services. In 2005, a new freight container terminal was opened, and the number of containers lifted increased in 2006. A railway law (based on European standards) was completed in early 2006, and it is approved on 15 June 2008. Rail freight is increasing. Based on the existing Law, should be established a regulatory body ('Railway Regulatory Authority'). The authority is planned to be established in 2009 or in early 2010. The final draft of Network Statement is completed in August 2009. Kosovo Government has started the separation process of Kosovo Railways JSC. It is expected that up to the end of 2009, the company will be separated into two new companies: infrastructure of Kosovo Railways JS and Train Operations of Kosovo Railways JSC.

### 3. Border Crossing

Border crossing procedures involve about 4 different national authorities on each side of an international border, which are subordinate to an equal number of different national ministries. Consequently, coordination and collaboration are crucial in order to simplify procedures and reduce delays of trains at borders. The Working Group railways 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.

The delay of freight trains<sup>2</sup> at borders in south-east Europe was measured to be six hours on average with a high scatter, ranging up to nine hours. Recorded delays, often accumulated in previous stages of a trip, were found to be several hours longer than time tabled delays. This

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<sup>2</sup> GTZ funded a project rail consultant, Vienna Consult, to analyse and report on the obstacles and delays at borders between different South-East European states. The reporting period covered 1999 to 2005. The main findings and recommendations of the report are provided in the present chapter. The project manager presented them at the working group meeting of January 2007, where they were also discussed.

deviation then was found to create additional delays, such as traction or train paths not being available when the train was finally ready.

The main causes for delays were the following:

- The single most important cause of delay is the locomotive and driver not being available. This accounts for about 70% of delays.
- Inadequate cooperation the different actors at borders and insufficient equipment.
- The legal basis setting up the rules and relationship between railway undertakings and infrastructure managers – the international border agreement signed between the neighbouring state governments – are mostly not compliant with EU railway law and interoperability rules.
- The operational procedures ("technology") for train processing - agreements at present signed between the respective neighbouring state railways must be brought to modern standards, allowing every railway undertaking to have its own technology.
- Flow of information is inadequate and too slow with regards to the requirements for faster and more efficient train processing.
- Incomplete freight documents lead to further delays, requiring harmonized documentation within the EU and with its neighbouring countries.

- Agreements between states

Bilateral agreements, where they exist, do not often take into account the EU railway acquis, i.e. they are based on the existence of two state railway monopolies on either side of the border. When a new agreement is negotiated, drafts are based on the existing agreement. This approach risks putting up additional market barriers to new railway undertakings which wish to enter into international transport..

Such border crossing agreement, create the risk of fixing rules that are contrary with EU law and thus new problems will be created when one of the signatories negotiates access to the EU. At the same time, border crossing agreements, e.g. the one between Bulgaria and Serbia at the Dimitrovgrad border, comply with EU law and have shown first steps in liberalizing border-crossing with non-EU countries. .

- Cooperation along international corridors

Under the project ZEUS, a consortium of railway companies including Deutsche Bahn subsidiary Railion had set freight service between Germany and Turkey, using multi-system traction which is able to run under all the different current systems on the Corridor IV. The travel time between Cologne and Istanbul could be reduced to 3.5. days one way, and one week for a round trip. After the end of the test phase, these travel times could not be maintained.

- Visa facilitation

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. The visa facilitation agreements with Albania, Bosnia & Herzegovina, Montenegro and the former Yugoslav Republic of Macedonia have been initialled on 10-12 April 2007. The agreement with Serbia will hopefully be agreed soon. This agreement concerns train crews and envisages a single document to request entry, multiple entry visas and a waiver of visa fees.

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

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 fewer 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, and 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 to supplement own data collection with activities running in parallel, notably under the UN ECE's TER project and the UIC.

Existing rail border agreements should be brought in line with EU railway law to allow for open access and compliance with EU interoperability rules. Where they conflict with the latter, EU law should prevail.

When preparing new border crossing agreements, private railway undertakings should equally be included in consultations. Recent agreements concluded between EU Member States should be taken as a starting point rather than agreement from the regions dating back to pre-2000 times. The parties should avoid getting into conflict with EU law and interoperability provisions. They should introduce clauses ensuring that in case of conflict or arbitration EU-law shall prevail or at least be taken as reference.

The ZEUS project has shown that a close cooperation among infrastructure managers and railway undertaking is possible and can render freight transport on the corridor competitive, at least time wise. It also showed the commercial advantages of a corridor-integrated infrastructure management.

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.

Some limited investment in new equipment at border crossing stations (e.g. information and communication technology, printers and copy machines) is needed.

#### 4. Institutional setup and administrative capacity

The present section outlines the legal basis<sup>3</sup> 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

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<sup>3</sup> 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.

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.

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 European Railway Agency. This is the basis for the establishment of this network.

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

Pricing for the use of rail infrastructure is regulated in Directive 2001/14/EC. The general objective are to optimise the use of the existing infrastructure, whereas full cost recovery is legally not required and the cost structures and the market situation will normally not allow full cost recovery. As a result, only the cost of operating a train should be included in the charge for using the track and the tracks to get access to infrastructure services, i.e. the minimum access package. In addition, mark-ups can be included up to a level where market segments are not priced out. Eventually, charges have to be related to costs of infrastructure provision. Scarcity costs are allowed during periods of congestion. The infrastructure manager is also allowed to average costs across different parts of his network.

Apart from the said minimum access package, the directive distinguishes three types of services, for which different pricing rules apply: For infrastructure services (i.e. terminals, marshalling yards, maintenance facilities etc.) competitive pricing is the basis for setting the charge, while for additional services (traction current, fuel etc) and ancillary services (telecom network, supplementary information, inspection of rolling stock etc) prices must be based on the cost of providing the services.

Other objectives are transparency and stakeholder consultation and here the network statement plays an important role. The state has to ensure the financial stability of the infrastructure manager and his tasks correspond to his financial resources. Infrastructure managers must also be incentives to reduce their costs and perform well by performance regimes built in the charging system.

The infrastructure manager must not discriminate against certain railway undertakings. So, comparable prices must be charged for equivalent services.

The state must set a charging framework. He also has to set charging rules, unless he decides to delegate that to the infrastructure manager. It is then up to the infrastructure manager to set charges, unless there is no clear separation of providing transport services and infrastructure services. In that case, the state sets charging rules and sets the charges, while the infrastructure manager is only allowed to collect charges.

The regulatory body is appeal body for railway undertakings. It also has to supervise possible negotiations on the level of charges. In addition, judicial appeal must be provided for.

Charges shall be used to fund the business of the infrastructure manager, i.e. not other services, such as passenger transport services.

There is a legal obligation for infrastructure managers to cooperate with one another, including cooperation across borders with the objective to establish optimum competitiveness of international rail freight. In this context, the law explicitly allows infrastructure managers to set up a joint organisation in pursuit of the said objective, where that joint organisations is bound be the same rules is individual infrastructure managers.

Conclusions:

A strong cooperation of the region's infrastructure managers across borders is considered vital for the sector.

## 7. Compensation for public services obligations in rail passenger transport

Regulation 1370/2007 of the European Parliament and of the Council of 23 October 2007 sets the framework for passenger transport services by rail (and by road) under public service obligations. The regulation takes effect in December 2009, except its article 5 (Awarding contracts), which only takes effects 2019, i.e. 10 years after that date.

Eventually it requires that public service obligations have to be compensated and be delivered on the basis of a contract that sets out the level of compensation as well as the services to be provided under the contract.

The regulations prohibits over-compensation of service providers and provides for them calculating their costs.

Article 5 paragraph 3 of the regulation sets competitive tendering as a rule, whereas paragraph 2 to 6 provide exceptions as regards in-house production (the so-called internal operator) and direct contract award as possible alternatives. According to article 5, Member States must not adopt national law in order to prohibit competitive tendering, but they may do that to prohibit direct award. Where such a prohibition does not exist, it is up to competent authorities to choose the appropriate award mechanism.

Past experience however has shown that competitive tendering may perform best in terms of costs, customer-satisfaction, quality of service and usage levels. Much depends on the selection of the appropriate funding mechanism (e.g. who takes ticket revenue risk), performance measurement and incentives (key performance indicators) and setting conditions for renegotiating and early termination.

It is first and foremost important for railways and for authorities to know the cost of different service levels, whereby costs are different from expenditures and represent monetised consumption of resources that can be assigned to a particular service. It is recommended to that the annual accounts of all the railways are brought up to IAS or GAAP standards as quickly as possible. In particular, the asset register, the treatment of liabilities, and a full statement and application of depreciation policies are important. These will need to be robust whether or not the railway is privatised. They will change the railway's cash requirements.

A second challenge may consist in knowing the track access charges at the time of selecting or awarding the contract for its full duration. This will be of less importance for the bidding service providers when the PSO contracts envisage full compensation of infrastructure charges throughout the contact lifetime whatever level they be.

Existing data about the railway's customer-facing outputs are limited and the range and scope of relevant indicators needs to be developed further. Typical indicators used elsewhere might include measures of train capacity (for example, numbers of passengers forced to stand), measures of train cancellations, measures of train and station cleanliness and facilities, and so

on. These would form the basis of future incentivisation regimes, especially post-privatisation.

We have suggested investments in rolling stock which will have speedy payback. Other cost-saving investments need to be identified in detail for the long term; many of these may be focussed on infrastructure rather than train operation. We believe that these will be primarily in the areas of signalling and track maintenance standards where the level (and therefore cost) of maintenance, capacity and output may be reduced with the introduction of new rolling stock – especially the replacement of locomotives by multiple units. There needs to be thorough review of the need for all the existing assets with a view to reducing the railway's asset holding as quickly as possible. We have in mind especially the extensive and seemingly surplus numbers of available platforms and tracks at major stations and at the frontiers.

We have made the best use of the available data from ticket sales to estimate passenger volumes and revenues, and the likely effect of any changes to services. There is much scope for tightening up the data collection, perhaps as part of a greater effort to collect fares. If linked to specific studies of fares elasticity and frequency elasticity, there would be a much more robust platform for estimating the effect of future changes, including changes to the fares structures and the introduction of new retail distribution channels.

The relationship and respective roles of train and bus need to be examined in depth in due course, perhaps as a study of the transport needs of the greater Skopje conurbation. The outcome of any such would have significant effects on fares, fares structures and perhaps service levels on the railway.

If buses are to be an instrument of public policy, their regulation and financing needs to be the subject of review and probable legislation. Until this is done, their value as rail replacement services is very limited indeed.

It is inevitable that data series are short and patchy, and probably incomplete. Building up long term data series cannot start soon enough; these will enable the PSO to be more precisely calibrated in the future. In particular, it is highly desirable for more regional and sub-regional socio-economic data to be available as well as data on car usage and journey purpose.

Whilst the formalities and administrative procedures are essential, so too are the less formal features of state/industry relationships which will enable both parties to understand their political and managerial agendas better and to help anticipate problems well before they are reflected in any formal Key Performance Indicators. This is as much a cultural matter as a managerial one, but it continues to be the key to effective supervision and regulation of state enterprises throughout Europe. Both State and railway might care to consider a programme of external mentoring whilst the new PSO arrangements bed in.

When the passenger business is concessioned or privatised, the incentivisation arrangements will be changed. Instead of targeting the directors of the company, it will be the company's Profit and Loss Account which is targeted. We will be explaining how this is done very fully in a note to accompany our next work stream, suffice to say here that there will be a system of points awarded/subtracted for bettering or failing to deliver specified quality levels. Accumulation of positive points will lead to a bonus being paid; accumulation of negative points will lead to a fine, or in extreme cases, removal from the concession. In the context of

the quality monitoring the catalogue of quality factors to be monitored is likely to be quite short – perhaps total delay minutes and something related to customer satisfaction.

## 8. Management Strategies for fixed railway assets

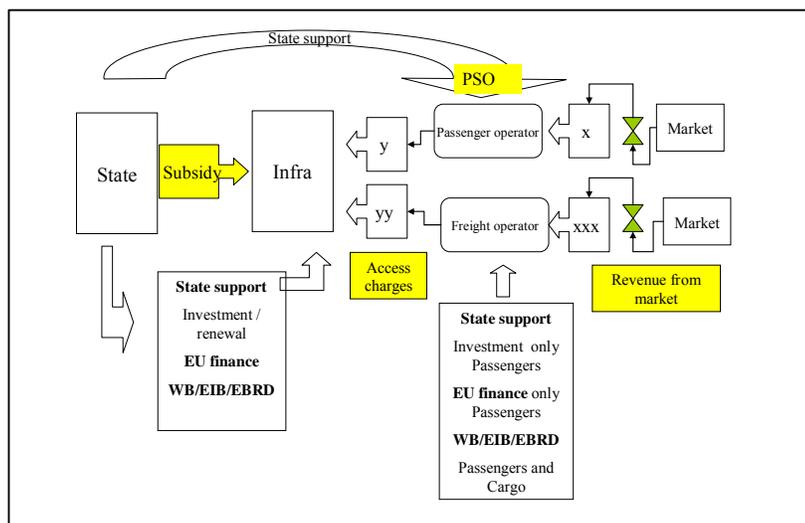
This chapter summarises a presentation and discussions at the railway working group meeting held in Zagreb (HR) in September 2008. It is the outcome of several years of work for railways and transport ministries on asset management in South East Europe.

To achieve competitive rail transport in Europe, it is necessary that the infrastructure manager's (IM) financial situation is balanced and stable. Europe promotes the idea of multi annual contracts between infrastructure manager and State as an instrument to achieve this. Such contracts require that the IM is able to adapt his maintenance strategy. The maintenance strategy should be based on current condition of infrastructure, future utilization of the network and available budget.

In practice we see in many countries a situation where there are not enough resources to keep the infrastructure at an appropriate quality level. This is most important for the track system. If problems with sleepers, ballast or rail occur and there is no money to repair properly lower speed restrictions are imposed. On many networks the list of speed restrictions has grown to impressive length.

In Eastern Europe often the solution is to propose a list of track renewal projects to restore the tracks in normal working condition. This requires huge amounts of money that never come available and the result is that most of the renewal work is postponed from year to year.

In general, the financial situation of the IMs is not balanced. In the balance scheme below, income of the infrastructure manager from subsidy and access charges is not sufficient to perform proper maintenance.



If the IM needs more money either access charges or State subsidy or both should be increased. But access charges are already too high and the State is in general cash strapped.

In Western Europe railways developed new maintenance strategies in the last 30-40 years as a reaction on budget cuts. In times of economic crisis (about every 7 years) governments did cut budget for renewal maintenance. Track renewal is very expensive and postponing has significant effect on the State budget. Railways learned how day to day maintenance and medium maintenance should be adapted to allow postponing renewal without imposing speed restrictions. Gradually in several countries maintenance strategies were developed that are based on:

- condition measurement
- analysis of future utilization (which lines are used by how many trains etc)
- life cycle optimization; renewal is not based on a regulation (like in the past in Eastern Europe) but on condition development and preventive maintenance
- priority setting: not all lines are the same important, less important lines could do with a less demanding maintenance regime.
- Preventive maintenance and fast repair of local deficiencies is utmost important to reduce costs and extension of renewal periods

During contract discussions between IM and State in the last 15 years many discussions were held how much should cost rail infrastructure; infrastructure is very expensive and one can not allow access charges to be too high because this will result in loss of market. This has triggered following developments:

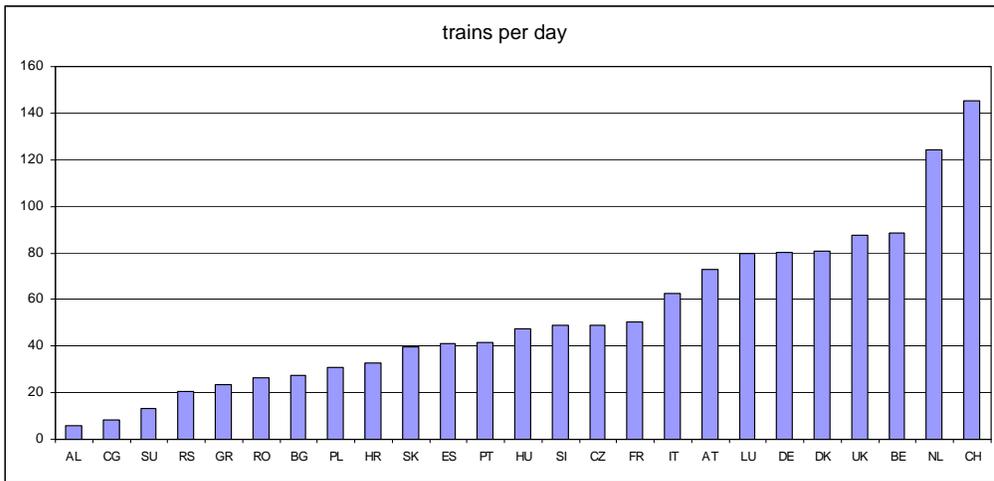
- Pressure on IM to reduce maintenance costs, this was achieved by condition and utilization based maintenance strategies
- Search for other sources of income: for example to allow the IM to use railway assets that are no longer used for operations for real estate development.
- Benchmarking between IM's from different countries. Most countries have only one IM, governments can not assess if their IM performs well. Benchmarking tools have been developed to compare IM performance in different countries.

This development resulted in what is called "Infrastructure asset management Plan" (IAMP). The IM should have an asset management plan (IAMP) which shows:

- how utilisation will develop,
- what are most economic maintenance strategies compliant with this utilization,
- what could be done with non operational assets,
- what should be priorities for various parts of the network,
- What are financing requirements and what are options to schedule work within available budget.

CER promotes introduction of IAMP in Eastern Europe and supported a Dutch funded project to introduce this practice in Bulgaria. Prorail (Dutch IM) experts performed a benchmark study, Dutch maintenance contractor experts explained to Bulgarian colleagues how modern maintenance practice looks like, how it should be organized, how to plan preventive and repair maintenance, what equipment is needed etc. And Dutch experts from Ministries of Transport and Finance explained to Bulgarian colleagues how they deal with the IM and his finance.

If you try to apply principles from West European Railways in Eastern Europe the first problem is the difference in utilization. In the diagram below is presented the average number of trains per day per line km.

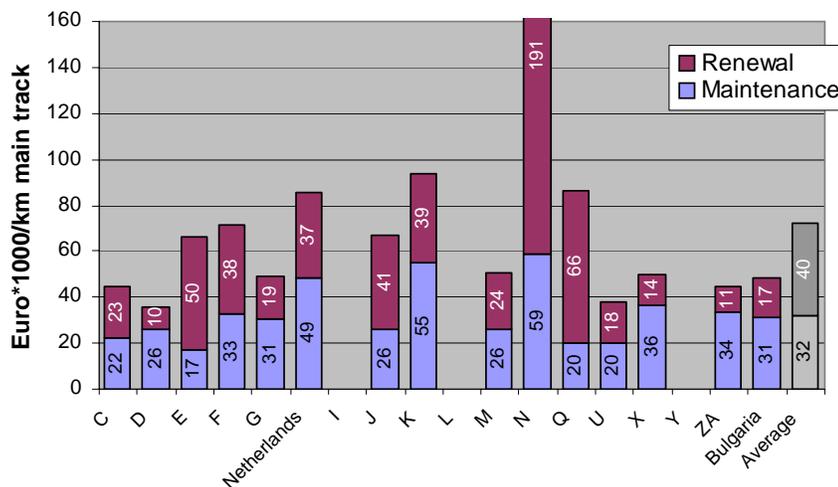


Most Eastern European networks show a much lower train density as in North West Europe. This means however that variable, marginal and fixed cost has a different dimension. On the left side of the diagram track elements will have a much longer life cycle as on the right side. It also means that investment for renewal should be considered against this low utilization, maybe high tech, high quality track that is used in Western Europe is not the most economic solution for the next 45 years. It means also that access charges per train km will be more high if full cost coverage is applied.

The experience in Bulgaria showed that a benchmark tool can be used to assess what should be a reasonable budget. The benchmark assesses:

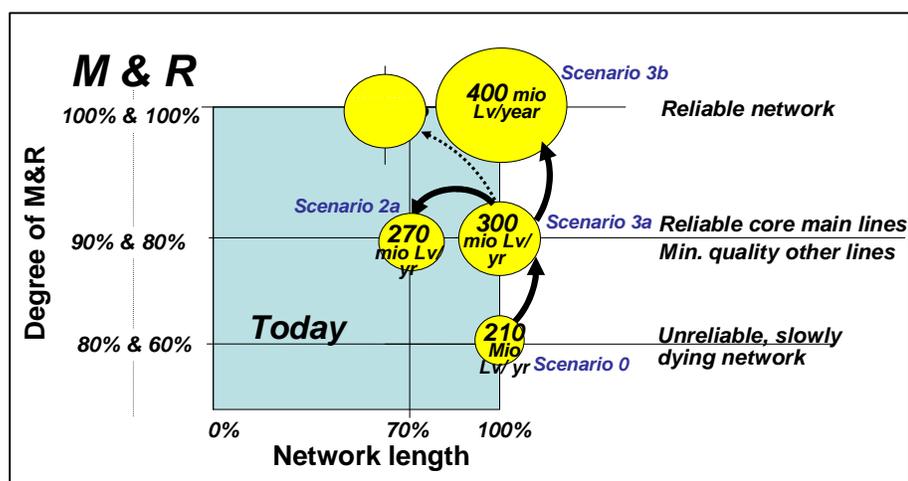
- Utilization of tracks (in million tons per year) today and in future
- Cost of maintenance corrected for purchasing power, single / double track, electrification level etc. (see the example below)

Cost benchmark:  
**LC-costs/km main track (fully harmonised)**



From the benchmark a strategy can be developed that answers the question what should be a reasonable budget for maintenance.

In the diagram below is presented how much money per year should be available dependent on government policy, utilization, priorities and targets.



The diagram shows several options:

- Degree of maintenance and repair on the left vertical axle;
- 3 scenario's on the right side:
  - Today's situation
  - A middle scenario where a few main lines (core network) that carry the majority of traffic receives 100% maintenance and the other lines have a more cheap regime
  - What would cost a full quality solution?

Each scenario has of course different effects for passenger service, cargo transport, access charges en government policy.

For each scenario different schedules for maintenance and renewal can be developed.

The benchmarking enables government to consider its rail policy en budget plan and to agree with the IM which scenario will be basis for a multi annual contract.

The conclusion is that also for low utilization networks in Eastern Europe modern maintenance practice from Western Europe can be applied. It requires a shift of budget from renewal projects to current maintenance. It requires in general restructuring of maintenance organization to allow fast repair, condition measuring, detailed planning of maintenance actions, mobile maintenance team with sufficient vehicles and equipment. And of course it requires integration of maintenance and renewal planning both based on future utilization and priorities.

In Western Europe IAMP and benchmarking are used to achieve that:

- Maintenance and Renewal works can be scheduled in 5 or 10 year plans within available budget (State budget + access charges + real estate income)

## Conclusions

Maintenance strategies determine the costs and the quality of the infrastructure, and thus also the level of track access charges and the competitive position of railways. Moreover, maintenance strategies are the instrument for the state to define and agree cost and performance targets with its infrastructure manager, as required under EU legislation. Consequently, the state, the regulatory body and railways' customers should take an interest in the infrastructure managers' maintenance strategies, as it is an important factor for their financial and market position, i.e. the need for state finance and the sector's market opportunities. It thus is through costs, performance indicators and track access charges that this link is established, that performance can be benchmarked and compared and targets can be agreed.

An analysis of infrastructure managers' maintenance strategies in South East Europe, but also in other parts of the world, has led to the following recommendations:

- Shift from a regular to condition based maintenance
- Establish measurement programmes to regularly assess infrastructure condition.
- Move away from re establishing past design parameters across the network , future utilization should decide what parameters are sufficient and appropriate based on government policy and not on engineering history

Focus resources first of all on parts of the network where most demand is forecasted. Like in every industry mostly 80 % of effect (improvement) can be achieved with 20% of resources. In Bulgaria this means that improving 20% of lines has effect on 80% of trains. In general there will never in any country be enough budgets to have all lines on top quality.

The infrastructure manager's business strategy should be consistent with the national transport strategy and the resources available under it.

The current budget constraints for most Governments in the Balkan have as effect that access charges are high (they cover IM operations cost minus available subsidy). Per train km they are even higher because of the low utilization (low number of trains).

For the European goals this has adverse effects, it makes international long distance rail transport -for example from Germany to Istanbul – expensive and uncompetitive. To compete with highways by the sea (most important competitor) and road transport it is advised to have a basis access charging level comparable with the German one. If this tariff is competitive in West Europe, it will also be competitive on the whole route via the Balkan. Competitive means also more trains and higher utilization and lower costs per train km.

Again this makes it important that governments discuss with the IM options to reduce costs with modern maintenance practice and priority setting that enables rescheduling of works and reduction of costs.

Experience learns that IM's can learn from colleagues in West Europe, and governments can learn from colleague governments in West Europe.

## 9. 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.

## 10. Implementing the Addendum on a Common South East European Railway Area

The SEETO Ministerial Conference of December 2008 adopted the following time table on implementation of the Addendum on a common South East European rail transport area:

Measures	Albania	Bosnia and Herzegovina	Croatia	the former Yugoslav Republic of Macedonia	Montenegro	Serbia	Kosovo under UNSCR 1244/99	Region
Addendum Item 2.1: Institution building	Jun-09	2008	Dec-09	Jun-09	Jul-09	2006	Feb-10	<b>Feb-10</b>
Addendum item 2.2: Separation, management independence and market orientation	Jun-09	Feb-09	Mar-08	Feb-08	Sep-08	2010	Apr-10	<b>Apr-10</b>
Addendum Item 2.3: Fair infrastructure access, safety and interoperability	2010	2010	-	Dec-10	2010	2010	Dec-10	<b>Dec-10</b>
Addendum item 2.4: Financial Stability	Jan-09	2009	Jan-07	Jan-09	Jan-09	2010	Dec-09	<b>2010</b>
Addendum item 2.5: Border Crossing	NA	2009	-	Jun-09	Dec-08	2010	Jun-09	<b>2010</b>
Addendum item 2.6: Social dimension and social dialogue	Jan-09	2008	-	Dec-09	2009	2010	2003	<b>2010</b>

Implementation steps:

1. Primary law adopted and in effect
2. Secondary law adopted and in effect
3. Budgetary and financial framework established
4. Institutional and organisational arrangements established
5. Staff in office in sufficient number and competence
6. Operational decisions issued and/or published or measure in operation.

## ANNEX 1

### **Ad-hoc Working Group Railway and Intermodal Policy**

#### **Terms of Reference / Mandate**

The Steering Committee sets up an ad-hoc Working Group on railway and inter-modal policy on a temporary basis according to paragraph 9 of the Memorandum of understanding (MoU) on the development of the South East Europe Core Regional Transport Network (SEETO).

The WG will deal with the administrative and regulatory procedures necessary to foster the development of a European railway area, leaving discussions on investment prospects to the Steering Committee. While the ultimate aim is to promote the implementation of the EU railway acquis in the SEETO region, the Working Group will more specifically take stock of, analyse and give its opinion to the Steering Committee on some or all of the following issues:

1. Inventory of rail reforms
2. Reviewing participants' strategies for reform, including regulatory and policy change with regards to
  - open access to infrastructure
  - network statements
  - institutional settings (regulatory bodies and safety authorities)
  - intermodality
3. OTIF rules for international traffic and compatibility of cross-border agreements with EU legislation and the EU rail market opening approach
4. Recommend measures to be taken to ensure regional integration and harmonisation of reforms

Coordination and Cooperation: The Working Group will report to the Steering Committee and coordinate its activities with those of the Steering Committee and of other Working Groups set up under this MoU.

The Working Group will ensure that work carried out in other exercises (such as the task force on railways of the European Conference of Ministers of Transport (ECMT) and by the working group on South-East Europe set up under the auspices of the Community of European Railways (CER)) is properly coordinated with its own activities.

Participation: Steering Committee delegated experts including European Commission/DG TREN. The Working Group may on a case by case invite external experts and stakeholders, like representatives/experts from neighbouring countries, international financial institutions, corridor secretariats, regional railways, professional associations etc.

Meetings: 2-4 per year

Chair: EU Commission/DG TREN

Secretariat: SEETO