



**Mobility  
Consultants**

MC Mobility Consultants GmbH  
A-1180 Vienna, Gentzgasse 64 – 66/9  
Telephone: +43/1/8923600  
office@vienna-mc.com  
www.vienna-mc.com  
Skype: office.vienna-mc

## Separate NS for the border – crossing zone?



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Sabine Langer, legal and  
institutional expert

Klaus Uhl, legal  
expert



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## The Zone – general principles of the model agreement



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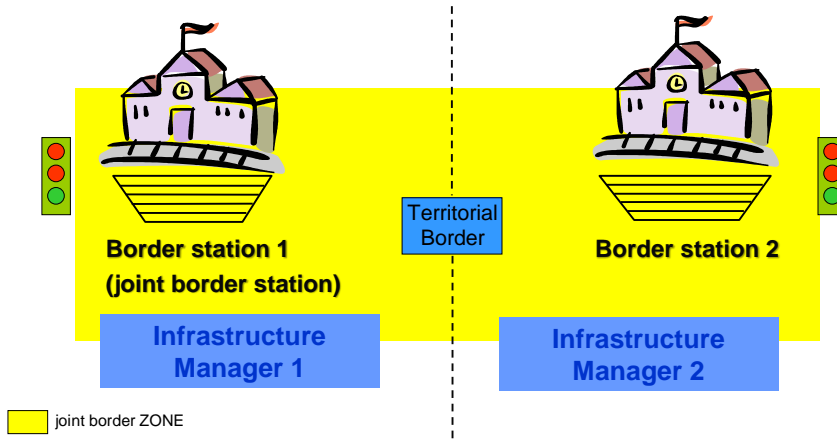
For joint activities in accordance with the Border Crossing Agreement, the Zone is defined as a territory in two states in which the officials and railway personnel of the contracting parties jointly carry out the dispatching of train, the border and customs control and any other controls required by the laws of both states.

The ZONE shall include:

- the premises at which the border authorities of the neighbouring state may carry out their functions,
- the tracks and lines,
- freight and passenger stations, warehouses, waiting facilities for passengers,
- other buildings and facilities within the ZONE and
- trains moving between the defined parts of the railway line on which border authorities perform their activities

**The Border Authorities have the freedom to extend the Zone for their own purposes.**

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## The ZONE (3)

The general provisions, objectives and principles listed in Article 2 of the Model Agreement shall be valid in the Zone:

- carrying out border dispatching activities of one state on the territory of the other state by official and railway personnel;
- establishing the rules for the border dispatching of one state on trains that are moving on the territory of the other state by official and railway personnel;

## Guaranties in the ZONE (1)

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- **Open access for rail undertakings by means of a simplified procedure of mutual acceptance of licences, safety certificates, traction, rolling stock and driving licences for locomotive drivers;**
  - **Non-discriminatory and fair competition in respect to the open access;**
  - **Acceptance of the international standards as well as goods and passenger documents;**
  - **Acceptance of other internationally accepted transport documents;**
  - **Freedom for rail undertaking to organise their own rail border dispatching procedures by making agreements with the respective border authorities;**

## Guaranties in the ZONE (2)

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- **Freedom of the border authorities to conclude separate bilateral Protocols with each other, individually;**
  - **Right of the border police of the neighbouring state to carry out controls on the territory of the domestic state in the Zone;**
  - **Right of the customs authorities to establish a **Single Window** service in the Zone;**
  - **Right of phyto-sanitary, veterinary, sanitary and health-anti-epidemiological and any other authority appointed by either contracting party to control in the Zone of the territory of the domestic state and to accept the respective certificates and controls mutually.**

### **The Zone covers 2 railway networks:**

- 2 different IMs - 2 different NS
- 2 different responsibilities
- 2 different licenses needed
- 2 different safety certificates needed
- different authorisation for rolling stock needed
- 2 train driver license needed for the respective country (language skills)

**Without mentioning the particularities of the Border Crossing Agreement in the Network Statement only the requirements from one state are valid and have to be fulfilled by the RU entering the ZONE in the respective territory of the one state.**

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## How to solve the problem?

- **Bilateral agreement as in the old days**
- **Zone with separate NS?**
- **Integration in the NS of both IMs?**

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## Suggestion: Zone as a separate chapter in each of the two NS

- **Two NS introduce a new chapter with an agreed content and requirements valid for the total ZONE**
  - Important: definition of zone (first station after the border, entry/exit signal)
  - Acknowledgement of
    - train driver license incl. language
    - rolling stock
    - licence and safety certificate
- **The ZONE will become a single point of contact**

The following problems will be avoided:

- zone is divided by two different NS with different responsibilities
- joint NS separates the ZONE from the rest of the network (legal problem?)
- which regulatory body is responsible? Application of Art. 57 of 2012/34/EU
- who is the path allocation body? Agreement between the two IMs to establish ONE-STOP-SHOP
- calculation and charging of track access charges? Agreement between the two IMs

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## Regulatory intervention in case of conflicting requests – cooperation between regulatory bodies

- **Cooperation according Art. 57.3 of 2012/34/EU**
- *“In the case of a complaint or an own-initiative investigation on issues of access or charging relating to an international train path, [...], the regulatory body concerned shall consult the regulatory bodies of all other Member States through which the international train path concerned runs and, where appropriate, the Commission, and shall request all necessary information from them before taking its decision.”*
- *“Where matters concerning an international service require decisions of two or more regulatory bodies, the regulatory bodies concerned shall cooperate in preparing their respective decisions in order to bring about a resolution of the matter. For that purpose, the regulatory bodies concerned shall carry out their functions in accordance with Article 56.”*
- *“The regulatory bodies consulted in accordance with paragraph 3 shall provide all the information that they themselves have the right to request under their national law. [...]”*

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