

DEVELOPMENT SCENARIO FOR RAILWAY MARKET INSTITUTIONS IN SERBIA

Branislav BOŠKOVIĆ¹
Mirjana BUGARINOVIĆ²
Uglješa MILOVIĆ³
Nikola STOJADINOVIĆ⁴

***Abstract** – Opening of the railway market requires establishment of new institutions in the railway sector. Among them we distinguish those institutions that directly regulate relations between the market participants (the Regulatory Body, Safety Authority, Licensing Body and the railway accidents Investigation Body) and the institutions that provide different permits for the railway industry products (Notified Body and Designated Body). EU secondary legislation has defined the role, responsibilities and functions of these institutions but not their organizational models and position. Also, there is still considerable freedom or ambiguity regarding the independence of those institutions and their mutual relations, as well as their relations with other institutions of the railway sector and the state. The paper presents the tasks and responsibilities of those institutions according to the EU directives, as well as constraints regarding their position and independence from market participants and other institutions. Starting from the current situation in the market and requirements of the EU directives, possible institutional development scenarios have been presented for the Serbian railway market as an example.*

Keywords - rail market institutions, models, development scenario.

1. INTRODUCTION

It was as early as in 1957, by the Treaty of Rome, that the European Union (EU) defined a transport policy including open and free transport market in the whole territory of the EU, for all transport modes and in all segments of the market. Railway reforms, which have been lasting for more than two decades, enable gradual opening of the railway market which has always been monopolistically organized since its establishment. One of the main elements concerning the functioning of the market includes establishment and functioning of institutions regulating the market. Among them, we distinguish those institutions which directly regulate relationships among the participants in the market (regulatory body, safety authority, licensing body and investigation body) and those which issue different permits for railway industry products (notified body and designated body).

The process of establishment of the above mentioned institutions in Europe, either in the EU member states or outside of the EU, is still in its initial phase. Most countries have not even established those institutions yet and the whole process has been

marked by frequent changes and wandering. The establishment of railway market institutions represents a special challenge for small countries having a lack of knowledge, financial, human and other resources. Besides that, taking into account the current economic crises, necessity to reduce budget deficits and government administration, which also represents a general trend in Europe, the problem of establishment of 4 railway institutions appears to be even more complicated.

The most important is to find an appropriate approach to this problem, as well as to define the most important issues to be solved. In order to answer those questions, there has been given an example of how this institutional problem could be solved in the Serbian railway sector. The paper mostly represents the result of work of the Serbian Directorate for Railways and German consulting company Deutsche Bahn International on the project “Development of Railway Regulatory Body in Serbia“ funded by EBRD within German II fund for technical cooperation.

2. RESPONSIBILITIES AND CONSTRAINTS

¹ Branislav BOŠKOVIĆ, Directorate for Railways, Nemanjina 6, Belgrade, branislav.boskovic@raildir.gov.rs .

² Mirjana BUGARINOVIĆ, Faculty for Transport and Traffic engineering, V. Stepe 305, m.bugarinovic@sf.bg.ac.rs

³ Uglješa MILOVIĆ, Deutsche Bahn International, Terazije 16, Belgrade, ugljesa.milovic@db-international.de

⁴ Nikola STOJADINOVIĆ, Faculty for Transport and Traffic engineering, V. Stepe 305, n.stojadinovic@sf.bg.ac.rs

REGARDING THE ESTABLISHMENT OF THE DIFFERENT BODIES

Regulatory Body - RB is an independent state authority which shall regulate the market by preventing discrimination and unfair behavior of certain participants in the railway market and to ensure transparency of the different processes, as well as equal treatment for all participants. RB shall be independent regarding its organization, funding decisions, legal structure and decision making related to the different actors in the market: infrastructure manager (IM) and railway undertakings (RUs).

Safety Authority - SA is an independent state authority, respectively a national authority responsible for railway safety and interoperability issues in accordance with the Directive 2004/49/EC. This authority can be integrated into a Ministry in charge of transport and shall be independent regarding its organization, legal structure and decision making related to any railway undertaking – RU, infrastructure manager – IM, applicant or supplier.

Investigation Body - IB is a permanent body investigating accidents and incidents with the objective to improve the safety system and to prevent accidents by the necessary modifications of regulations. That body needs to have at least one employee capable of exercising the function of investigator in charge in case of an accident or incident. IB shall be independent concerning its organization, legal structure and decision making related to any infrastructure manager, railway undertaking or any party whose interests could be in conflict with the tasks of the investigation body (which means that it shall be established outside of ministry of transport). Besides that, IB shall be independent from safety authority and regulatory body.

Licensing Body - LB is a body which issues licences to RUs and IMs. The only requirement which shall be met by a LB concerns its position and organization: it shall be independent from those who submit application for licences. LB can also be an ad hoc body whose members meet if necessary, that is, when a licence application has been submitted.

3. INSTITUTIONS OF THE SERBIAN RAILWAY SECTOR

The current actors of the Serbian railway sector are: Ministry of Transport, Serbian Railways SA, acting as IM and RU in freight and passenger transport, Directorate for Railways, and several companies for maintenance of railway infrastructure and rolling stock and railway industry. There are also 3 registered RUs which have not been given access to public railway infrastructure yet.

Directorate for Railways is a special organization

within the Serbian Government responsible for licensing, safety of transport, market regulation and other professional activities. However, the applicable law does not provide for its competencies regarding market regulation and for most of its functions concerning safety and especially interoperability, as it has been regulated by the EU legislation. IB has not been established yet.

Taking into account transit character of the railway network and the necessity to maintain its competitiveness, it is indispensable to open the railway market, establish all the railway market institutions (RB, SA, LB and IB), define their respective legal responsibilities and start them up. The main problem, which is also the subject of this paper, is to define the form of each of the mentioned institutions (legal form and position of the body, funding sources, independence regarding the other participants) and their internal organization. It should also be kept in mind that combining of the different functions of those bodies in a single institution is allowed with certain restrictions prescribed by the EU directives. All this increases the number of possible models for these bodies and it is therefore necessary to define the criteria to be respected in order to find a solution. It is also necessary to decide whether in this phase of development and restructuring of the railway sector is better to look for a final solution or to envisage a development scenario before finding a long term solution, and what this decision would depend on.

Solutions of such problems greatly depend on the current situation in the railway sector of a country. Characteristics of the Serbian railway sector, regarding the problem in question, are the following: railway network with important transit traffic, process of restructuring of the incumbent railway company has only been started, great difficulties and non productivity in all aspects of its activities (IM, RU in freight and passenger transport), lack of knowledge and difficulties regarding recruiting of human resources for specific profiles of the mentioned institutions, etc. External factors influencing definition and choice of a model or a scenario shall also be taken into account. At the moment, the most important factors are: extremely negative public opinion regarding the establishment of new state authorities, great budget deficit, solving problems of the public sector by the Government is uncertain, especially in the railway sector, uncertain dynamics of the European integration of Serbia, etc.

4. CRITERIA FOR DEVELOPMENT OF MODELS AND SCENARIOS

The main doubt while making a decision in such a situation is whether it is better to look for a final solution for all institutions according to the requirements prescribed by the EU directives or to provide

for an appropriate development scenario for those institutions. The main motive in favor of a development scenario is the wish to adapt organizational forms and capacities during different periods of time to the real situation, with all advantages and disadvantages this may bring about. Therefore, DfR required the following criteria to be respected while generating models and development scenarios for the different institutions or, in general, for all institutions.

Criterion 1: Degree of openness of the railway market or current phase in the process of restructuring of the incumbent railway company. Different models of organization and institutional capacities shall correspond to the degree of openness of the railway market and process of restructuring of JSC Serbian Railways.

Criterion 2: Dynamics of EU integrations. Different models shall correspond to the process of EU integrations of Serbia. It is well known that EU requirements regarding the form and especially independence of the mentioned institutions differ depending on the phase of EU accession of a candidate country (without candidate status, candidate status without negotiations and candidate status with negotiations) where the influence of EU is more important towards the end of the integration process.

Criterion 3: Possibilities of implementation of models with respect to the current Serbian legislation. For each of the proposed models it is necessary to make an analysis from the point of view of the possibility for its implementation with respect to the current Serbian legislation.

Criterion 4: Independence of the institution. EU regulations require a certain minimum regarding the independence of each of the discussed institutions. Assessment of one of the models according to this criterion can be realized with regard to its funding, its position in relation to other institutions and its founder, as well as its competences regarding making (and signing) decisions in case of a model where two or more bodies are merged into one institution.

Criterion 5: Current situation regarding the institutions of the railway market and its limitations. A number of limitations regarding the development of an organization model for the different institutions derive from the actual situation. Therefore, it is necessary to carry out an analysis concerning possibilities and difficulties of transforming the institutions from their actual form (Directorate for Railways), their capacities and resources, into the proposed organizational models.

Criterion 6: Expected solutions in the proposed directive SERA. For each of the proposed models it is necessary to carry out an assessment by a comparative analysis taking into account the requirements of the proposed SERA directive, with regard to the position, independence and responsibilities of institutions.

Criterion 7: Flexibility of a model. It is necessary to envisage and assess flexibility of each model regarding its possibility to transform into a new organizational form.

Criterion 8: Implementation costs for different models. Implementation cost estimate shall be done for each of the models (regarding the implementation and functioning of the institution). Such estimate can be done by comparing models without calculation of absolute amounts of costs.

5. DEVELOPMENT SCENARIO FOR SERBIA

According to the defined criteria for definition and choice of models, DBI and DfR have decided to propose to the competent authorities a scenario for development of these institutions. The essential point of this concept is to start by concentrating the activities of RB, SA and LB in one institution, as separate and functionally independent organizational units. Later on, depending on other factors – first of all dynamics of EU integrations – and on different phases of opening of the railway market, the same units can be separated in order to form independent institutions or to be joint to other similar institutions responsible for the market. This would allow human and other resources, as well as capacities and power of those institutions, to be gradually developed in order to finally achieve full functionality in all aspects.

5.1 Development scenario for RB

The figure 1 shows development scenario for RB. Meanings of different models are the following:

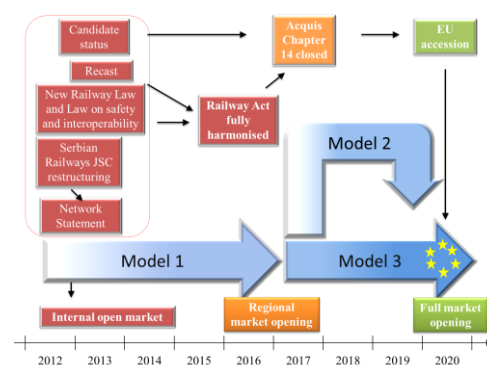


Fig. 1. Development scenario for RB

- Model 1 – Directorate for Railways includes, under the same roof, 3 bodies (RB, SA and LB) which will be functionally separated (separate organizational units – sectors) having a common service providing logistic support.

- Model 2 – This model represents (a possible) “intermediate step“ between the model 1 and model 3 in order to provide a more independent RB if this requirement becomes an obstacle to EU integrations or development of the market. This would be achieved

by establishment of an independent commission, playing the role of a RB with a judge at the head of it who would sign decisions on behalf of the RB, while the Sector for regulatory matters would stay within DfR and function as a kind of "technical secretariat" for the proposed commission.

- Model 3 – It represents the last step in achieving full independence of RB according to the proposed EU directive ("SERA") which also means separating regulatory functions from the Directorate for Railways. Sector for market regulation shall either become a public agency, join another public agency (for example, Competition Agency) or be established as a unique Agency regulating transport market for all transport modes.

Model 3 represents a medium/long term objective (year 2016/2017) within the development of the railway RB in Serbia. Implementation of the model 3 is a complex political decision, which has also been proved by the experiences of most of the EU member states. It is difficult to foresee to what extent political parties and governments are ready to open the railway sector, establish strong and independent railway RBs and strong competition bodies as opposed to national railway undertakings owned by the state.

5.2 Development scenarios for SA, LB and IB

The proposed models for SA does not differ regarding the position and form of the institution, but only regarding its internal structure and capacity which is not the subject of this paper. Therefore, in all variants of the development scenario, SA shall be a special state authority, the same as today. However, there are to different cases in the development scenario of SA: (1) when SA and RB represent separate sectors merged into one common institution (DfR), and (2) when RB is a separate organization while DfR includes only SA and LB.

Models of Licensing Body (LB) are always connected to DfR and sub-variants of this body within DfR have already been explained in point 5.1.

Investigation Body (IB) has not been covered by this project. Due to specificity of functioning of this body and great doubts regarding the definition of the necessary capacities, it has been agreed with the Ministry of Transport to establish a special investigation body in charge of railway, air and waterway transport.

6. CONCLUSION

Regulatory Body, Safety Authority, Licensing Body and Investigation Body represent new institutions in the railway sector. The necessity to establish these bodies is due to the opening of the railway market. Those are new institutions with new responsibilities, unknown in a monopolistic market. That is why there are a lot of difficulties regarding

their establishment and initial functioning. It is necessary to acquire the indispensable knowledge and skills, harmonize capacities with the needs, gain and impose authority necessary for the functioning of institutions acting as regulators in a field having a long history, provide funding sources and political consensus regarding the necessary independence, etc.

The problem of their establishment and functioning is even more important in smaller countries with lack of capacities necessary to establish and enable functioning of these institutions. This problem has also started to be solved in Serbia. Research has shown that, first of all, there should be defined the most important factors, that is, criteria, influencing generation and choice of solutions or institutional models. In this paper have been defined eight criteria.

Taking into account the presented criteria and constraints, there was proposed a single solution in form of a scenario for development of railway market institutions in Serbia. This scenario includes 3 phases in the development of those institutions, where each of the models meets the required criteria defining the system of railway sector and its environment with regard to the defined problem. In the first phase, 3 organizational units (SA, RB and LB) shall be established within a single institution (the existing DfR), while in the third phase, RB shall be separated from DfR according to one of the three proposed models. The second phase represents a compromise or transitional phase leading towards the third phase.

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