

SUSTAINABLE DEVELOPMENT OF TRANSPORT MARKET INSTITUTIONS FOR SMALL COUNTRIES

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Abstract: Creation of a unique European transport market requires establishment and strengthening of institutions which govern the market and develop governing mechanisms. This process in Europe takes place independently for each transport mode, with different rates and solutions. In the railway sector, along with railway infrastructure market opening, it is required to establish more institutions. One can distinguish between institutions which directly govern relations between market participants (Regulatory Body, Safety Authority, Licencing Body and Investigation Body) and institutions which grant various approvals for products of railway market (Notify Body and Designated Body). EU legislation defines roles, competence and functions of these institutions, but not their models. Likewise in the railway transport, there are several institutions in the road transport which govern the road transport market. Small countries face the issues of resources, efficiency and possibilities to establish large number of transport market institutions. Is the number of institutions required sustainable for small countries? What models are sustainable under current circumstances and how to develop them? What approach to develop for finding a solution to this problem? These are some of the issues discussed in this paper which gives Serbia as an example of a small country. The main issue raised in the paper is whether the required number of institutions is sustainable under the changes present circumstances with requirements set out in the EU legislation.

Keywords: Transport policy, Institutions, Transport market regulation, Small countries, Serbia

1. Introduction

The key transport policy determinant of the European Union (EU), and thereby of the whole Europe, is the preference for an open and free transport market for all transport modes. The process of creating a free market, however, does is neither simultaneous nor tailored to each transport mode. Inland waterways and air transport in Europe may be regarded as open markets, road transport as well, with smaller or higher limitations depending on whether a country is an EU member state or not, while railway transport is only in the initial stage of market opening (European Union, 2010). In Europe, each of the above markets developed independently from one another. Consequently, requirements for institutions to govern these markets were developed in different ways. What is the status quo for these institutions today? This paper focuses on issues of market institutions in road and railway transport as competitive modes of inland transport.

From the very beginning of common market policy in the EU, it has been clear that a common system of strict market regulations could not be the crux of a single market. On the contrary, the common market principle could only consist of a liberalized market structure that allows for an unrestricted movement of people, goods, services and capital amongst all member countries (OECD, 1997). The 1957 Treaty of Rome that established the European Economic Community stated that a common transport policy had to be achieved by December 1969. Because member states made little progress toward this principle during the 1960s and 1970s, the European Parliament brought legal action against the European Council, and in 1985 the European Court of Justice decided that member states had to enact legislation in order to achieve free transport. This initiated a period of liberalization. The process started in 1985 with the road sector and, except for some minor changes for inland waterways, it has left the railway sector basically unchanged until the early 2000s.

The form and speed of the deregulation process in the road transport was affected by desire to eliminate government discrimination based on nationality of the freight transport provider (Lafontaine and Malaguzzi, 2005). This rendered the process gradual, having been completed, or at least mostly completed, only at the end of the 1990s. Liberalisation process was followed by harmonisation of social, road safety, environmental, fiscal and technical regulations, as well as harmonisation of requirements to access the market and admission to the occupation of road haulage operator. Outside the EU, although most regulations in the said spheres were harmonized, access to international market is limited, i.e. it is authorized under bilateral agreements or under European Conference of Ministers of Transport (ECMT) quota arrangements.

During this same time period, there were few changes in the regulation of other modes of international transport in the EU. Rail freight transport which remained fairly heavily regulated though legislation enacted in the 1990s set the ground rules for a slow liberalization to occur in the rail freight industry starting in March 2003. The first concrete activity aimed at rail freight transport market opening was the enactment of Council Directive 91/440/EEC (1991). Ever since its establishment in the early 19th century, the railway market was organised as a monopoly. There are several requirements for its opening, the following two being the key ones. The first is the incumbant restructuring. The second is establishment and full capacity engagement of institutions governing the market.

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One can distinguish between institutions which directly govern relations between market participants (Regulatory Body, Safety Authority, Licencing Body and Investigation Body) and institutions which grant various permits for products of the railway industry (Notify Body and Designated Body). EU legislation defines roles, competence, limits, procedures and functions of these bodies, but not models of their organization. At this development stage of the EU and the legislation governing this sphere, there is still considerable freedom, or vagueness, with regard to independence of these institutions, their mutual relations, as well as relations to other railway sector and state institutions.

The process of forming the above institutions of the railway market in EU countries, development of their functions and competence is in the initial stage. Many countries have not yet founded all the institutions, while the whole process is characterized by frequent changes and vagaries. Legal actions were brought with the European Court of Justice against even 10 out of 25 EU countries with railways because of delays in the market opening process. This process requires considerable engagement of government resources and funds. Moreover, if one considers the current economic crisis, requirements to reduce budget deficits and to reduce state administration, as generally trending in Europe, then, the issue of forming four new institutions for the railway sector is even more aggravated. The process is highly correlated to the restructuring processes of the railway sector and especially of the incumbants. Some experience is gained in establishing these institutions, as well as the so-called best practice that can be taken as models. However, it is up to each country to find its own models for both processes of restructuring and forming the railway market institutions.

Unlike railway transport legislation, EU road transport legislation does not regulate the issues of forming specific institutions. Instead of explicitly prescribed obligations to designate specific institutions, road transport legislation prescribes only certain obligations of competent bodies in member states. It is either governed to designate a body which shall have specific tasks or there are certain limitations imposed in cases of transfer of powers. Thus, for example, Regulation (EC) No 1071/2009 (2009) defines the need to have a "national, regional or local authority in a Member State which, for the purpose of authorising the pursuit of the occupation of road transport operator, verifies whether an undertaking satisfies the conditions laid down in this Regulation, and which is empowered to grant, suspend or withdraw an authorisation to pursue the occupation of road transport operator", and it also defines the obligation of a member state to ensure establishment of a national electronic register of road transport undertakings and to ensure that all the data contained in the national electronic register is kept up to date and is accurate. Another example is the Directive 1999/62/EC (1999) which governs that a member state shall set the amount of the external-cost charge for the use of certain infrastructures for heavy goods vehicles. If "Member State designates an authority for this purpose, the authority shall be legally and financially independent from the organisation in charge of managing or collecting part or all of the charge". Hereby, it is implicitly required to constitute specific institutional capacities.

The paper provides an overview of required market institution in the railway and road transport according to the EU legislation. The paper draws attention to sustainability of EU model solutions and provides guidelines and criteria for developing models for these institutions in Serbia as an example of a small country.

2. Overview of Railway and Road Transport Market Institutions

This chapter provides an overview of institutions which regulate coming into/out of the market and relations between market participants. For railway transport, this implies description of requirements defined in the EU legislation for Regulatory Body, Safety Authority and Investigation Body, as well as their mutual relations. For road transport, there are no strict rules set out in that respect, therefore, each state has its own institution models. This requires a different approach when defining institution models and consequently when comparing these institutions, as well. The chapter gives an overview of bodies required in the railway transport, while for the road transport; only forms appearing in this sector are mentioned. Such an approach and methods are required due to completely different developments of these two transport modes in Europe which consequently resulted in separate transport setups. Namely, unlike in the railway transport, a single company has never held national monopoly in the road transport. This is exactly the reason why the approach to the railway transport had to include stricter legal forms and solutions in terms of railway market institutions.

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 and railway undertakings.

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 (2004). 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, infrastructure manager, 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 licenses to railway undertakings and infrastructure managers. 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 licenses. LB can also be an ad hoc body whose members meet if necessary, that is, when a license application has been submitted.

The above authorities are in the road transport implemented through various institutions. Most often, one or more sectors of the ministry in charge of transport or its executive agencies constitute the institutional framework, while powers are delegated to either public authority or government agency. There are cases when some tasks are also performed by non-profit organizations or associations, as well cases of entrusting task to companies from the private sector.

3. Road and Railway Transport Market Institutions in Serbia

Nowadays, there are four institutions operating in the road transport sector in Serbia, viz: the Ministry in charge of transport, the Road Traffic Safety Agency, co. Roads of Serbia and co. Corridors of Serbia. Current participants in the railway sector are: the Ministry in charge of transport, Serbian Railways JSC, being the infrastructure manager and railway undertaking in passenger and freight transport, Directorate for Railways, several companies for railway infrastructure and vehicle overhaul and the railway industry. There are 5 more registered railway companies to which access to public railway infrastructure was not yet provided.

Formally, the Ministry in charge of transport has all the authorities (the Law on Ministries). Nevertheless, it does not have, nor it ever had (especially for the railway transport), all the functions and resources developed pursuant to the above law. The Ministry essentially deals with investment issues and transport policy. For that purpose, the Ministry deploys legislative tools and inspections.

The Road Traffic Safety Agency is a body of the Government of the Republic of Serbia which was founded to perform developmental, expert and regulatory tasks in the railway safety sphere. Almost a year passed from the date when the Agency was founded in late 2009 until it actually started the operation, yet, not all of its functions have been established. Public enterprises "Roads of Serbia" and "Corridors of Serbia" are in charge of maintenance, protection, use, developing and managing the state roads, and they act as employers in respective highway constructions. The remaining functions, regulatory and licensing, are within the competence of the Ministry in charge of transport. Due to institutional capacities available to the Ministry, the majority is used for the tasks of administrating the quota permits for road transport market access. New draft laws related to passenger and freight road transport anticipate an agency for road transport to be formed to operate the activities of granting licenses to transport operators, and the complete administrative workload related to permits allocated to transport operators. Data of the competent Ministry (2011) shows that in the Republic of Serbia there are 1,000 companies registered for international road transport and 300 companies for international passenger traffic which own around 10,500 vehicles. In this respect, substantial activities of the Ministry in charge of transport were directed towards bilateral negotiations with other countries and towards providing a sufficient number of international transport permits.

Directorate for Railways is a special body of the Government of the Republic of Serbia in charge of licensing, railway safety, market regulation and other specialized activities. However, currently valid law still anticipates neither power to regulate the market nor most other functions related to safety and especially to interoperability, as governed by EU regulations, while Investigation Body is not even formed yet.

Due to the transit nature of the railway network and maintaining its competitiveness, it is imperative that the railway market be open, all railway market institutions (Regulatory Body, Safety Authority, Licencing Body and Investigation Body) be established and set up and their corresponding legal authorities defined. The main problem is to define the form for each of the institutions listed (legal form and position of these bodies, financing methods, independence from other participants) and their internal organizations. Thereat, one should bear in mind that even some combinations are possible when it comes to consolidating the functions of these bodies into a single institution with certain limitations imposed by the EU directives. All the above increases the number of models possible for these bodies, and an issue rises what are the criteria to apply when finding a solution. Moreover, it is required to decide whether a final solution is to be sought in the current development and restructuring phase or a development scenario is to be foreseen until a more permanent solution is reached, as well as what this depends on.

Although competent institutions already exist in the road transport, requirements arising mostly from the process of harmonizing the legislation and from the changed roles of the state administration in modern conditions generate a need to organize the institutions in a different manner. Thus, the above mentioned Road Traffic Safety Agency was formed, and it is also proposed to form others as well, as it is required to have an institutional setting which reacts faster to both global (international) and local (national) changes, as well as to changes in the transport market. Re-examination of the existing institutions and forming new ones have to be considered as a whole and evaluated according to criteria to be defined in line with the conditions in small countries.

Solutions for such problems considerably depend on the initial (existing) situation in both road and railway sector in one country. The following are the characteristics of road/railway sectors in Serbia with regard to the problem observed: networks with heavy transit traffic, restructuring process either in the early stages (the railway sector) or just recently completed (the road sector) with privatisation of road maintenance companies, major problems and unproductiveness of business performance for all activities in both systems, lack of knowledge and limited human resources to be recruited for specific profiles in the above institutions, etc. Moreover, one has to consider external factors that influence generation and selection of models and scenarios at decision-making moments. This is at the moment influenced by the following factors: strong public pressure against forming new government bodies, especially agencies, massive budget deficit, uncertainty with regard to Government's problem solving in the public sector and notably in the railway sector, uncertain dynamics of Serbia's European integration etc.

4. Sustainability Analysis of Regulatory Framework for Small Countries and Serbia

The paper provides guidelines to build regulatory institutions for road and railway transport in Serbia as based on past assessments of Serbia's transport system (DB International, 2012; Italferr et al., 2010; Booz Allan Hamilton, 2005; EAR, 2006) and forecasts how the current situation and circumstances will further develop. First, it is required to identify international, interior (national) and internal (in the transport sector) changes in Serbia as compared to the time when EU directives defining transport market regulatory bodies were drafted and issued. The changes identified have to be taken into consideration when a defining development strategy for transport market regulatory institutions. The fact that market institution requirements for some transport modes developed independently have to be given special consideration.

Development of transport market institution has to be sustainable in new circumstances. What does sustainable development of regulatory bodies in the transport market imply? Today, there are many variations of the definition of sustainable development, as each country is defining the specific scope of what sustainable development encompasses with regards to its unique geographical, political, social, cultural, and economic conditions. Despite these specific interpretations, however, the concept of sustainable development is globally accepted as harmonized development and equilibrium between the economic, social, and ecological sector within a society.

Projections and further narrowing down of the sustainable development concept to regulatory bodies of the transport market puts a question what concept of their capacity development is sustainable in relation to the situation and possibilities in a country.

The process of projecting requirements for the institutions mentioned lasted for a longer period of time. As a consequence, the unity of required capacities and possibilities of smaller countries was overlooked. The EU legislation does not give models partly for these reasons, this is rather delegated to each country. The problem is that the whole EU concept with regard to transport sector institutions was not developed at once; it was actually upgraded gradually over time. Therefore, both requirements and limitations have to be reconsidered with regard to independence, relations and capacities of institutions. It is particularly required to examine institution models, the development of which has started in some countries.

How to describe and quantify key parameters and changes that took place from the moment when the EU legislation defining regulatory bodies was enacted? The structure of key changes in relation to the problem set may be defined as follows: changes at the international level which appear as global trends, changes within the country under observation and changes in the transport sector of the country under observation (Abbas, 2004). Reference period for recording these changes starts from the point when legislation defining transport market regulatory bodies was enacted. For the railway sector this period encompasses 2001-2004, i.e. from the Directive 2001/14/EC (2001) which refers to regulatory body and licensing body to the Directive 2004/49/EC (2004) which refers to safety authority and investigation body. For the road sector, this is the period from 2009 to 2011, when the Regulation (EC) No 1071/2009 (2009) and the Regulation (EC) No 1072/2009 (2009) were passed until they were fully implemented.

International changes related to the problem observed:

- World economy recession, which started with 2008 financial crisis and continued with new crisis impact in 2012;
- Budget crisis in most EU and non-EU countries;
- Further drop of railway share in the transport market;
- Railway sector restructuring in Europe decelerated in comparison to the projected dynamics;
- Further growth of incumbent debts;
- World wide concerns on environment and sustainability issues
- Globalization of trade involving the international agreement of the WTO, namely the Generale Agreement on Tariff and Trade and the General Agreement on Tariff and Services which affects services including the transport sector.

Changes within Serbia:

- Interminable, severe budget crisis since 2008;
- Contunuous deferal of public sector restructuring and within it, the transport sector in particular;
- Manpower surplus in state bodies which has to be eliminated;
- Odium towards independent regulatory bodies built with the public;
- Reorientation and shift from a centrally planned economy towards market economy with present tendency towards export economy;
- Deregulation of all public companies and privatization of several companies and formations of the Serbian stock market;
- Incentives to domestic and foreign private sectors and their contribution to Serbian economy development.

Changes within the transport sector in Serbia:

- Lack of knowledge and human resources in the sphere of transport market regulation;
- Ill-devised structure and lack of qualified manpower for the future modified role of the ministry in charge of transport;
- Restructuring of the incumbant is constantly being postponed;
- Institutional restructuring of the Ministry responsible for transport and changing roles;
- Increasing involvement of the private sector;
- Safety issues high on the agenda due to the potential accidents that attract public and mass media attention.

As based on the as-is analysis of regulatory bodies, EU legislative requirements and changes that took place upon the adoption thereof, it can be concluded that Serbia is at the beginning of establishing and operating the transport sector regulatory bodies under ultimately unfavourable circumstances. The following are the key limiting or guiding factors: huge budget deficit, manpower surplus in state administration, restructuring of the public transport sector is not completed, poor employee structure in the transport sector along with lack of knowledge.

Under such circumstances, solutions should be sought in models that consolidate regulatory activities within one transport mode as well as several transport modes. At the same time, there are more limitations in financial, legal and functional independence relations between existing institutions.

5. Criteria for Building Inland Transport Market Institutions

The main dilemma which decision-makers face in such problems is whether to instantly seek a final solution for all institutions pursuant to the current EU requirements or to anticipate an appropriate development scenario for them. The main motive behind choosing a development scenario is the wish to have organisational forms and capacities in specific time periods more tailored to the actual circumstances with all the advantages and disadvantages alongside. Bearing in mind the above mentioned, when generating models and development scenarios for specific bodies/institutions, or for all of them in general, it is required to lay down criteria for defining capacities, legal norms and forms of inland transport institutions (road, railway and inland waterway) as a single environment. In other words, if road and railway transport and institutions regulating these markets constitute a single environment, then also, a single model should exist, meaning the whole problem has to be uniformly addressed, on the same principles and criteria. Target function is the solution with least costs to the budget and tax payers and with institutions which are efficient if compared to corresponding market size and development.

The above setup applies to all countries, particularly to small countries with insufficient resources. Bearing all the above in mind, the following criteria were defined to be considered when solving the problem set for Serbia exemplifying a small country and all its circumstances:

Criterion no. 1: Degree of market openness. The highest correlation exists between institution capacities and the degree to which the market is open. Model variants for organisation and capacity of the institutions have to be in correlation with the degree of railway/road market openness.

Criterion no. 2: Dynamics of EU integrations. Model variants have to be in correlation with Serbia's integration process into the EU. EU requirements for forms and especially for independence of the above institutions are known to differ according to the stages of EU accession for candidate countries (viz: candidate country status not granted, candidate country status without negotiations, candidate country status with negotiations) with EU influence growing as the integration process unfolds.

Criterion no. 3: Prospects of model implementation vs. current Serbian legislation. It is required to analyze possibilities to implement each of the models proposed in relation to the current Serbian legislation. Possibilities to implement the model of institution which enjoys a state administration body status should be separately analyzed and evaluated due to higher limitations in founding thereof and decision making.

Criterion no. 4: Criterion of institution independence. EU regulations require certain independence minimum for each of the institutions observed. Financing methods, position of a body in relation to other institutions and the founder thereof can be used to evaluate a model pursuant to this criterion, as well as the competence to adopt (and sign) decisions in model variants with two or more bodies included in a single institution. Therefore, for given solutions, it is required to anticipate who shall sign decisions in line with current regulations in Serbia.

Criterion no. 5: Current state of market institutions and consequent limitations. When developing models of organisation for specific institutions, numerous limitations emerge from the initial (current) situation. Therefore, one has to analyze possibilities and difficulties of shifting from the current institutional form, their capacities and resources, towards the proposed organisation models.

Criterion no. 6: Future European legislative solutions expected in this sphere. Proposed models have to be harmonized and to follow the guidelines and requirements for these institutions which are expected in new EU directives. Each of the model variants proposed has to be assessed by a comparative analysis against the requirements in the proposal, both in relation to position and independence and in relation to its competence.

Criterion no. 7: Model flexibility. It is required to anticipate and evaluate flexibility of each of the models in terms of shifting towards a new organisational form. Regulations in the EU and Serbia for this sphere are frequently amended, and this will continue in the future as well, because these processes are insecure to a considerable degree. This should be borne in mind when generating a model and possibilities to transform each model into a new form pursuant to amended (or expected) EU regulative requirements should be assessed.

Criterion no. 8: Model implementation costs. It is required to make cost estimates for implementation (founding and operation) of institutions for each model. Such estimate can be made by comparing models without calculating absolute cost amounts.

6. Conclusion

Creation of a unique European transport market requires building and strengthening of institutions which regulate the transport market and development of mechanisms to regulate it. In Europe, this process has been and is still unfolding independently for each transport mode, with different institutional requirements and with different dynamics and solutions in that respect. The process of projecting the requirements for the above institutions took place in various periods for each of the transport modes and with longer duration. In addition, the society and conditions when transport market institutions were regulated differ from the present situation. As a consequence, the unity of required capacities and possibilities of small countries was neglected. Therefore, in small European countries and in changed circumstances, it is now required to reconsider the sustainability of the commenced model for building transport market institutions and which is characterized by independent development of institutions per transport modes.

Bearing in mind the changes which took place in the meantime, from the time when the relevant legislation was enacted (international changes as global trends, domestic changes within a country and changes in the transport sector of the country observed), when finding a solution to the problem set, one has to start from defining criteria for an overall solution for transport market system seen as a whole. The paper defines criteria for Serbia as an example of a small country which has, more or less, just started developing its transport market institutions. The current transport sector characteristics were thereat taken into account (market participants, network and market sizes, network operation degree, Serbian economic prospects, European integration dynamics, etc.) and EU directive requirements.

The following seven criteria for developing a single model for Serbian transport market institutions were defined, whereat capacities, legal forms, independence and funding thereof has to be correlated with the following: market openness degree, dynamics of Serbia's integration into the EU, possibilities to implement the model compared against the current Serbian legislation, with (minimal) institutional independence requirements from the EU regulations, with the current state of market institutions and limitations arising therefrom, with the future European legislative solutions expected for this sphere, model-flexibility-to-changes requirement and least possible implementation costs.

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