SWOT ANALYSIS OF THE MINISTRY OF TRANSPORT AS A COMPETENT AUTHORITY FOR PSO CONTRACTS

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Abstract – After Regulation No. 1370/2007/EC entered into force, all the non-profit passenger transport railway services of public interest had to be contracted between a railway company and a public transport authority. Public transport authorities now have to possess the capacities for contracting a public service obligation (PSO), its monitoring, and managing the process, which are new competences compared with the previous practice. Since contracting and acquiring the service in question is of public interest, it is necessary to consider which form of competent authority is the most efficient with regard to the demands of the Regulation and the parties involved. This paper is devoted to the general assessment of the suitability of the ministry of transport as the competent authority for PSO contracts, with specifics related to the application to smaller countries and networks, as is the case with Southeastern Europe. SWOT analysis was used as the method of research.

Keywords – public service obligation, public transport authority, railway, SWOT analysis.

1. INTRODUCTION

The creation of a unified European “railway space”, deregulation and liberalization of the railway services market require a different institutional organization both with regard to laws and by-laws and the state institutions themselves. This relates to all levels of state authorities, from the EU over the national and regional levels, all the way to the local level. The implementation of the EU regulations in the area of railway transport demands great changes in the institutional framework of every country. In the period prior to this reformation, the institutional structure of the railway sector in Europe was rather simple. Integrated state companies, with monopoly at the national level, were constantly monitored by a competent ministry of transport, and in some cases were even part of the ministry itself. Almost all of the most important decisions needed to be approved by the government. At the same time, the vast majority of activities related to the development and operation of the entire railway sector in practice took place in the companies themselves. The ministry only conducted legislative and certain control activities.

From the abovementioned, it can be concluded that the states, i.e. their governments and competent ministries, were mostly unprepared for the beginning of enormous changes required by the process of market liberalization, since their resources in the railway sector were quite scarce. Apart from human, organizational, financial and other resources demanded by the competent ministry of transport, it was necessary to establish several new regulatory agencies (for market regulation, traffic safety, incident investigation, company licensing, notified and appointed bodies). Apart from these bodies, whose foundation stemmed directly from the introduction of a market, the concept of funding the development of infrastructure and non-profitable services in passenger transport was also altered. With the publication of Regulation No. 1370/2007/EC on public passenger transport services by rail and by road and repealing Council Regulations EEC No. 1191/69 and 1107/70, the former concept of subsidies was changed to the concept of state aid which required the conclusion of a contract between the state and the company receiving the aid.

Despite the fact that the restructuring processes of European railways began back in 1991, to date least attention has been paid to the issue of constructing the capacity for contracting obligations and monitoring both public services and the funding of maintenance and construction of railway infrastructure. This statement relates not only to the practice but also to the literature. Thus, it does not come as a surprise that there are numerous different solutions and models in the EU states with obvious discrepancies concerning the institutional level and capacity of the competent contracting bodies. This paper analyzes the compatibility of the ministry of transport as an institution in charge of contracting and monitoring public service obligations, i.e. transport.

2. PROVISIONS OF REGULATION NO. 1370/2007/EC WITH REGARD TO THE TRANSPORT AUTHORITY FOR PSO

During the restructuring process of the transport sector in the EU, a need arose in the area of subsidized
public transport services to break monopolies, encourage competition and introduce greater control of the budget resources spending, so as to gain a higher quality transport with lower prices. The PSO regulation provides a legal framework for achieving those goals.

In December 2009, Regulation No. 1370/2007/EC on public passenger transport services by rail and by road and repealing Council Regulations No. 1191/69 and 1107/70 entered into force. The fundamental requirements/rules promoted by this regulation are as follows:

1. The competent authority is obligated to ensure that the public transport services are performed, with an adequate compensation to the performer of these services.
2. The no-obligations subsidies will no longer be awarded. The allocated resources will now be defined as state aid which needs to be in the form of a contract between the competent transport authority and a railway company.
3. The regulation prescribes the content of the contract, which has to include the following items: an accurately defined transport obligation which needs to be fulfilled by an operator; parameters which determine the compensation and/or the type and framework of the exclusive right, with the aim of preventing overcompensation, regardless of the manner in which the contract is concluded (directly or through a tender); arrangements for cost and income distribution; validity period of a contract.
4. A PSO contract can be concluded with a railway operator directly or through a tender in accordance with the conditions prescribed by the Regulation. In the case of a direct allocation of resources, the competent authority is in obligation to inform the public on the name of the subject with which the contract has been concluded, as well as to present the contract conditions. In the case of a tendering procedure, the contest has to be open for all operators under the same conditions, righteous, transparent and without discrimination. The PSO compensation is determined according to the methodology provided in the Annex of the Regulation.

The above rules for allocating the resources for passenger transport in road and rail traffic imply much greater capacity of the transport authorities in comparison with the previous period. This capacity now relates to the ability to define the policy and strategy in this area, define all of the conditions for transport, tendering organization and selection of operators, contracting and monitoring.

Bearing in mind that the passenger transport service on the railway can be performed in the local, regional and long-distance traffic, the question is posed concerning the best position of the transport authority bodies: whether it should be at the city, regional/provincial or republic level, or perhaps decentralized in accordance with the territorial community where the services are performed.

3. ANALYSIS OF THE PREVIOUS FORMS OF TRANSPORT AUTHORITIES FOR PSO

Regulation No. 1370/2007/EC does not strictly define the type of authorities competent for PSO. This is the reason why a number of models of competent transport authorities have appeared in the EU practice. Competent authorities (bodies or institutions), their position in the system of the EU countries state government, as well as in those countries which have aligned their systems with Regulation No. 1370/2007 EC, are shown in Table 1.

The table shows that 16 European countries have retained the traditional institutional approach which implies that the competent ministry of transport is, as before, the only transport body (TB) for the railway sector. The same number of countries have decided to adopt a new approach with special and/or local directorates becoming the competent bodies for public transport. Within these countries, three subgroups can be distinguished:

1. countries with TB in the form of a national level agency;
2. countries with TB at both the national and the regional level;
3. countries with TB only at the regional level.

Table 1. Overview of the models of competent authorities for PSO in European countries

<table>
<thead>
<tr>
<th>Countries</th>
<th>COMPETENT BODY/ORGANIZATION LEVEL</th>
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<tbody>
<tr>
<td>Belgium, Bulgaria, Croatia, Estonia, Greece, Hungary, Lithuania, Luxembourg, Montenegro, Norway, Portugal, Romania, Slovakia, Slovenia, Spain</td>
<td>national level MINISTRY</td>
</tr>
<tr>
<td>Denmark, Austria, Ireland, Latvia</td>
<td>national level DIRECTORATE</td>
</tr>
<tr>
<td>Czech Republic (14)*, Finland (1), France (22), Great Britain (3), Italy (15), Holland (13), Poland (16), Sweden (37), Switzerland (26)</td>
<td>mixed level NAT/LOC</td>
</tr>
<tr>
<td>Germany (33)</td>
<td>local level</td>
</tr>
</tbody>
</table>

(14)* – number of PPTs at the local level
The first subgroup comprises 4 countries while the second one contains 9. Despite the fact that in 8 of these countries the ministry is still the TB for certain segments of public transport, the role of special and local directorates is very important. The number of TBs vary greatly from country to country and it ranges from one in Finland (Helsinki TA) to 37 in Sweden. The division at the local level is also varied. Thus, the Czech Republic and Poland have an almost identical number of regional TBs even though Poland is four times the size of the Czech Republic both in terms of territory and population. The third subgroup includes only Germany, which does not have TBs at the national level. Apart from the variations in the models of transport bodies and levels of authority, the mere experience varies as well. This implies that each country individually, given the historical heritage in the railway sector, the level of authority decentralization and other specificities, has to find its own particular model. This paper contains a SWOT analysis of the ministry competent for transport as a body of the transport authority competent for contracting and monitoring PSOs in the Western Balkan countries.

4. SWOT ANALYSIS OF THE MINISTRY OF TRANSPORT AS A COMPETENT AUTHORITY FOR PSO

Is the competent ministry of transport of an adequate form, level and structure to be the transport authority body for contracting, monitoring and controlling the performance of public transport obligations in railway traffic? Above all, is it a form which can allow for constant improvement of this type of public transport services? These questions are answered here in the form of a SWOT analysis, and the results are presented in Fig.1.

When searching for the answers to the questions concerning the strengths, weaknesses, opportunities and threats when the ministry is the competent body, the current organization of competent ministries of transport in the Western Balkans region was taken into consideration, including their structure, human resources and capacities which are very similar for all of the countries in this region. With that in mind, it is very important to emphasize that the manners in which the governments of these countries operate have stemmed from the same legal system and are very similar in themselves, which is yet another important component in concluding that this SWOT analysis relates to this geographical region. Without explaining the present SWOT analysis, the paper will point out to and discuss several significant aspects in the analysis of the suitability of the ministry for PSOs.

The first aspect will be marked as an answer to the question concerning the starting characteristics and positions of the ministry in relation to the tasks set by Regulation No. 1370/2007/EC. These state bodies are undoubtedly in possession of the greatest capacity and competence when it comes to railway traffic. However, they are nowhere near sufficient to perform the role of the transport body adequately. One has to bear in mind that in the former Yugoslavia all of the railway-related issues were solved at the federal level. Today, after more than 20 years, the capacities of the competent ministries are still poorly developed with regard to railway-related tasks, and even PSOs. The existing capacities are being exhausted on the interpretation of legal provisions and transposition of the European legislation, while there are no appropriate capacities that could deal with all the issues related to the policy and strategy of railway development. Even though this lack of necessary capacity and competence needed to define and conduct PSOs could most easily be reduced by cooperating with relevant professional and research institutions, it is obvious that these ministries do not possess neither the will nor the awareness of the need to define the research tasks in this area, nor are they capable of it.

The second aspect relates to the manner in which the ministries operate and the atmosphere within them, which comes from the structural organization of the ministries and the governing approach. Namely, despite the fact that the professionalization of state administration and even the legislature to that effect have been proclaimed, the manner in which these ministries are governed is still characterized by strong political influence. The ministries do not have good interaction with service users, especially at the local and regional level. An inevitable factor in the SWOT analysis is the fact that the state owns the monopolistic railway company for passenger transport. This is quite certainly an aggravating circumstance when it comes to establishing efficient railway passenger transport in the process of restructuring, since the above political influence will lead to the state-owned operator being protected and favoured.

The fourth aspect relates to the degree of regionalization of the country and the subsequent ability of the local self-government units to fund and decide on the issues from the domain of public railway passenger transport. Even though the degree of regionalization differs in the Western Balkan countries (counties, cantons, districts or plain municipalities), what they have in common is the lack of resources for funding PSOs. The question remains open on whether the region borders coincide with the regional railway lines. Without further analysis, it can be assumed that the majority of local and regional lines encompass more than one administrative unit, thus complicating the processes of contracting, funding and controlling PSOs.

The fifth aspect relates to the possibility of coordinating public railway passenger transport with other forms of traffic, primarily public urban and suburban traffic and intercity road traffic. Despite the fact that the ministry is the highest body in the state hierarchy in the area of traffic and transport, it is not
the best institution to carry out such coordination. Public transport on the territory of municipalities and cities most often legally belongs to the so-called municipal activities, which are under exclusive jurisdiction of the local self-governments. One should also bear in mind that these municipal activities are subject to tax exemption in the majority of the countries.

5. CONCLUSION

A public service obligation related to passenger transport, its contracting, monitoring and control represents a new task for transport authorities not only in the region of the Western Balkans but also at the European level. The fundamental issue that needs to be solved in its introduction is the concept of PSO and which transport body should deal with it. In the EU countries there is no single specific model, nor is that possible, which makes it necessary for every country to search for the most convenient model with regard to the characteristics and the historical development of the railway system and the country itself.

The paper discusses the adequacy of the competent ministry of transport as the body of transport authority for PSO. When the SWOT analysis figure is scrutinized, there can be observed significant negative sides to this institution in relation to PSO, but also some important advantages in comparison with the other solutions in this phase of restructuring the railway system in the Western Balkan countries. The final decision-making procedure concerned with what kind of a body of transport authority is necessary for certain countries in this region, should include all of the system participants in order to reach a sustainable solution and model through a certain form of participatory analysis, where the main criterion has to be the improvement of the railway service efficiency. To solve the dilemma whether that body should be the ministry or some other type and form of a central state institution, or that this can be done by decentralization and delegation of a part of, or the entire, jurisdiction to the regional authorities, further more comprehensive research that could provide answers to various questions is needed.

REFERENCES