

THE ROLE OF TREATY ESTABLISHING TRANSPORT COMMUNITY IN DEVELOPMENT OF RAIL TRANSPORT MARKET IN SERBIA

Lazar MOSUROVIĆ¹
Branka NEDELJKOVIĆ²
Zorica RADOVIĆ³

***Abstract** – Opening up national freight and passenger rail markets to competition in cross-border and cabotage operations was a long and demanding process, conducted in the European Union with the aim to provide for more efficient and customer-responsive rail industry and also, more competitive vis-à-vis other transport modes. Establishing competition in rail market in Serbia by providing access to railway infrastructure to all interested railway undertakings on non-discriminatory basis was the necessary step in the process of restructuring in railway sector, also in order to achieve more competitive and efficient rail transport. Rail market in Serbia is opened to competition at the national level, however, its integration in European rail market is needed for increasing the quality of rail services and railway's modal market share. Treaty establishing Transport Community provides legal basis for the progressive integration of Serbian transport market into the European Union transport market.*

***Keywords** – rail market, Transport Community, Treaty, connection, rail services.*

1. INTRODUCTION

Rail transport is recognised as one of the most environmentally friendly transport modes, as well as the safest form of land transport in Europe today.

After a long period of decline of the railway transport mode in Europe, over the last decades massive effort in European Union (EU) has been done for its revitalization and improvement of rail transport services, as well as the increase of its modal transport market share.

European Commission Communication COM (2019) 640 final published on 11 December 2019 set out a European Green Deal for the EU and its citizens, with the objective of achieving a climate-neutral European Union by 2050. In the “Green Deal” Commission states that, as a matter of priority, a substantial part of the 75% of inland freight carried today by road should shift onto rail and inland waterways.

In order to promote rail transport mode, considering its significant role in accelerating the reduction in transport emissions, as one of the most environmentally friendly and energy-efficient transport modes, in March 2020, the Commission

presented its proposal for a Decision of the European Parliament and of the Council on a European Year of Rail (2021). The objective of the European Year of Rail should be to encourage and support the efforts of the EU, the Member States, regional and local authorities and other organisations to increase the share of passengers and freight moving by rail. This proposal shall also contribute to promoting rail as an important element of the relations between the Union and neighbouring countries, in particular in the Western Balkans, building on the interest and needs in partner countries and on the Union's expertise in rail transport.

In order to fulfill these expectations and to seize the presented opportunity to develop, rail transport must be improved. This will require actions on the integration of the rail network and rail market opening at the European level, including non-EU member states, particularly in Western Balkans, actions for development and maintenance of the rail TEN-T network infrastructure, actions on improving rail border-crossing operations, on digitalisation etc.

¹ Directorate for Railways of the Republic of Serbia, Nemanjina 6, Belgrade, lazar.mosurovic@raildir.gov.rs

² Directorate for Railways of the Republic of Serbia, Nemanjina 6, Belgrade, branka.nedeljkovic@raildir.gov.rs

³ Directorate for Railways of the Republic of Serbia, Nemanjina 6, Belgrade, zorica.radovic@raildir.gov.rs

2. MARKET OPENING IN SERBIA

Harmonisation of the Serbian national railway legislation with the relevant EU acquis began in 2005 with the Law on Railways that provided for new entrants in railway transport market. Further harmonisation with the EU rail legislation was done by the Law on Railways adopted in 2013, amended in 2015 and 2017, and with the Law on Railways ("Official Gazette RS, No. 41/18), now in force.

Although the rail market in Serbia has been legally opened for competition for railway undertakings established in Serbia since 2005, it has been actually opened only after the integrated railway company, "Serbian Railways" JSC, was unbundled. In July 2015, the Government of the Republic of Serbia adopted founding acts for three new companies, "Srbija Voz" JSC (Serbia Train), "Infrastruktura železnica Srbije" JSC (Infrastructure of Serbian Railways) and "Srbija Kargo" JSC (Serbia Cargo). Directive 2012/34/EU (amended by Directive (EU) 2016/2370 and Commission Delegated Decision (EU) 2017/2075) provides for possibility for holding organization under certain conditions, however, in Serbia complete separation of activities related to the infrastructure, passenger services and freight services was done.

The first Network Statement was published by Infrastructure Manager in 2016, and the same year the first new entrant gained access to railway infrastructure.

Regional cooperation and cooperation with the EU in the field of railway transport was organised by the South East European Transport Observatory (SEETO) in the framework of the Memorandum of Understanding on the development of the South East Core Regional Transport Network signed in Luxembourg on June 11, 2004 signed by Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, the United Nations Mission in Kosovo and the European Commission and its Addendum for a South East European Railway Transport Area, signed in Tirana on December 2007.

3. TREATY ESTABLISHING TRANSPORT COMMUNITY

In Explanatory Memorandum for its Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Treaty establishing the Transport Community (COM(2018) 532 final) European Commission pointed out that a well-functioning transport system connecting the Union and the neighbouring countries is essential for sustainable economic growth and the wellbeing of all citizens. As the Memorandum of Understanding has shown limits and following an assessment made by

the Commission in 2008, a more comprehensive cooperation approach – involving other transport policies and transport related areas – was suggested. In this context, based on the positive experience with the implementation of the Energy Community Treaty, the Commission proposed to take inspiration from this example for the purposes of the transport sector and negotiate an agreement providing that the legislation, standards and technical specifications applied by the Western Balkans partners be made compatible with those of the Union.

The Treaty establishing the Transport Community (hereinafter: Treaty) was signed by the European Union and six South East European partners, the Republic of Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo*, Montenegro and the Republic of Serbia, between 12 July in Trieste and 9 October 2017 in Brussels and has entered into force on 1 May 2019 in accordance with its Article 41(2). All parties have ratified or approved it.

The aim of the Treaty is the creation of a Transport Community in the field of road, rail, inland waterway and maritime transport as well as the development of the transport network between the European Union and the South East European Parties. The Transport Community shall be based on the progressive integration of transport markets of the South East European Parties into the European Union transport market on the basis of the relevant acquis, including in the areas of technical standards, interoperability, safety, security, traffic management, social policy, public procurement and environment, for all modes of transport excluding air transport. For this purpose, this Treaty sets out the rules applicable between the Contracting Parties under the conditions set out hereinafter. These rules include the provisions laid down by the acts specified in Annex I.

Annex I.2 specifies rules applicable to rail transport. The European Union acts are divided in following regulatory areas:

- Market access
- Train driver licensing
- Interoperability
- European Union Agency for Railways
- Railway safety
- Inland transport of dangerous goods
- Transportable pressure equipment
- Social field - working time / hours
- Passenger rights.

Article 11 refers to railways and provides that within the scope and conditions of the Treaty and within the scope and the conditions set out in the

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 (1999) and the ICJ Opinion on the Kosovo declaration of independence.

relevant acts specified in Annex I, railway undertakings licensed in an EU Member State, or by a South East European Party shall have the right of access to the infrastructure in all EU Member States and South East European Parties for the purpose of operating international rail passenger or freight services.

Paragraph 2 of the same article provides that within the scope and conditions of the Treaty and within the scope and the conditions set out in the relevant acts specified in Annex I, there shall be no restrictions on the validity of licenses of railway undertakings, their safety certificates, the certification documents of train drivers and rail vehicle authorisations granted by the EU or a Member State's competent authority or a South East European Party.

3.1 Transitional arrangements

Transitional arrangements applying between the European Union, on the one hand, and the South East European Party concerned, on the other hand are regulated by article 40 of the Main Treaty and Protocols I to VI of the Treaty.

The gradual transition of each South East European Party to the full application of the Transport Community shall be subject to assessments. The assessments shall be carried out by the European Commission in cooperation with the South East European Party concerned. The European Commission may launch an assessment upon its own initiative or at the initiative of the South East European Party concerned.

If the European Union determines that the conditions are fulfilled, it shall inform the Regional Steering Committee, which is responsible for the administration of the Treaty and its proper implementation, and decide thereafter that the South East European Party concerned qualifies for passing to the next stage of the Transport Community.

If the European Union determines that the conditions are not fulfilled, the European Commission shall so report to the Regional Steering Committee. The European Union shall recommend to the South East European Party concerned specific improvements.

Transitional arrangements between the European Union, of the one part, and the Republic of Serbia, of the other part, are regulated by Protocol VI of the Treaty.

3.2 Transitional periods

The Treaty provides for two transitional periods before its full implementation:

- Rail market opening for competition on national level;
- Rail market opening for competition on

regional level.

Provisions related to transitional periods for railways are prescribed in Section I. of the Protocol VI

- Conditions relating to transition for rail transport.

The first transitional period shall extend from the entry into force of the Treaty until following conditions have been fulfilled by Serbia:

- all railway legislation as provided for in Annex I is implemented;
- sufficient progress in implementing the rules on State aid and competition in accordance with the Treaty is made.

The second transitional period shall extend from the end of the first transitional period until the Treaty is applied in Serbia, including all railway legislation and the rules on State aid and competition in accordance with the Treaty.

Fulfillment of these conditions related to first and second transitional period shall be verified by an assessment carried out by the European Commission in accordance with the procedure referred to in Article 40 of the Main Treaty.

Serbia may ask the European Commission at the end of the first transitional period to assess progress in accordance with Article 40 of the Main Treaty with a view to pass directly to market integration according to Article 11 of the Main Treaty.

During the first transitional period railway undertakings licensed in Serbia shall be granted access to railway infrastructure in Serbia.

During the second transitional period railway undertakings licensed in Serbia shall be permitted to exercise the traffic rights provided for in the railway legislation referred to in Annex I on railway infrastructure of any other South East European Party.

3.3 The Permanent Secretariat

The Permanent Secretariat of the Transport Community is established by the Treaty, in order to:

- provide administrative support to the the other institutions of the Transport Community, Ministerial Council, the Regional Steering Committee, the technical committees and the Social Forum;
- act as a Transport Observatory to monitor the performance of the indicative TEN-T extension of the comprehensive and core networks to the Western Balkans;
- support the implementation of the Western Balkans Six (WB6) Connectivity Agenda aiming to improve links within the Western Balkans as well as between the region and the European Union.

The seat of the Permanent Secretariat is in Belgrade, Serbia.

First Technical Committee on Railways was held

in Brussels on May 23, 2019 and since then this Committee has been very active, especially during COVID 19 crisis.

The Transport Community Secretariat is also active in connecting railway sector stakeholders and providing for the proper coordination of the activities carried out by other institutions and organisations as European Commission, European Union Agency for Railways, IFIs, Shift2Rail etc, with the aim to ensure synergies and complementarity in using the Technical Assistance devoted to the rail sector.

4. RAIL MARKET IN SERBIA

Rail market in Serbia is in the first transitional period, as it has been opened for competition on national level since 2016.

In 2020 there are 11 railway undertakings operating on the railway network:

- 1 for passenger transport services (incumbent);
- 7 for freight transport services (1 incumbent, 6 new entrants);
- 3 RUs for its own purposes.

In 2019 there were 10 railway undertakings operating on the railway network:

- 1 for passenger transport services (incumbent);
- 6 for freight transport services (1 incumbent, 5 new entrants);
- 3 RUs for its own purposes.

Railway undertakings market share as a percentage of tonnes-km in 2019, using data from the Directorate for Railways Report on rail services market regulation in 2019, is shown in Fig. 1.

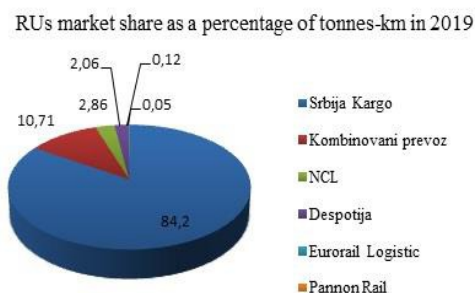


Fig.1. RUs market share in 2019

Although the number of new entrants in railway freight market was growing within the period 2016-2020, the pie is not expanding, since the market share of rail vis-à-vis other transport modes is declining in the same period. It is shown in the Fig. 2, using data provided by statements on total transport of passengers and goods for 2016-2019 issued by Statistical Office of the Republic of Serbia.

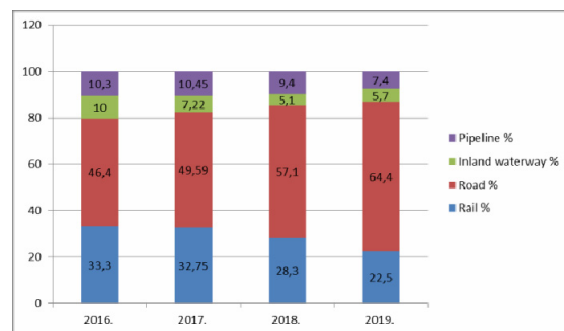


Fig.2. Modal share in freight for 2016-2019

It should be noted that decline in rail modal share in 2019 is related to major works on the railway infrastructure in Serbia in 2019.

These data show that opening rail market for competition is far from enough to make rail competitive vis-à-vis other transport modes, especially road transport. It means that much more has to be done in order to increase the capacity of railways and achieve more competitive, more efficient and customer-responsive rail transport in Serbia.

5. CONCLUSION

Further rail market opening for competition for international rail passenger and freight services, firstly on the regional level and then between Serbia and EU countries shall take place in the framework of the Treaty.

Transitional periods are the opportunity for all stakeholders in railway sector in Serbia to prepare for the full implementation of the Treaty, with assistance of the Permanent Secretariat all the way, providing for the EU expertise in railways and best practices in relevant EU acquis.

Integration of the European rail network is prerequisite for increasing the quality, punctuality, and reliability of rail services in order to meet passenger and industry needs, and thus to provide for modal shift needed to fulfill increased EU's climate ambition stated in the Green Deal.

More competitive rail transport needs commitment of all stakeholders in railway sector and continued cooperation and coordination of relevant activities related to development of railway transport, which shall be done in the framework of the Treaty.

REFERENCES

- [1] Official Journal of the European Union, L 278, 27.10.2017.
- [2] Law on Railways ("Official Gazette RS, No. 41/18), 2018.
- [3] Directive 2012/34/EU, 2012.
- [4] Directive 2016/2370, 2016.
- [5] Commission Delegated Decision 2017/2075, 2017.