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## COMPLIANCE OF SERBIAN RAILWAYS REGULATIONS FOR PERFORMANCE OF DUTIES IN PUBLIC TRANSPORTATION WITH EUROPEAN UNION REGULATIONS

### Abstract

*Duties of the public passenger transport are still present on the railways, although the railway had long lost its monopoly on the transport market, and their presence made it difficult for beginning the process of reform, transition and restructuring of railways in relation to other modes of transport. Those instrument has been replaced by the establishment of a new way of financing unprofitable transport through the introduction of the obligation of public transport including rail transporter obligation to transport passengers and goods at established prices and special conditions for a fee determined by the difference between the cost of the state and justified the full cost. Baseline this instrument gives its effect on the economy of business traffic (transporters). Losses in business could be compensated from the state budget, but budget was insufficient and it was impeded the orderly and proper maintenance of infrastructure. In such circumstances the exploitation parameters infrastructure are exacerbated, and that effects led to the further weakening the competitive position of the railway. So, in a situation where the state compensates the losses from operations of railways it also provides funds for simple reproduction of the infrastructure, so that the final result of the railroad and shall bear is the total amount of these costs. However, the causal circuit costs, prices, competition, transport volume, revenue, profit, quality maintenance, a new reduction of competitiveness, are really important deteriorating market position of the railways.*

**Keywords** – public service obligations, unprofitable transport, cost of transport, the regulations of the European Union.

**JEL Classification:** R40,R41

## УСКЛАЂЕНОСТ ПРОПИСА ЗА ОБАВЉАЊЕ ОБАВЕЗЕ ЈАВНОГ ПРЕВОЗА ЖЕЛЕЗНИЦЕ СРБИЈЕ СА ПРОПИСИМА ЕВРОПСКЕ УНИЈЕ

### Апстракт

*Обавезе јавног превоза у путничком саобраћају су и данас присутне на железници иако је железница већ давно изгубила монополску позицију на*

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транспортном тржишту, и њихова присутност отежавала је започињање процеса реформи, транзиције и реструктурирања железнице у односу на друге видове саобраћаја. Овај инструмент, замењен је успостављањем новог начина финансирања нерентабилних превоза кроз увођење Обавезе јавног превоза што подразумева обавезу железничког превозника да превезе путнике и робу по утврђеним ценама и посебним условима уз надокнаду разлике између тако утврђене цене од стране државе и оправдане пуне цене коштања. Основну црту овом инструменту даје његово деловање на економију пословања саобраћаја (транспортера). Губици у пословању надокнађивани су из буџета државе, били су недовољни и онемогућавали су уредно и квалитетно одржавање инфраструктуре. У таквим околностима експлоатациони параметри инфраструктуре су погоршавани, а ефекти тога су водили ка даљем слабљењу конкурентске позиције железнице. Дакле, у ситуацији када држава надокнађује губитке из пословања железнице она обезбеђује и део средстава за просту репродукцију инфраструктуре, тако да у коначном резултату железница и не сноси укупан износ тих трошкова. Међутим, узрочно последични круг трошкова, цена, конкурентности, обима превоза, прихода, губитака, неквалитетног одржавања, новог умањења конкурентности, реално битно погоршава тржишну позицију железнице.

**Кључне речи** – обавеза јавног превоза, нерентабилни превози, цена коштања превоза, прописи Европске уније

## Introduction

One of the reasons that creates a need for regulation of the transport market is the existence of general interest for the functioning of the transport market. In the public interest, except for the matters of general public importance and except the possible questions regarding on traffic system, for example, setting up transportation security as a problem of particular public interest. “The public interest depends on decision of the political decision-makers, who declare public interest as question of general importance”<sup>4</sup>. Separation of individual issues and making level questions of general interest, mainly involves pre-rendered appropriate political decision. Make a decision no matter how they are reflected in the general interest, are always changing the conditions of competition in the transport market.

Environmental protection is one of the important questions that arises as a matter of public interest. Privacy energy production and consumption is declared as a general interest in terms of supporting the largest possible share of own energy resources and the use of environmentally tolerant forms of energy in the performance of the transport sector. The development complies with the requirements and limitations of nature, involves correlation of economic and environmental policy at all levels of society and its integration with modern international trends.<sup>5</sup>

The new legal framework is provided services of general interest, including the railway sector important application of legislation and institutional arrangement for carrying

<sup>4</sup> Božić V., Ćimović S. (2004), *Marketing logistika*, Ekonomski fakultet, Beograd.

<sup>5</sup> Mihajlović D., Ilić B., & Simonović Z. (2013). Razvoj održive ekonomije prirodnih resursa u skladu sa ekološkim zahtevima, *Ekonomika*, 59 (4), 10-22.

out the obligations of public transport<sup>6</sup>. Regulation of the European Economic Commission (EEC) 1191/69 defines the rules according to which the Member States should act when it comes to public service obligations in rail and road transport and inland waterways. This regulation has defined a common procedure for financial compensation, the concept of a contract for public transport, which can be signed between the competent authorities in the Member State and the transport company that would provide adequate public services. Regulation 1191/69 is repealed in the adoption of the EU Regulation 1370/2007 which is a generalized use of contracts when an authority granted exclusive rights or compensation for the performance of public service obligations. The purpose of the Agreement is to publicly define the roles and responsibilities of different stakeholders (authorities in charge of traffic and transport operators). The Regulation defines the mandatory content of the contract. In order to ensure effective competition or classification of the roles and responsibilities of the duration of the contract is limited to 15 years for transport by rail and can be extended by 50 percent if the carrier provides significant resources in connection with the transportation of carrying out a defined contract.

### **The legal and institutional framework for the introduction of obligations of public transport according to the EU regulations in the railway sector**

The obligation of public transport in the transport sector is requested by the competent authorities for the provision of public transport of general interest to the transporter, if it is taken into account own commercial interests, would not be served or not served to the same extent and under the same conditions without compensation. The transporter would not normally perform such transportation because it believes that the provision of such services is not commercially viable. New EU legislation and in particular Regulation 1370/2007/EZ which entered into force on December the 3<sup>rd</sup>, 2009, brought a new concept that is defined as a Public Service Obligation (PSO). Regulation in the European Union legislation has the force of a direct implementation in the Member States and its implementation is prohibited through domestic legislation. The main actors in the implementation of the PSO competent authorities and transporters. Agreement on PSO can be assigned to the transporter directly or through tenders. According to EU Regulation 1370/2007, public transportation means transportation of passengers of general economic interest that is being offered to the public on a non-discriminatory and continuous basis. Public service obligations are therefore mutual obligations of the competent authority that is responsible for the organization and management of public transport and the operator who is responsible for carrying out the transport. Obligations are described in a set of written contract documents<sup>7</sup>:

- The competent authority shall define the transport that should be made
- The operator carries out transportation in accordance with the agreed level of quality
- The operator receives an annual compensation in the form of a lump sum that is defined in the Agreement on public transport.
- Every year, the competent authority and the carrier harmonized development services.

<sup>6</sup> CER: EURAILPRESS (2008). *Reforming Europe railway*.

<sup>7</sup> Hall D. (1998). *Restructuring and Privatisation in the Public Utilities Europe*, International Labour Office ILO, Geneva.

Implementation of the obligations of public transport in passenger traffic on the example of France French National Railways (SNCF) have been given as a monopoly for the performance of rail passenger transport in France. Regions are not able to invite tenders to get the other service providers except SNCF. Law of the SRU (Solidarité et Rénovation Urbaines) which is proclaimed in December 2000, planned transfer of responsibilities from the state to the regions in terms of the performance of the railway passenger traffic. Implementation of such decentralization policy has given the regions the power to make decisions about new offers<sup>8</sup>. The state budget is transferred to the regions (in 22 regions). Each region and SNCF had to negotiate and sign an agreement that describes transport, organization and financing of transportation. The first agreements were signed for a period of not less than 5 years. From the 2002, regional, local and suburban passenger transportation by rail define, organize and finance the 22 regional governments of France where the state has awarded this task. Transfer to the region proved to be a commercial success. In each region, the volume of traffic has increased by almost 10% a year, rolling stock almost everywhere rebuilt or new. In 2005, the regions have paid 2.7 billion euros to SNCF in the performance of regional rail transport and investment in rolling stock. When the term of the contract expires, the region has the right to claim ownership of the rolling stock, as it is entirely financed their purchase. The next problem was the issue of the condition and capacity of rail infrastructure in the region.

Many regions have sought control of the National Railway infrastructure (RFF) and the State to consider their own needs for the renewal of regional rail infrastructure and to provide the necessary funds. Contracts on the obligation of public transportation are such that SNCF maintains income and an interest in business development. But in the case of regions wishing to develop specific commercial policies to specific groups of customers, they increase their contribution to the SNCF. Each competent authority requires justification for financial compensation to be provided in exchange for passengers. SNCF has for each region to prepare a dedicated and unified account, as defined by the Government of France. Account includes railway and bus regional transport performed by SNCF.

### **Contracting obligations of public transport by Serbian Railways**

The legal and institutional framework for the introduction of public service obligations in rail passenger transport in the Republic of Serbia is based on European regulations in the field of rail transport, which regulates the manner and conditions of:

1. Railway Law (“Off. Gazette of RS” No. 45/ 13)
2. Regulation on the methodology for calculating the full reasonable cost of transport (“Official Gazette of the Republic of Serbia “ No. 76 /2009) Guidelines on the contract obligations of public rail transport (“Off. Gazette” 58/2010)
3. Ordinance on the conditions and procedure for the exercise of remuneration for performing mandatory public rail transport (“Off. Gazette” 58/2010).

On harmonizing the national legislation with the EU legislation is Regulation 1370/2007 EU (effective from 3.12.2009) that defines the legal and institutional obligation to perform under the contract of public transport on public transport.

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<sup>8</sup> Pop-Lazić J., Bošković B. (2009). Contracting of public service obligation in railway transport – the czech example, *Proceedings of II International Scientific Conference New traffic and telecommunication Horizont*, Dobož, Serbian Republic.

Law on Railways (“Off. Gazette » 45/13) created an institutional framework for the establishment of a mechanism of financing public service obligations (PSO). This system of financial compensation to the Purchaser transport (Government of the Republic of Serbia or local government) compensate the railroad companies performing socially desirable transportation that are unprofitable, or that the carrier which establishes the obligation of public transportation make up the difference between the observed prices and reasonable full cost of transport. The Government of the Republic of Serbia is prescribed and adopted the Regulation on the methodology for determining reasonable full cost of transport (Official Gazette 76/2009). One of the reasons for the proposal and adoption of the Regulation is based on the need for harmonization of legislation with EU directives (2001/12/EC, 2001/13/EC, 2001/14/EC, 2004/49/EC and 2004/51/EC) and Regulation 1370/2007 EC (“the PSO Regulation”) as the new legal framework, which came into force on 2009<sup>9</sup>. The adoption of this regulation has a significant impact on the process of restructuring at “Serbian Railways”, primarily through the rationalization of transport services that the transporter provides. There are a number of tracks and trains that transport relations are not economically justified, but social justification exists. The main objectives of the new concept are to improve the efficiency of the railway system of the Republic of Serbia, its integration in the market rail system. Law on Railways (“Off. Gazette » 45/13) defines the type of rail transport can be considered as the transport of general interest, and shall be performed according to a published timetable: Railway transport of general interest: Public transport - on the territory of the local government; suburban transport - in the wider area; regional transport - the area of a region, or territory of the Autonomous Province; long-distance transport - between the two local governments in long-distance and international transportation. Criteria for determining the liability of public transport are:

- The existence of general interest;
- Availability of other means of transportation and
- The cost of replacing the rail transport by other means of transport.

The rights, obligations and responsibilities of rail carriers and the competent authority in relation to the obligation of public transport are regulated by the contract obligations of public transport. Public service obligations aimed at determining the maximum tariffs for all passengers or for certain categories of travelers may also be governed by the general rules. The competent authority shall provide the Train Operator compensation for the obligation of public transport the amount of net financial results, positive or negative, for costs incurred and revenues generated in accordance with the tariff obligations established general rules in a way that prevents the payment of excessive compensation for the obligation of public transport.

Compensation for public service obligations for contracts concluded on the obligation of public transport or general rules, must be calculated in accordance with the rules for calculating the amount of compensation for the obligation of public transport, prescribed by the Government. Agreement on the obligations of public transport and general contain provisions:

1. clearly define the obligations of rail transporters relating to the obligation of public transport, as well as the geographic area to which the obligation relates;
2. determine the parameters which are calculated by the amount of compensation for the obligation of public transport, taking into account the portion of income that keeps the rail carrier and appropriate tax;

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<sup>9</sup> Pravilnik o uslovima i postupku za ostvarivanje nadoknade za obavljanje utvrdene obaveze javnog prevoza u železničkom saobraćaju, *Sl. glasnik RS*, 58/ 2010.

3. Allocation of costs related to the obligation of public transport, which may include staff costs, energy costs of infrastructure, maintenance and repair of rolling stock and installations necessary for the commitment of public transport, fixed costs regulates the division of revenue from ticket sales, and other income Train Operator may keep it, pay it to the relevant authority, or may be split between them;
4. determines the duration of the contract on the obligation of public transport;
5. establish quality requirements that rail carrier must provide defines the obligations of rail carriers to report to the competent authority on the implementation of contractual obligations, including the manner and schedule of reporting, the report form prescribed by the Train Operator shall submit to the competent authority;
6. define the consequences of default or failure of performance of contractual obligations and
7. establishes the procedure for amending the agreement.

Agreement on the obligation of public transport can be assigned: on the basis of a court decision on the immediate award of the obligation of public transport and on the basis of open competition, open to all railway operators, respecting the principles of transparency and non-discrimination, which may, upon submission of bids and possible previous elections involve negotiations in accordance with these principles in order to determine how best to meet the specific or complex requirements. Method of awarding the obligation of public transport on the public competition is prescribed by the state and the proposal by the Directorate of Railways. Funds for the reimbursement obligations of public transport operators provided in the budget of the Republic of Serbia, in the autonomous province and the local government budget. Train Operators are obliged to keep separate accounting records of the use of the funds received under the conditions prescribed by the Railways, the methodology and the Regulations on the use of funds intended for the performance of public service obligations under the Treaty (PSO). The methodology for calculating fees for PSO, is determined based on the accounting records and the reports of the ad “Serbian Railways”. The purpose of this document is to provide a model that reflects the cost structure and enable to calculate the costs of different types of transport. Regulation on the methodology for calculating the full cost of transport (PSO) (Official Gazette 76/2009) is a document that defines the model or the method of calculating the cost of different types of transport (passenger and freight) and the method of allocation to individual transport relations based on the proportion of traffic on these routes (train km)<sup>10</sup>. The document set out the principles of distribution as well as recommendations. Rolling km is the staging, or the key to the distribution, which accounting costs directly associated with the level of transport. After the adoption of the Regulation on the methodology PSO passed the Ordinance on the conditions and procedure for the exercise of remuneration for performing mandatory public rail transport (“Off. Gazette of RS” 58/2010). This Regulation lays down the conditions and procedure for obtaining compensation for performing mandatory public rail transport. Compensation for the mandatory public transport, in terms of the regulations, are financial assets that are carrier approved budget funds during the period of implementation of the obligations of public transport or in connection with that period, which is recognized for the difference between the observed prices of transportation and justified full cost of transport. The transporter, which is assigned

<sup>10</sup> Regulation No 1370/2007 EU on public passenger transport services by rail and by road and repealing Council regulations (No1191/69 and 1107/70), OJ L 315, 2009.

public service obligations, submits a written request for reimbursement in accordance with the law regulating railroads. The request includes: information on the carrier, which is assigned public service obligations; public transport services; relationship; schedule and the amount of compensation. The carrier which was approved compensation concluded with the Ministry responsible for transport or local government, the contract governing the rights and obligations in carrying out public service obligations, in accordance with the law regulating railroads. Guidelines on the contract obligations of public rail transport (“Off. Gazette” 56/2010) prescribes the contents of the contract on the obligation of public rail transport. The contract contains the following elements: The objective of the contract, the period of the contract, the level of service quality of public transport; the method of calculation and payment, reporting obligations and the consequences of non-performance or negligent performance of contractual obligations.

### **Award of public transportation in accordance with the regulations of the European Union**

Agreement on the obligation of public transportation in practice costs can be allocated to the first mode of transport, and by driving miles on individual tracks. The methodology for allocating transportation costs consist of the following steps: data for input; allocation of common costs to transport passengers and goods transport with the help of keys and the proposed allocation of global expenses to individual tracks to driving miles.

Accounting system ad “Serbian Railways” differs certain costs to transport passengers and goods transport. Using the so-called. keys that are already used for certain calculations - the cost allocation model that allows user to change the keys. There are three basic categories of costs that will be used for the distribution of keys on the passenger and freight transport. This specifically refers to the infrastructure costs shared by passenger and freight transport, especially the transport relating to the performance of public transport, as well as the cost of towing to be shared. This also applies to areas where the division between the passenger and freight transport is not clear.

Table1: The proposed distribution keys

Functional Categories	The proposed unit costs calculation
Infrastructure management	
1. Traffic management	train mile (KM)
2. Infrastructure	
a. Services	train mile (KM)
b. Maintenance, modernization, other	train mile (KM)
c. Overheads	train mile (KM)
d. Logistic costs for infrastructure	working hours of employees
e. Financial costs	working hours of employees
f. Amortization	train mile (KM)
g. Other	working hours of employees
Transport	
1. Staff on the train	
a. Train drivers on open line	working hours of employees
b. Staff	working hours of employees



c. Energy (electric)	train mile (км)
d. Energy (diesel)	train mile (км)
e. Energy (steam)	train mile (км)
f. Energy (EMV)	train mile (км)
g. Energy (DMV)	train mile (км)
h. Other running costs	train mile (км)
i. Maneuvers and preparations trains	train mile (км)
Transportation means	
1. Maintenance	
a. Locomotives (steam)	traveled distance train kilometer
b. Locomotives (electric)	traveled distance train kilometer
c. Locomotives (diesel)	traveled distance train kilometer
d. EMG	traveled distance train kilometer
e. DMG	traveled distance train kilometer
f. Passenger / freight car	traveled distance train kilometer
g. Amortization	train mile (км)
h. Other	train mile (км)
Financial and general expenses	
a. Overheads (directorate, Logistics)	working hours of employees
b. Transport logistic costs	working hours of employees
c. Finance	working hours of employees
d. Operating leases	train mile (км)
e. Amortization	train mile (км)
f. Other expenses	working hours of employees

Source: Methodology for the calculation of the full cost of transport (SPO) (Official Gazette 76/2009)

### *Exploitation coefficients*

Rail freight exploitation ratio means the ratio between (1) operating costs of carriage of goods and operating expenses, net of amortization and plus share of the costs relating to the maneuver, maneuvering and fixtures, which bear the infrastructure manager, and (2) the net revenues transport goods. Operating expenses of carriage of goods consist of a locomotive personnel costs, maintenance costs of funds, the cost of energy for traction, costs of other transport staff, and administrative staff in freight transport and the cost of using the car under the Rules RIV.

## **Conclusion**

The new regulatory framework for rail passenger sector by prescribing the obligation of public transport is meant to be in the area of subsidized services abolish monopoly, encouraging competition among operators who are interested in conducting this kind of transportation, and to introduce budget control, to achieve a higher quality of this type of transport with lower prices. The main objectives are to be achieved by the agreement on public transport can be conceived as follows: supply of operators clearly defined and limited package, definition of mutual responsibilities and roles of the parties, avoiding the third annual public budget constraints and promote medium-and long-term planning, improving the accountability of management, decision making and problem

solving, getting constant feedback on the performance of mutual obligations. The establishment of public transport in passenger traffic exposed to a completely new legal and economic concept, could be reached by one of the major goals of reform Serbian Railways. Bearing in mind the characteristics of Serbian railways, and the factors that influence the practical implementation of decisions of the regulatory framework for public transport can be observed following: Today in Serbia works only company for passengers and goods within ad “Serbian Railways” and the company engaged in the transport industry for power plants “Nikola Tesla”, which was licensed to transport. According to the size of the network, 3,809 km, belonging to medium-sized networks, which confirms that there are no other transporters (operators) that would be competitive, according to the number of train kilometers dominated by passenger traffic, but with a lesser degree of utilization of trains (fewer travel kilometers), the railway network is not present large volumes of traffic, and maintenance is not high, government subsidies are necessary to keep existing users of rail transport. It can be concluded that the conditions for the implementation of public passenger transport are not exists still, although there are legal requirements that are appropriate and that are in line with European Union regulations in this area.

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