

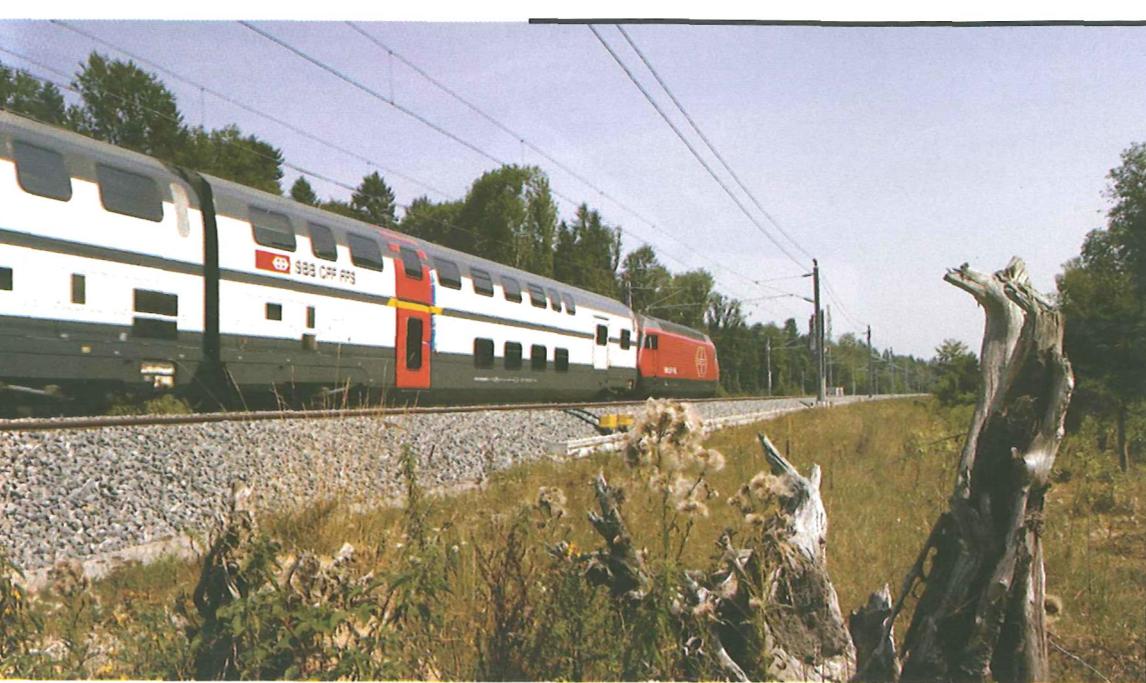
The First Railway Package

Over deadline for 24 states

March 2003 – deadline for the implementation of the First Railway Package in Europe.

June 26 2008 – the European Commission sends warning letters to 24 Member States, Romania included, for having not complied with the obligation of implementing this legislative package in the railway sector.





Having the obligation to monitor the implementation of the First Railway Package in national legislations, EC observed that the respective package was not implemented or was incorrectly implemented in countries such as: Austria, Belgium, Bulgaria, Czech Republic, Germany, Denmark, Estonia, Greece, Spain, Finland, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, Poland, Romania, Sweden, Slovenia, Slovakia and the UK.

In May 2006, the European Commission noticed that, although Member States implemented the necessary legislation, several countries had to adopt further measures in order to ensure an efficient legislative framework, as well as well-functioning railway markets.

In 2008, following a detailed analysis on the conformity of national legislations, the European Commission observed major deficiencies in the implementation of the First Railway Package. The 24 countries that received notification letters were mainly warned about the lack of an independent infrastructure manager, as opposed to the railway operators. The insufficient implementation of the norms stipulated by the directive concerning the taxation system for infrastructure access, especially the absence of an efficient system that can help develop the railway network and, in the case of the infrastructure manager, the lack of incentives to help reduce costs and taxes, all these were major causes of concern. The non compliance with the obligation to create an independent and fully authorized control body that could solve the problems related to the competitiveness in the railway sector was another matter mentioned in the notification letters.

"As for the notification letter received by Romania, there is no official stand on the matter. If this will be the case, everything will be posted on the Ministry of Transport website and the necessary measures and actions will be taken", declared for Club Feroviar Claudiu Dumitrescu, General Manager of the Railway Transport and Infrastructure Department within the Ministry of Transport.

Objectives

At European level, the goal of the First Railway Package is to revitalize the railway sector by gradually creating an integrated European railway space, as well as by promoting on a large scale the change from the freight road transport to the railway transport. This is a well-known reality, an unbearable reality, which generates dissensions among the competent authorities. This was the main reason why the First Railway Package had to be implemented properly, especially because of the road transport which harms the environment and which still benefits from a preferential treatment. In the European Union, the taxes on infrastructure use which have fixed maximum limitations, are perceived in a facultative manner, usually only for highways and trucks, without including the external costs.

In a first stage, the First Railway Package was necessary because most of the European countries placed their efforts and money in the motorized passenger transport system.

In a second stage, the transport sector is well-known to generate 15%-30% of the total CO2 emissions in the European Union. That is why the transfer from road to railway transport has to be intensified, due to the fact that the railway transport has a less negative impact on the environment.

The First Railway Package also stipulates other aspects, such as the fact that the general framework for the competitiveness and cooperation between the railway, road, air and naval transport cannot affect the efficiency of each type of transport taken separately.

Moreover, the matter of fair competitiveness between these types of transport has to stand at the basis of the efficiency and competitiveness of each and every type of transport.

The decision based on which the European Commission established several norms for the revitalization of the railway transport had as grounds the importance of freight and passengers to benefit from railway access, taking into consideration the low costs generated by an efficient railway network. The degree of development of the railway field had to be organized a way in which the EU principles concerning the existence of a liberalised railway market had to be observed.



Non-discriminatory access

The European Commission issued a series of directives in order to create an efficient railway transport and to promote it among the Europeans, as well as to increase the confidence of railway operators in this means of transport. The first step was made by adopting the White Paper on Transport in 2001.

In short, the First Railway Package includes three directives: Directive EC 12/2001, Directive EC 13/2001 and Directive 14/2001. These directives grant the European railways administrative autonomy and stipulate the division between the infrastructure branch and the freight and passenger transport

branch. The experience gathered so far and the current level of competitiveness show that the railway system functions just as well even if the network and the transport branches are separated.

The three above-mentioned European directives also stipulate the way in which the access to the railway infrastructure is made, as well as the safety measures which have to be established and adopted.

"The First Railway Package", more precisely the three directives, stipulates that the railways will no longer be under state

"The proper implementation of the First Railway Package is essential to create competitiveness on the European railway markets and to increase the competitiveness of the railways in comparison with other means of transport",

Antonio Tajani,
Vice President of the European Commission on Transport.

What needed and needs to be done

In order to ensure an efficient legislative framework, as well as well-functioning railway markets, it was necessary to impose - from the beginning of the development of the Romanian railway market - the non-discriminatory access of private operators to the facilities ensured as a monopole or even per region by the units set up following the reorganisation of the former SNCFR. Take for instance the access of locomotives and of the private operators' personnel to CFR Marfă depots for repair. According to Unifertrans representative, the market became stable following the intervention of private operators to the Competition Council.

As for the insufficient implementation of the provisions stipulated by the European directive concerning the taxation system on railway infra-

structure use, Moroşanu said that, when it comes to the competition between railway transport operators, applying a certain tariff on infrastructure use cannot favour one operator comparative with the others, due to the fact that CFR SA uses a very efficient system which shows the works made on every railway section.

While the principles which stand at the basis of the taxation system on railway infrastructure use have been established at European level, their implementation differs a great deal for every EU Member State.

On the other hand, the railway freight transport is the least favoured of all the types of transport which either does not pay tariffs on infrastructure use for providing services, or has very low tariffs.

One of the measures seen in Romania, as well as other European Member States, that the European Commission criticised was that of the high taxes imposed on railway transport routes, while trucks are not obligated to pay taxes on road infrastructure use. This does not comply with the objectives of the European policy on transport.

No railway borders

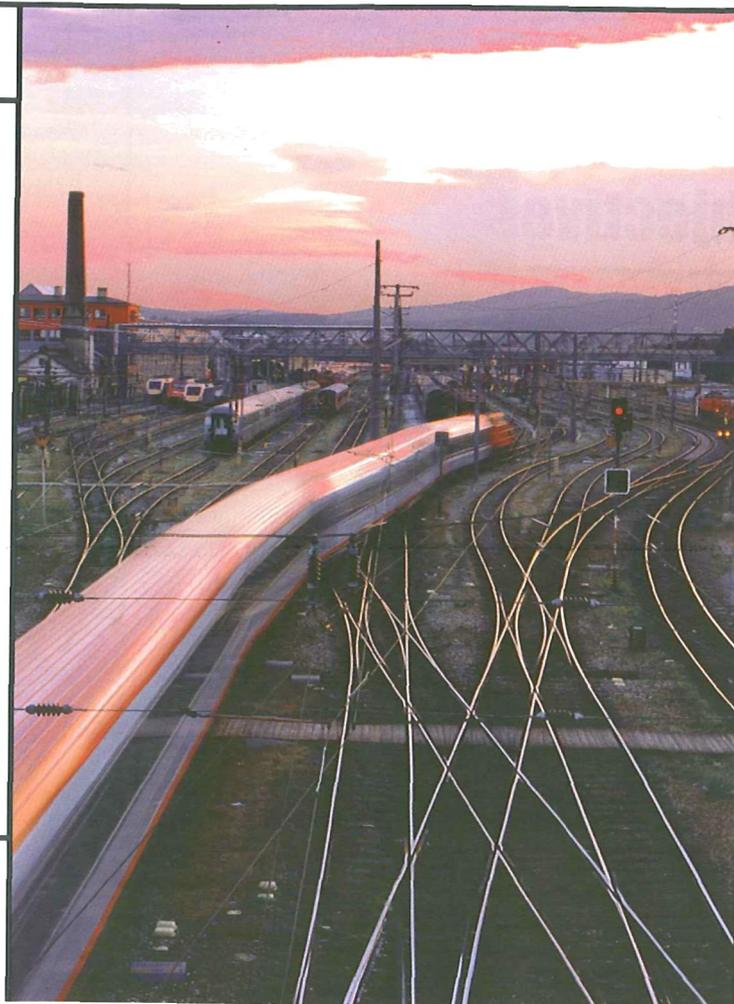
Although the Community of European Railway and Infrastructure Companies (CER) expressed its agreement and support towards the decision of the European Commission of asking EU states to properly implement the three directives adopted in 2001, the organisation manifested its confusion with respect to the decision of the Commission to send notification to almost all the EU Member States, in the extent in which all the countries which own a railway network, except the Netherlands, have been warned.

"We agree with several aspects related to the objections of the Commission, but we are at the same time surprised by the evolution of these procedures despite the constant communication between European institutions and national governments", said Johannes Ludewig, CER Executive Director.

Following the publication of the EC report concerning this legislative package in 2006, European states made efforts to align their national legislations to the European one by participating intensively to numerous discussions held with the Commission, with railway operators and infrastructure managers on the interpretation and implementation of the First Railway Package.

CER representatives also underlined the fact that the 24 formal letters should mainly point out the need for the state and the national infrastructure manager to close multi-annual contracts which are essential for ensuring an optimal quality of the infrastructure and, consequently, of the railway transport system.

Elena Ilie



Obstacles in Romania

When it comes to Romania, certain important aspects are underlined. Although the railway transport opened up for competition, the optimal requirements are not fully fulfilled. Because of this, railway operators do not have the capacity to impose and provide European services.

In our country, the railway freight transport operators whose activity falls under the incidence of the First Railway Package have established certain strategies in accordance with European regulations, but they still have to face legal obstacles in reality. Even though competition is favoured and the results are visible, "the new comers" face major difficulties which diminish their efficiency. These are some of the aspects included in the report drawn up by the European Commission and based on which the 24 Member States received notification letters.

"A large part of the Romanian railway market fulfils the competition demands, seeing as the provisions of the First Railway Package have been implemented and the treatment the infrastructure manager applies to railway transport operators is non-discriminatory", said Dan Moroşanu, Head of Exploitation at Unifertrans. "There are, however, provisions included in the current regulations that limit free competitiveness. Among these regulations, we have MT Order 535/2007, which stipulates that a railway operator is authorized by the Romanian Railway Authority (AFER) - ASFR through the Safety Certificate Part B to perform railway manoeuvres

on an interoperable railway line if he presents a copy of the Exploitation Authorization for that line and proves to have learned the manner of operation of the respective line. According to GD 60/2004, the owner of an interoperable railway line is authorized by AFER to use the line if the documentation he presents proves that his manner of operation is approved by an operator, whose name will be written down on the authorization."

The procedure for obtaining a Safety Certificate based on these provisions is very complicated and leaves room for interpretation. It reduces the chances of an operator to participate at the tenders organised by the beneficiaries/owners of the line for manoeuvre services. There is currently a railway operator who, based on the above-mentioned provisions, obtained the Safety Certificate Part B issued by AFER-ASFR and has now access on all the interoperable railway lines connected to the Romanian railway stations registered in the pass books issued by CFR SA.

The Romanian railway market provides minimum requirements for ensuring competitiveness between railway operators within the country, in relation with the non-EU countries. However, there are many requirements which stop private operators from accessing the railway lines which cross the borders of these countries. "We believe that these requirements resulted also from the lack of an efficient lobby which can help Romania develop intergovernmental bilateral agreements", pointed out Dan Moroşanu.

