

AVOSETTA MEETING, FRIBOURG, 23-24 November, 2012

QUESTIONNAIRE: “ENVIRONMENT AND LAND TRANSPORTATION LAW”

CROATIA

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Brief introduction to the country

Croatia finished accession negotiations on 30 June 2011 and on 9 December 2011 signed the agreement on accession to the EU. Accession Treaty still has to be ratified by: Belgium, Denmark, Finland, France, Germany, The Netherlands, Slovenia and United Kingdom.¹ Once the Treaty is ratified by all Member States, Croatia's membership in the EU will be formalised as of 1 July 2013.

A. Transportation law

1. General questions on national transport policies and laws

1. a. National transport policy and environmental issues

Transport Development Strategy of the Republic of Croatia was adopted by Croatian Parliament in 1999 (Official Gazette, no. 139/99). Although environmental issues were taken into account, the Strategy did not set any specific environment-related goals in order to reduce negative impacts on environment. It was emphasized that railway had the least negative impact on environment and that environmental component provided railroad substantial advantage over other forms of transport. Development of, environmentally less harmful, combined transport was set as one of the strategic objectives.

Croatian railways lag behind the average of the EU Member States. The speed of 160 km/h can be reached only on 4.1% of the railway network and only 12.2% percent of the railway lines network allows speeds of 100 km/h. The average speed of trains is 40 to 60 km/h.² In addition, only 36.1% of the railway networks are electrified and only 9.3% are double-track.³

The Strategy's assessment of overall investments by the year 2010 was approximately 20 billion USD. Frame structure of overall investments into each segment of the transport system was the following: roads and road transport 40%, railways and railroad transport 25%, maritime and river transport 20%, air transport (airports, etc.) 5%, integrated transport (latest transport technologies) and terminals 10%. However, the Strategy was not implemented as planned. The largest part of the investments was directed into roads⁴ (according to some sources more than 80%) and investments in all other branches of transport were considerably

¹ Delegation of the European Union to the Republic of Croatia, <http://www.delhrv.ec.europa.eu/?lang=en&content=3935>, November 12, 2012

² National Railway Infrastructure Program 2008-2012 (Official Gazette no. 31/08)

³ Source: Statistical Yearbook 2011, http://www.dzs.hr/Eng/Publication/stat_year.htm

⁴ In 2001 the length of motorways in Croatia was 429 km. Intensive construction of motorways resulted in their total length of 1126 km in the year 2010 (source: Statistical Yearbook 2011).

lower than planned.⁵ One of the consequences is that 59% of transport of goods in Croatia is by road transport, and only 9% by railway (other transport: 25% seawater and coastal, 7% pipeline, 0% air, 0% inland waterway).⁶

On October 24, 2012 Croatian Central Finance and Contracting Agency published a service procurement notice regarding the preparation of a new Transport Development Strategy of the Republic of Croatia for the period of 20 years. Maximum budget for this service is 400 000 EUR (obtained from the EU Instrument of Pre-Accession Assistance (IPA)).⁷ It is not uncommon in Croatia that legislation and policies are prepared by foreign consultants to whom the service contracts are awarded.

Although on a constitutional and policy level there is a clear duty of protection of human health, nature and the human environment, the largest part of the investments are directed to road infrastructure. The situation was similar on an EU level. Despite the declared policy of the importance of reducing greenhouse gas emissions, a breakdown of the European Investment Bank's transport and related industry investments from 2006-2009 shows that in central and eastern Europe at least 66% of investments were made into roads.⁸

In 2012 Croatian Railways announced the termination of 44 of the 56 existing daily international rail lines. The reasons for a radical close down of railway lines were financial losses that these lines generated and the average small number of passengers. There was an international protest organized by World Carfree Network.⁹ Momentarily, Croatian Railways decided to cut 32 daily international services (instead of 44).

1. b. Important constitutional law provisions

There are no constitutional law provisions which are specific for this field, except the duty of protection of human health, nature and the human environment (see § 70 of the Croatian Constitution¹⁰).

1. c. Important legislative acts in the field of road and rail transportation

- Roads Act, Official Gazette no. 84/11
- Decision on determining public roads for transit transport of freight vehicles through Republic of Croatia, Official Gazette no. 145/08
- Road Transport Act, Official Gazette no. 178/04, 48/05, 151/05, 111/06, 63/08, 124/09, 91/10 and 112/10

⁵ Pavlin, S.; Šimecki, A.; Bračić, M., Polazne osnove za izradbu nove strategije prometnog razvitka Hrvatske s posebnim osvrtom na aerodrome, http://bib.irb.hr/datoteka/577734.HAZUkup2012_PavlinSimeckiBracic.docx

⁶ Data for 2010, source: Statistical Yearbook 2011

⁷ Provisional commencement date of the contract: 8.7.2013. Duration in months: 7. See: <http://ted.europa.eu/udl?uri=TED:NOTICE:336189-2012:TEXT:EN:HTML>

⁸ Bankwatch blog (June 6, 2011), <http://bankwatch.org/node/8760>

⁹ <http://www.change.org/petitions/croatian-railways-reconsider-planned-cuts-to-international-passenger-rail-services>

¹⁰ "Everyone shall have the right to a healthy life.

The state shall ensure conditions for a healthy environment.

Everyone shall, within the scope of their powers and activities, accord particular attention to the protection of human health, nature and the human environment." - Constitution of the Republic of Croatia, Official Gazette no. 85/10 - consolidated text

- Road Traffic Safety Act, Official Gazette no. 67/08, 48/10 and 74/11
- Order on limitation of road traffic, Official Gazette no. 64/09
- Railway Act, Official Gazette no. 123/03, 30/04, 153/05, 79/07, 120/08 and 75/09
- Railway Traffic Safety Act, Official Gazette no. 40/07, 120/08 and 61/11
- Combined Transport Act, Official Gazette no. 124/09
- Ordinance on terminals for combined transport and rail unloading stations, Official Gazette no. 30/10
- Act on privileges in domestic passenger traffic, Official Gazette no. 97/00 and 101/00

2. Instruments to manage and reduce road traffic

There is no national debate on the sense and nonsense of traffic tolls and other instruments to manage and reduce road traffic. Changes or corrections of the Croatian regulatory framework are envisaged due to the alignment with the EU acquis.

2. a. Tolls and user charges

Motorways are operated by four companies: Hrvatske autoceste d.o.o., Bina-Istra d.d., Autocesta Rijeka-Zagreb d.d. and Autocesta Zagreb - Macelj d.o.o.¹¹

On motorways and other tolled structures (bridges, tunnels, etc.) tolls are collected in accordance with the distance travelled and the vehicle category.

CATEGORY	VEHICLES
I A	Motor vehicles with characteristics of a motorcycle, motor tricycle and quadricycle
I	Motor vehicles with two axles, height up to 1.30 m, measured at the first axle, except motor vehicles from II B
II	A) Motor vehicles with three or more axles, height up to 1.30 m, measured at the first axle B) Motor vehicles with two axles, height exceeding 1.90 m, maximum allowed mass not exceeding 3500 kg
III	Motor vehicles with two or three axles, height exceeding 1.30 m, measured at the first axle, maximum allowed mass exceeding 3500 kg and motor vehicles from II B with trailer
IV	Motor vehicles with four or more axles, height exceeding 1.30 m, measured at the first axle, maximum allowed mass exceeding 3500 kg

Pursuant to article 87/2 of the Roads Act, tolls for the use of motorways and other tolled structures (bridges, tunnels, etc.) are determined¹² by:

¹¹ Bina-Istra d.d., Autocesta Rijeka-Zagreb d.d. and Autocesta Zagreb - Macelj d.o.o. are concession companies for the construction, operation and maintenance of motorways and tolled structures.

¹² Pursuant to article 9 of the Roads Act, the toll is determined by:

“- Distance travelled on motorways and other tolled road structures,
- Category into which a vehicle falls according to the number of its axles, its dimensions, weight or the type of vehicle indicated in the vehicle documentation,

- 1) Hrvatske autoceste d.o.o. with the approval of the Croatian Government,
- 2) in the case of public roads in the concession - the concessionaire under the conditions specified in the concession contract.

User charges can be imposed for use of the network of public roads or part of the network of public roads for motor vehicles and trailers intended solely for transporting cargo with a total weight of over 3.5 tons (§ 86/2 of the Roads Act). Croatian Government decides on the introduction of user charges (§ 86/3 of the Roads Act). User charges have not been introduced.

Upon registration of motor vehicles and trailers natural persons and legal persons must pay an annual fee for use of public roads (§ 86/1/1 of the Roads Act). Motor vehicles and trailers registered outside of Croatia pay a fee for use of public roads in accordance with the Road Transport Act (§ 86 of the Road Transport Act). This does not apply to motor vehicles registered in the Member States of the European Union. There are also exemptions prescribed by the Combined Transport Act (*infra*: 3.a.).

There are no specific mechanisms for charging external costs in the rail sector.

2.b. Emission Trading

There is no emission trading system on vehicles.

2.c. Transit Exchange System

To my knowledge, there is no transit exchange system.

2.d. Road traffic restrictions

Transit transport can only take place on certain public roads that are specified for transit traffic (§ 17/2 of the Roads Act).¹³

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- Regulation of the Minister determining categories of vehicles from the second subparagraph of this paragraph, the methodology of determining the amount of toll and parameters for toll adjustments with the costs of management, routine and extraordinary maintenance and development of tolled structures,
 - The principle of non-discrimination for all categories of vehicles owned by legal entities and natural persons who are users of the motorway and other tolled structures,
 - Calculated average toll that is proportionate with the costs of construction, maintenance, management and infrastructure development, and is expressed as the total revenue from tolls for a specified period divided by the number of kilometers travelled by all vehicles that paid toll on a particular motorway network,
 - Tariff model that will regulate the range of vehicles on motorways and tolled road structures so that toll price range does not exceed more than 100% of the toll levied during the cheapest time of day, type of day or time of year for all users of motorways and tolled road structures provided that such tariff model does not affect the calculated average toll,
 - Environmental group of vehicles with a maximum mass of over 3500 kg according to EURO emission class in the way that these vehicles accounted for a lower toll than equivalent vehicles that do not meet the most stringent emission standards, provided that they do not interfere with the calculated average toll,
 - incentive models of toll payment that cannot be greater than 13% for vehicles with a maximum mass of over 3500 kg, and that is calculated according to the currently applicable tariff model for toll payment, and available to all companies and individual that use motorway and tolled road structures, provided that such incentive models do not affect the calculated average toll.”

¹³ Currently in force: Decision on determining public roads for transit transport of freight vehicles through Republic of Croatia, Official Gazette no. 145/08

If it is necessary for the traffic flow and safety, protection against road noise and other elements related to environmental protection, minister responsible for transport with the consent of minister responsible for home affairs and minister responsible for construction shall issue a regulation that restricts the use of certain public roads for freight vehicles whose permissible maximum weight exceeds 7.5 tonnes, when other public roads exist for these roads as alternative routes with better traffic and technical characteristics, except for the transport of these vehicles in the local traffic (§ 17/7 of the Roads Act).

Minister responsible for transport with the consent of minister responsible for home affairs may, on certain roads or sections of roads, on certain days or at certain time intervals prohibit or restrict the traffic of all or certain types of vehicles, vehicle speed, if this prohibition or restriction is necessary to prevent or eliminate hazards to road users, or if it is necessary for unimpeded traffic, or if it can be reasonably expected that traffic will be particularly heavy or difficult.¹⁴

3. Instruments to promote rail traffic and combined traffic

3. a. Specific legislation promoting rail traffic and combined traffic

Croatian Parliament adopted the Combined Transport Act¹⁵ in October 2009. In order to stimulate the development of combined transport, there are three special instruments:

- 1) Exemption from annual fee for the use of public roads: owners or operators of motor vehicles and trailers registered in Croatia, which are primarily used for transportation to or from the railway terminal for intermodal transport or rail unloading station (at least 80 such transfers per year) are exempted from payment of the annual fee for the use of public roads that is paid at the registration of motor vehicles and trailers (§ 7 of the Combined Transport Act). However, this provision will enter into force on the day of Croatian accession to the EU.
- 2) Exemption from quotas and licenses: minister in charge of transport determines road routes on which the initial and subsequent transport¹⁶ are exempted from all quotas and permits that are set out in international multilateral and bilateral agreements (§ 8 of the Combined Transport Act), thus encouraging foreign operators to use environmentally friendly forms of transport in Croatia.¹⁷
- 3) Exemption from restrictions on road traffic: restrictions on road traffic set by special provisions (i.e. Order on limitation of road traffic) do not apply to initial and subsequent transport (§ 9 of the Combined Transport Act).

Croatian Railways (Croatian: Hrvatske željeznice) is the national railway company (State-owned). Its subsidiaries still have to be privatized. The rail market is fully open to Croatian undertakings only, with access for operators licensed in the EU to be granted on the date of

¹⁴ Currently in force: Order on limitation of road traffic, Official Gazette no. 64/09.

¹⁵ Official Gazette no. 124/09.

¹⁶ Initial and subsequent transport is transport of intermodal transport units along the road from the point of loading and unloading to the nearest terminal for intermodal transport or unloading station (provided that it does not exceed the distances specified in the Combined Transport Act) (§ 3/1/11)

¹⁷ Road routes are determined in: Ordinance on terminals for combined transport and rail unloading stations, Official Gazette no. 30/10.

accession. The railways continue to receive high levels of budget support.¹⁸ One analysis of state aid showed that it is mainly used for debt rehabilitation of shipyards, steel manufacture companies and the Croatian Railways.¹⁹

The highest share of allocated funds for sector-specific aid in 2010 was the one for the transport sector – HRK²⁰ 1.5 billion. The funds were not utilized for investment into transport infrastructure, but were exclusively state aid to support business operations of companies in the area of transport, such as Croatian Railways (Hrvatske željeznice), for which approximately HRK 850 million was provided.²¹

“By aid instruments, state aid awarded to rail transport in 2009 and 2010 was awarded in the form of grants pursuant to the Programme for the promotion of the railway, passenger and combined transport, whereas in previous years it had been granted as capital investments as well. In 2010, under the above Programme HRK 709.7 million was awarded in grants, in which the amount of HRK 396 million pertained to promoting passenger and combined transportation. The amount of HRK 313.7 million was granted by the Ministry of the Sea, Transport and Infrastructure for the implementation of the Programme of Restructuring and Modernisation of Railways.”²² “It should be noted that significantly more funds from the State budget were granted to Hrvatske željeznice in the observed period. However, as those funds were earmarked for renovation and modernisation of infrastructure intended for all actual and potential beneficiaries and future operators on this market, those funds are not considered state aid.”²³

“Besides the funds from the State budget, in 2010 railways were also granted state aid by local and territorial (regional) self-government units in the amount of HRK 81 million.”²⁴

3. b. Financing infrastructure costs for rail traffic

The existing railway infrastructure is one of the least developed aspects of transport infrastructure in Croatia (poor infrastructure, outdated rolling stock, and outdated signaling and communication). Besides national investments, rail projects are co-financed by the European Union under the pre-accession programs, and their co-financing is proposed in the framework of structural instruments that will be used after the Croatia accession to the European Union. For the programming period of 2014-2020 Croatia is planning to prepare a new operational program as a basis for financing transport infrastructure projects through the Structural Funds and the Cohesion Fund.²⁵

¹⁸ European Commission, Croatia 2011 Progress Report, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/hr_rapport_2011_en.pdf

¹⁹ Kesner-Škreb, M.; Jović, I., Industrial Policy and State Aid in Croatia, <http://www.ijf.hr/eng/newsletter/55.pdf>, p. 7.

²⁰ 1 euro is approximately 7.5 Croatian kunas (HRK). (1 HRK is approximately 0.13 EUR.)

²¹ Croatian Competition Agency, Annual Report on State Aid for 2010 December, http://www.aztn.hr/uploads/documents/eng/documents/AR/Annual_report_State_aid_2010_ENG6.4.pdf, p. 9.

²² Ibid. p. 53.

²³ Ibid. p. 54.

²⁴ Ibid.

²⁵ Strategic plan of the Ministry of maritime affairs, transport and infrastructure for period 2012-2014

4. Case law

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B. Land-use planning and environmental impact assessment

On a national level there are two main spatial planning documents:

- (1) Spatial Planning Strategy of the Republic of Croatia: the Strategy was adopted in 1997.
- (2) Spatial Planning Program of the Republic of Croatia:²⁶ the Program was adopted in 1999.

Development of amendments to the Strategy and to the Program is in progress.²⁷

Croatia is divided into 20 counties and the capital city of Zagreb, which has the authority and legal status of both a county and a city. The counties are subdivided into large cities, cities and municipalities. Main strategic spatial planning documents on the regional and local level are: - Spatial plan of the county and the City of Zagreb, - Spatial plan of the area with special characteristics, - Spatial plan of the municipality, city and large city.

Spatial plans at local level must comply with the spatial planning documents of the State and with the spatial plan of the regional level (counties and the City of Zagreb). In the area where a plan is contrary to the spatial planning document of the State or spatial plan of the regional level, the higher plan shall apply.

Different transportation modes are sometimes weighed against each other. However the most important criteria taken into account are financial and political,²⁸ and lower priority is given to environmental concern. There is no test of need for more roads and no concern that new roads may trigger further individual transportation. Zero-option is not taken into account. Road construction is very often a politically sensitive issue since there are parts of Croatia that are still poorly connected.²⁹ Moreover, Roads Act expressly declares that construction, reconstruction and maintenance of public roads is in the interest of the Republic of Croatia (§ 36/1).

Concerning the approval of individual road construction projects, the only alternatives that are tested are the alternatives of routes that have already been planned in the spatial plan of the county and city/municipality concerned. In practice, all comments from the public concerned regarding the alternative road routes are rejected in the environmental impact assessment procedure with an explanation that the selected routes are planned in spatial plans. The only way to influence the selection of alternative routes is through public participation in spatial planning. The Ministry of environmental and nature protection does not examine whether

²⁶ Spatial Planning Program establishes measures and activities for the implementation of the Strategy and determines, in accordance with the Strategy, basic rules, criteria and terms of spatial planning at national, regional (regional) and local level for a period of eight years.

²⁷ Decision on drafting amendments to the Spatial Planning Strategy of the Republic of Croatia, Official Gazette no. 96/12 and Decision on drafting amendments to the Spatial Planning Program of the Republic of Croatia, Official Gazette no. 96/12.

²⁸ This can be illustrated by an ongoing problem of connecting two parts of Croatia that are intersected by a small strip of the coast around the town of Neum which is part of Bosnia and Herzegovina. See: http://en.wikipedia.org/wiki/Pelje%C5%A1ac_Bridge

²⁹ Citizens organized a petition for building a bridge that will connect southernmost part of Croatia with the rest of the country via the Pelješac peninsula.

alternative routes proposed by the public concerned would be less environmentally burdensome, if the routes are not foreseen in the spatial plan. However, this does not necessarily mean that the spatial plan envisaged the best option in terms of environmental protection. Strategic environmental assessment has only begun to be implemented in the last two years. Moreover, the Environmental Protection Act does not require strategic environmental assessment of spatial plans of cities and municipalities (nor the SEA screening), but only for spatial plans of counties and the City of Zagreb (§§ 56 and 57 of the Environmental Protection Act³⁰).

C. Product labelling

Ministry of environmental and nature protection is competent for assigning the label “environmentally friendly”. Long-distance transportation is not specifically mentioned in the Criteria for assigning a label “environmentally friendly” to products (for which criteria have been set³¹).

³⁰ Official Gazette, no. 110/07.

³¹ <http://www.mzoip.hr/doc/POSEBNAMJERILA.pdf>