

## **ANNEX 2**

### **SPECIFIC PROJECT RESULT 7: Regional approach for implementing passenger border controls on moving trains**

**(REVISED FINAL)**



Support for implementing measures for the South East Europe Core  
Regional Transport Network Multi Annual Plan 2008-2012  
EuropeAid/125783/C/SER/MULTI



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# **REGIONAL APPROACH FOR IMPLEMENTING PASSENGER BORDER CONTROLS ON MOVING TRAINS (REVISED FINAL)**

## **Specific Project Result 7**

**July 2009**

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## **REGIONAL APPROACH FOR IMPLEMENTING PASSENGER BORDER CONTROLS**

### **ON MOVING TRAINS**

#### **Specific Project Result No. 7 (Final Revised Version)**

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## GLOSSARY OF TERMS <sup>1</sup>

|                                              |                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Border Control</b>                        | Means application of all national regulations of the two States which are applied during the crossing of the border by persons and their luggage across, the import, export and transit of goods.                                                                                                                                                                     |
| <b>Border Station</b>                        | Means the railway station which is identified by the Agreement as the station at which the border control and procedures take place. It is situated in the ZONE.                                                                                                                                                                                                      |
| <b>Contracting Parties</b>                   | Means the two governments, signatories of the Agreement.                                                                                                                                                                                                                                                                                                              |
| <b>Goods</b>                                 | Means all kinds of articles, luggage, other consignments and means of transport carried over the state border.                                                                                                                                                                                                                                                        |
| <b>Infrastructure Manager</b>                | Shall mean any body or undertaking responsible in particular for establishing and maintaining railway infrastructure. This may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings (Art. 3 of 91/440/EEC).   |
| <b>Joint Border Station</b>                  | Means the border station where joint border control and procedures and traffic exchange are carried out.                                                                                                                                                                                                                                                              |
| <b>Neighbouring State Official Personnel</b> | Means the State of the other Contracting Party.<br>Means all personnel of the respective competent state border authorities of the Contracting Parties who perform the border control and procedures on their own territory and the territory of the neighbouring state and on moving trains in the ZONE.                                                             |
| <b>Railway transport</b>                     | Means an activity involving the carriage of passengers and goods and/or hauling the train.                                                                                                                                                                                                                                                                            |
| <b>Railway undertaking</b>                   | Shall mean any public or private organisation licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings, which provide traction only. (Art. 3 of 91/440/EEC). |
| <b>Railway Personnel</b>                     | Means personnel who are employed by a railway undertaking and/or an infrastructure manager and who perform the border railway traffic between both States.                                                                                                                                                                                                            |
| <b>Zone</b>                                  | Means the part of the territory of one state or of both states, on which the official and the railway personnel of both states are authorised to perform border control and procedures.                                                                                                                                                                               |

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<sup>1</sup> Note: This glossary of terms shall facilitate the reading of the Agreements which form the basis for the border control on moving trains.

## 1. Objective

Propose a draft proposal for implementing passenger border control on moving trains at all SEETO border crossings.

## 2. Introduction

Border controls of passengers on moving trains have always been one of the “hot issues” with the SEETO Participants. However, there seems to be some progress, in particular, when it comes to trains between Slovenia and Croatia, Bulgaria and Serbia on the most important Corridor X.

With his previous work on the border crossing between Bulgaria and Serbia, the Consultant has already contributed to solving basic problems for passenger controls on moving trains, which are incorporated in the BCA between Serbia and Bulgaria, signed in 2005.

For this reason, the Consultant proposes to use again the BCA between Bulgaria and Serbia as a practical example. This best practice was a compromise from 3 successful passenger border controls on moving trains with a very long tradition:

- Border control on moving trains between Switzerland and Germany (before Schengen in 2009);
- Border control on moving trains between Austria and Germany (before Schengen in 1995);
- Border control between Hungary and Austria (before Schengen in 2008).

In all likelihood, the result for future rules on border control on moving trains with the SEETO Participants will be the following:

- Inclusion of the respective articles into the bilateral BCAs;
- Proposal of a specific border agreement between border police of neighbouring countries (BPA).

To develop a practical agreement it is necessary that the Consultant enters into close contact with border police and customs who supplied him with many practical suggestions.

The challenge is rather with border police, due to the use of arms in foreign territory and even of taking suspects into custody on foreign territory.

The Consultant shall therefore propose a regional approach based on the above-mentioned best practices using them, as a “proof” that it is possible.

The results and recommendations will be presented in RWR Workshop 4 in September 2009.

### 3. Analysis of the present situation

The Tables below shows the present status of border controls of passengers on moving trains.

**Table 1. Corridor X**

| Type of control                     | Criteria                                              | Corridor X |         |         |         | Corridor Xb | Corridor Xc        |
|-------------------------------------|-------------------------------------------------------|------------|---------|---------|---------|-------------|--------------------|
|                                     |                                                       | SLO-CRO    | CRO-SER | SER-MK  | MK-GRE  | HU-SER      | SER-BUL            |
| Type 1<br>Checks on standing trains | National authorities only on national territory       | SLO        | SER     | SER, MK | MK, GRE | SER, HU     |                    |
|                                     | Joint checking on national and neighbouring territory |            |         |         |         |             | SER (ACTUAL)       |
| Type 2<br>Checks on moving trains   | National authorities only on national territory       | CRO        | CRO     |         |         |             |                    |
|                                     | Joint checking on national and neighbouring territory |            |         |         |         |             | SER-BUL (POSSIBLE) |

**Table 2. Corridor V**

| Type                                | Criteria                                              | Corridor Vb | Corridor Vc |          |          |
|-------------------------------------|-------------------------------------------------------|-------------|-------------|----------|----------|
|                                     |                                                       | HU-CRO      | HU-CRO      | CRO-BIH  | BIH-CRO  |
| Type 1<br>Checks on standing trains | National authorities only on national territory       |             | HU, CRO     | CRO, BIH | BIH, CRO |
|                                     | Joint checking on national and neighbouring territory |             |             |          |          |
| Type 2<br>Checks on moving trains   | National authorities only on national territory       | CRO, HU     |             |          |          |
|                                     | Joint checking on national and neighbouring territory |             |             |          |          |

**Table 3. Routes 2, 4 and 10**

| Type                                | Criteria                                              | Route 2             | Route 4 |                   | Route 10                         |                                 |  |
|-------------------------------------|-------------------------------------------------------|---------------------|---------|-------------------|----------------------------------|---------------------------------|--|
|                                     |                                                       | MNE-ALB             | RO-SER  | SER-MNE           | SER-KOSOVO (under UNSCR 1244/99) | KOSOVO (under UNSCR 1244/99)-MK |  |
| Type 1<br>Checks on standing trains | National authorities only on national territory       | NO PASSENGER TRAINS | RO, SER | SER, MNE (ACTUAL) | NO CONTROL AT ALL                | KOS, MK                         |  |
|                                     | Joint checking on national and neighbouring territory |                     |         |                   |                                  |                                 |  |
| Type 2<br>Checks on moving trains   | National authorities only on national territory       |                     |         |                   |                                  |                                 |  |
|                                     | Joint checking on national and neighbouring territory |                     |         | SER-MNE (NEW BCA) |                                  |                                 |  |

The present analysis shows the following results:

- There already exist controls on moving trains
- Most of the controls on moving trains are carried out by the national border authorities on their national territory with two exceptions:
  - Bulgarian – Serbian border on Corridor X
  - Hungarian – Croatian border on Corridor Vb
- Most of the border controls are carried out on standing trains
- There is no harmonised border control system for passengers on moving train on the corridors. So far it is a patch work approach

#### 4. Proposal

Based on the practical experience at the Bulgarian – Serbian border at the joint station Dimitrovgrad, the Consultant proposes the following actions:

1. Inclusion of the respective articles concerning border control on moving trains in the framework border crossing agreement as well as bilateral agreements (BCAs).
2. Inclusion of the respective articles for border authorities executing their activities on territories of a neighbouring state in an agreement between border police of neighbouring countries (BPA).

The framework agreement and the respective bilateral agreements (BCAs) has to regulate:

- Border dispatching of border authorities on territories of the neighbouring state
- Execution of activities of border authorities in a train that is still moving on the territory of the neighbouring state

For this reason, it is necessary to include the following articles in the framework BCA and the respective bilateral agreements and to propose a **border police agreement (BPA)** between the neighbouring states.

**Necessary articles to be included in the framework BCA (see Attachment 1 below):**

##### *“Article 5 (BCA)*

##### ***Border Dispatching on Board of Passenger Trains***

1. *Border dispatching shall be jointly carried out either in trains running in the Zone or stopping in the border stations by the personnel of the border authorities of the Contracting Parties.*
2. *External security at the border stations shall be ensured by the respective border authorities of the domestic state.”*

In order to fully execute their duties, the border police needs a legal basis in the BCA, an international agreement between sovereign states, which entitles them to act on the territory of the neighbouring state. At the same time, the international agreement has to establish “limitations” of “foreign” police actions.

The limitations are two-fold:

- 1) Geographical limitation
- 2) Limitations on the actions permitted on "foreign" territory

In order to geographically limit the activities of border authorities on the territory of the neighbouring state it is necessary that the **principle of the Zone** will be introduced.

The **Zone** can be considered as a "free" zone in which border authorities (as well as railway enterprises) are entitled to carry out their functions irrespective on which national territory they are.

### ***"Article 3 (BCA)***

#### ***The Zone***

1. *The Zone is defined for each border crossing point.*
2. *The Zone comprises:*
  - a) *the premises where the border authorities of the neighbouring state can carry out their functions, the tracks and lines, freight and passenger stations, warehouses, waiting facilities for passengers, other buildings and facilities,*
  - b) ***the trains moving between the defined sections or stations during which border authorities carry out their duties.***
3. *The general provisions, objectives and principles enumerated in Article 2 are valid in the Zone*
4. *The following service principles are valid in the Zone:*
  - *the single window principle for freight customs*
  - *the one-stop-shop for the use of rail infrastructure in the Zone*
  - ***passenger control on moving trains***
5. *In the Agreement, the Zone comprises*
  - a) *the border stations ..... and .....,*
  - b) *the border sections between the two border stations,*
  - c) ***the sections between.....and.....for passenger control on moving trains***
  - d) *the sections between.....and.....for moving freight trains*
6. *The joint border stations shall be .....*
  -

- 
- 

7. *Each border authority of the contracting party is free to extend the Zone for their own purposes in agreement with the general provisions, objectives and principles stipulated in **Article 2**, by concluding subsequent bilateral agreements.*

As can be seen from the bold letters, it is necessary to include various stipulations in the concept of the **Zone** in order to satisfy the requirements of border controls on moving trains.

**The Zone for border controls on moving trains may differ from the Zone in which the railway activities for rail border dispatching are undertaken, if the time on the rail section is not sufficient to carry out the controls.**

The limitations on the actions on a moving train on “foreign” territory require further rules that are stated in Article 4 BCA.

Article 4 is the result of many negotiations with the border police and customs authorities, in particular between Serbia and Bulgaria with slight modifications resulting from the meetings held with the representatives of the SEETO Participants.

#### ***“Article 4 (BCA)***

##### ***Border Dispatching in the Zone***

- 1 *In the Zone, the laws and regulations of the neighbouring state are valid concerning the border crossing of persons, of goods (import, export and transit) with the following principles:*
  - *Persons and goods are treated with the same procedures and with the same legal consequences as if they were in the territory of the neighbouring state.*
  - *Actions such as police, customs or other interventions and the putting into custody of persons and goods have to be agreed in subsequent agreements between the respective authorities of the Contracting Parties.*
- 2 ***In such subsequent agreements, the border authorities can also transfer their border dispatching powers to each other in order to achieve the objectives and principles stipulated in Article 2.***
- 3 *As long as the border authorities of the neighbouring state have not transferred border dispatching powers to each other, the border authorities of the domestic state carry out the procedures before the border authorities of the neighbouring state carry out their procedures.*

*The same shall be valid if the official personnel of the exit state refuses performance of border control and procedures*

- 4 *Once the border dispatching procedure of the neighbouring state has started, the authorities of the domestic state have terminated their functions unless they have judicial reasons to intervene but only with agreement of the respective authorities of the neighbouring state.*
- 5 *The rights concerning political asylum and the human rights of the domestic state remain valid.*
- 6 *The personnel of the border authorities of the neighbouring state carrying out their functions shall be liable solely to their own authorities.*
- 7 *The personnel of the border authorities of the neighbouring state shall be entitled of performing arrests in the territory of the domestic state. Persons arrested shall be, without any delay, handed over to the respective authorities of the domestic state for clarification of the action. The domestic state shall then notify immediately the personnel of the respective border authority of the neighbouring state of its decision.*
- 8 *In order to facilitate a faster border control, the official personnel may negotiate the ceding of its turn of discharging duties, following the stipulations of **Article 4 Paragraph 7**. In such case the personnel of the respective authority of the entry state shall have the right to arrest a person or confiscate commodities, only when the border dispatching has been terminated. If considered appropriate by the personnel of the respective authority of the entry state, the personnel of the exit state shall be obliged to hand over the persons or the goods to the respective personnel the exit state, before the termination of the border dispatching.*
- 9 *The personnel of the Contracting Parties shall co-operate with each other.*
- 10 *The official personnel of the neighbouring state shall have the right of free transfer of financial resources and the commodities detained and confiscated in the territory of the domestic state Zone.*
- 11 *Commodities detained and confiscated during the checks performed at the exit and returned to the neighbouring country by its official personnel, shall not be subject of border inspection by the personnel of the domestic state."*

Paragraph 2 of Article 4 BCA (in bold letters) requires, *expressis verbis*, a **subsequent agreement**, the so-called border police agreement (BPA) which can be found in **Attachment 2 below**. It regulates in detail the following actions:

1. Principle agreement that border police of the contracting parties are allowed to execute their national functions in the Zone
2. Agreement that they are allowed to transport in the Zone persons that are under the custody.
3. Persecution on the territory of the neighbouring country
4. Use of arms

Such an agreement is of paramount importance in order to render smooth the border control on moving trains.

## 5. Special case of night trains

**Joint border control on night trains would require an agreement between the railway undertaking and the respective border police authorities based on the BCA and BPA.**

It would mostly concern uses of couchettes and sleeping cars. The attendant would be allowed to collect the passports and present them to the respective border police. The border police would control them and would only wake up the person when in doubt.

Concerning **customs**, the situation is more complex.

Customs would have to carry out controls in an extended zone while passengers are not yet sleeping, that is to say before 22 hours or after 5.00 hours. Such measures are not new and have been used for a long time in the Western European night traffic when Schengen had not been introduced. According to the experiences from that time, it can be said that no major problems occurred or major delays happened. On the contrary for such night trains it was even possible that checks of the customs could be carried out on their own territory only.

## 6. Conclusion

With the application of such articles in the BCA and the subsequent BPA agreements, it would not be necessary in the future to stop the passenger trains simply for border control reasons since all formalities could be done on the moving trains.

This activity would be very customer oriented and allow the railway undertakings to have the following competitive advantages with the respect to their major competitors bus and air:

- o No necessity to have controls in standing trains as it is the case with the major competitor bus.
- o No necessity to have controls before boarding and leaving the trains as it is the case for air.

### **Implementing activities by the SEETO project:**

1. The above mentioned paragraphs have been included into the border crossing agreement (BCA) **(see Attachment 1 below)**.
2. In the realm of the discussion of the BCA, at all SEETO Participants, the Ministry of Transport and the representatives from the Ministry competent for police and customs participated.

3. The police border agreement has been presented to all SEETO Participants in their respective Ministries.
4. So far, suggestions from the SEETO Participants: Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Croatia, Serbia, Kosovo under (UNSCR 1244/99) have been included.
5. The latest version of the BPA with the respective paragraphs was discussed in the 2<sup>nd</sup> railway workshop in Zagreb on 13.5.2009

### **Implementing activities by the SEETO Participants:**

Two approaches may be chosen:

1. Forming official joint working groups on a bi-lateral basis to discuss the acceptance of the proposed two agreements and, if required, modify them.
2. Forming official multi-lateral working groups per corridor to discuss the acceptance of the proposed two agreements and, if required, modify them.

From a customer (passenger)-oriented point of view , the latter approach would be more beneficial, at least for the SEETO Participants sharing the Corridor X between Villach and Sofia and Budapest – Thessalonika, which are the two major axis for international passenger traffic with relatively superior-quality trains (EC).

The SEETO Secretariat might even take over some coordinating functions.

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## References

1. Border-crossing Agreement between Austria and Hungary 1992:

„Abkommen zwischen der Republik Österreich und der Republik Ungarn über die Grenzabfertigung im Eisenbahnverkehr“

(NR: GP XVIII RV 236 VV S. 44.BR: AB 4132 S. 546.)

„Das Abkommen tritt gemäß seinem Art. 23 Abs. 2 mit 1. Mai 1992 in Kraft.“

2. Border Police Agreement between Germany and Austria 1998:

„Vertrag zwischen der Republik Österreich und der Bundesrepublik Deutschland über den Durchgangsverkehr von Exekutivorganen und die Durchbeförderung von Häftlingen“

(NR: GP XIX RV 47 AB 284 S. 47. BR: AB 5052 S. 603.)

„Der Vertrag tritt gemäß seinem Art. 23 Abs. 2 mit 1. Mai 1998 in Kraft.“

3. Agreement between the Council of Ministers of Serbia and Montenegro and the Government of the Republic of Bulgaria on border control and Procedure for Railway traffic, signed on 25.4.2005.

4. AGREEMENT between Government of Montenegro and Government of the Republic of Serbia about Border Crossing Control in Railway Traffic, signed on 9.3.2009.

**Attachment 1**

**Final Version (Version 9- 22.07.2009)**

**FRAMEWORK AGREEMENT**

**between**

**the Government of**

**and**

**the Government of**

.....

**On**

**Border Dispatching for Rail Transport in the SEETO Region and with the neighbouring countries of the European Union**

The Government of the Republic of ..... and the Republic of ....., (hereinafter referred to as Contracting Parties), having the intention to establish a Framework Agreement setting out the principles of an open access border crossing among themselves and with the neighbouring member states of the European Union by adapting their existing Border Crossing Agreements to the new market requirements with the aim of increasing the competitiveness of the rail services in the region, have adopted the following Framework Agreement which shall be the basis, in structure and contents of all bilateral border crossing agreements, hereinafter called "Agreement" or "Agreements":

**Article 1****Definitions**

For the purpose of the Agreements the following definitions are applied:

1. **"Border dispatching"** the implementation of all rules and regulations of the Contracting Parties and the railway bodies which are applied for the border crossing of persons as well as the import, export and transit of goods;
2. **"Border Network Statement"** means the statement which sets out in detail the general rules, deadlines, procedures and criteria concerning the charging and capacity allocation schemes of the infrastructure in the **ZONE**. It shall also contain such other information as is

required to enable application for infrastructure capacity. It may be part of the Network Statements of the infrastructure managers of the Contracting Parties

3. **“Border Railway Line”** border line between the infrastructure networks of the Contracting Parties
4. **“Border Section”** the part of the network between the border station and the border railway line of the Contracting Parties.
5. **“Border Station”** a railway station in the **ZONE**,
6. **“Domestic State”** the territory of the State of the Contracting Party, where the border dispatching shall be performed by the official personnel of the other Contracting party.
7. **“Goods”** parcels, luggage, other consignments and the means of transport.
8. **“Infrastructure Manager”** any body or undertaking responsible in particular for establishing and maintaining railway infrastructure. This may also include the management of infrastructure control and safety systems. The functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings. (Art. 3 of 91/440/EEC)
9. **“International Rail Service”** any freight and passenger transport service where the train crosses the border of a Contracting Parties; the train may be joined and/or split and the different sections may have different origins and destinations, provided that all wagons or cars cross the border”;
10. **“Joint Border Station”** the border station in the **ZONE** where joint border dispatching is carried out
11. **“Neighbouring State”** the territory of the State of the other Contracting Party."
12. **“Network”** means the entire railway infrastructure owned and/or managed by an infrastructure manager; (Art. 3 of 2001/14/EC)
13. **“Official Personnel”** all personnel who perform, on behalf of the competent state border authorities of the Contracting Parties, the obligatory border dispatching on the territory of the domestic and neighbouring states as well as on the moving trains.
14. **“One-stop-shop (OSS)”** the joint network statement of the infrastructure managers of the Contracting Parties, who manage the infrastructure in the **ZONE**;
15. **“Railway Personnel”** all personnel who participate, on behalf of a railway undertaking or a rail infrastructure manager, in the rail border dispatching.
16. **“Railway undertaking”** any public or private organisation licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure traction; this also includes undertakings, which provide traction only. (Art. 3 of 91/440/EEC)

17. **"Single Window"** all customs services carried out by the customs authorities of the Contracting Parties at one and the same location in the **ZONE** in order to allow to lodge customs documents;
18. **"Zone"** the part of the territory of the Domestic State, on which the official personnel of the neighbouring state is authorised to perform border dispatching.

## Article 2

### General Provisions, Objectives and Principles

1. It is the objective of the Agreement to simplify the border dispatching and reduce the waiting times at the Border Crossing Points by:
  - carrying out border dispatching activities of one state on the territory of the other state
  - establishing the rules for the border dispatching of one state on trains that are moving on the territory of the other state
  - by determining;
    - in which stations of the domestic state the neighbouring state can establish border dispatching points
    - in which Zones the border authorities of the neighbouring state can carry out border dispatching in stations and on the trains in both directions on the territory of the domestic state
    - the Zones
2. The Contracting Parties guarantee the:
  - open access for rail undertakings which wish to enter into the Zone with the aim of crossing the border by means of a simplified procedure of mutual acceptance of licences, safety certificates, traction, rolling stock and driving licences for locomotive drivers,
  - non-discrimination and fair competition in respect to the open access
  - acceptance of International Conventions (e.g. COTIF - CIM -/SMGS) as freight and passenger documents,
  - acceptance of other internationally accepted transport documents
  - freedom of rail undertakings to organise their own rail border dispatching procedures by making agreements with the respective border authorities

- 
- freedom of the border authorities to conclude subsequent bilateral agreements with each other, in particular,
  - right of the border police of the neighbouring state to carry out controls on the territory of the domestic state,
  - right of the customs authorities to establish a single window service in the Zone,
  - right of phyto-sanitary, sanitary and health and any other authority appointed by either contracting party to carry out controls on the territory of the domestic state and to mutually accept the respective certificates and controls.
3. The Contracting Parties undertake steps to transfer border dispatching to hinterland terminals as far as the laws and regulations render it possible. Such border dispatching will be accepted by the same border authority at the border.
  4. The Contracting Parties agree to publish on the website all documents and procedures required by the border authorities and the infrastructure managers for a smooth border crossing.
  5. The Contracting Parties agree that their rail infrastructure managers establish a joint network statement containing ensuring:
    - non-discriminatory network admission procedures for the rail undertakings to enter the Zone,
    - one-stop-shop procedures to render easy purchasing of infrastructure services possible,
    - path allocation procedures
    - procedures on infrastructure fee and invoicing that are non-discriminatory, ensure fair competition and render easy payments possible by the rail undertakings.

### **Article 3**

#### **The Zone**

4. The Zone is defined for each border crossing point.
5. The Zone comprises:
  - a) the premises where the border authorities of the neighbouring state can carry out their functions, the tracks and lines, freight and passenger stations, warehouses, waiting facilities for passengers, other buildings and facilities,

- b) the trains moving between the defined sections or stations during which border authorities carry out their duties.
6. The general provisions, objectives and principles enumerated in Article 2 are valid in the Zone
8. The following service principles are valid in the Zone:
- the single window principle for freight customs
  - the one-stop-shop for the use of rail infrastructure in the Zone
  - passenger control on moving trains
9. In the Agreement, the Zone comprises
- a) the border stations ..... and .....,
  - b) the border sections between the two border stations,
  - c) the sections between.....and.....for passenger control on moving trains
  - d) the sections between.....and.....for moving freight trains
10. The joint border stations shall be .....
- - 
  -
11. Each border authority of the contracting party is free to extend the Zone for their own purposes in agreement with the general provisions, objectives and principles stipulated in **Article 2**, by concluding subsequent bilateral agreements.

#### **Article 4**

##### **Border Dispatching in the Zone**

1. In the Zone, the laws and regulations of the neighbouring state are valid concerning the border crossing of persons, of goods (import, export and transit) with the following principles:
- Persons and goods are treated with the same procedures and with the same legal consequences as if they were in the territory of the neighbouring state.

- Actions such as police, customs or other interventions and the putting into custody of persons and goods have to be agreed in subsequent agreements between the respective authorities of the Contracting Parties.
2. In such subsequent agreements, the border authorities can also transfer their border dispatching powers to each other in order to achieve the objectives and principles stipulated in **Article 2**.
  3. As long as the border authorities of the neighbouring state have not transferred border dispatching powers to each other, the border authorities of the domestic state carry out the procedures before the border authorities of the neighbouring state carry out their procedures. The same shall be valid if the official personnel of the exit state refuses performance of border control and procedures
  4. Once the border dispatching procedure of the neighbouring state has started, the authorities of the domestic state have terminated their functions unless they have judicial reasons to intervene but only with agreement of the respective authorities of the neighbouring state.
  5. The rights concerning political asylum and the human rights of the domestic state remain valid.
  6. The personnel of the border authorities of the neighbouring state carrying out their functions shall be liable solely to their own authorities.
  7. The personnel of the border authorities of the neighbouring state shall be entitled of performing arrests in the territory of the domestic state. Persons arrested shall be, without any delay, handed over to the respective authorities of the domestic state for clarification of the action. The domestic state shall then notify immediately the personnel of the respective border authority of the neighbouring state of its decision.
  8. In order to facilitate a faster border control, the official personnel may negotiate the ceding of its turn of discharging duties, following the stipulations of **Article 4 Paragraph 7**. In such case the personnel of the respective authority of the entry state shall have the right to arrest a person or confiscate commodities, only when the border dispatching has been terminated. If considered appropriate by the personnel of the respective authority of the entry state, the personnel of the exit state shall be obliged to hand over the persons or the

goods to the respective personnel the exit state, before the termination of the border dispatching.

9. The personnel of the Contracting Parties shall co-operate with each other.
10. The official personnel of the neighbouring state shall have the right of free transfer of financial resources and the commodities detained and confiscated in the territory of the domestic state Zone.
11. Commodities detained and confiscated during the checks performed at the exit and returned to the neighbouring country by its official personnel, shall not be subject of border inspection by the personnel of the domestic state.

### **Article 5**

#### **Border Dispatching on Board of Passenger Trains**

1. Border dispatching shall be jointly carried out either in trains running in the Zone or stopping in the border stations by the personnel of the border authorities of the Contracting Parties.
2. External security at the border stations shall be ensured by the respective border authorities of the domestic state.

### **Article 6**

#### **Border Dispatching on Freight Trains**

1. Border dispatching shall be performed in the Zone by the border authorities of the Contracting Parties.
2. External security in the Zone shall be ensured by the respective border authorities of the domestic state.
3. Any person found by the border authorities of the contracting parities in illegal border crossing, on board of freight trains, shall be subject to the laws of the state on the territory of which the person was found.

### **Article 7**

#### **Exchange of Information**

While on duty, the personnel may exchange only non-classified information. Information exchange shall be carried out on the basis of subsequent agreements concluded between the respective border authorities of the Contracting Parties.

## **Article 8**

### **Status of the Official Personnel**

The personnel of the border authorities have, while on duty, free access into the Zone of the neighbouring state, in uniforms and armed. The personnel of the neighbouring state receive the same protection and support as the personnel of the domestic state.

For its personnel, the laws and regulations of the neighbouring state are valid in the Zone.

Its personnel need special identification cards to act in the Zone. The issuing procedure is defined in **Article 10**.

If one of its personnel is killed or injured, loses goods which he carries with him (arms, uniforms etc.), while on duty, the laws and regulations of the neighbouring state apply.

Further details concerning duration, prolongation, withdrawal, questions on liability and insurance as well as other issues for the personnel are regulated in subsequent agreements between the respective border authorities.

Criminal acts or violations directed against the official or railway personnel of the neighbouring state on duty shall be treated in accordance with the legislation of the domestic state, under the same conditions as if occurred to the personnel of the domestic state. Further details shall be concluded in subsequent agreements.

7. Based upon an inquiry for bearing the responsibility for the activities performed by the personnel of the neighbouring state in the Zone, a subsequent Agreement shall detail the legal assistance. Upon such inquiries the official personnel, citizens of the domestic state and the neighbouring state, shall be entitled to equal rights.

8. The official and the railway personnel of the neighbouring state on duty in the Zone must wear official uniform or visible official insignia.

## Article 9

### Border Dispatching Facilities

1. On trains, the rail undertakings offer reserved compartments, free of charge, for the official personnel on duty.
2. Concerning the space and rooms in the Zone assigned to the border authorities of the neighbouring state, the border authorities conclude the respective agreements detailing the rent, compensation for services rendered as well as issue of liability for damage.
3. Space and rooms are to be identified by inscription and the national coat-of-arms. The inscriptions on office premises shall be written in the official languages of the Contracting Parties and any other languages, with the official language of the neighbouring state inscribed first.
4. No customs formalities for the personnel on duty are required. Material, including motor vehicles of the border authorities and of its personnel used for the execution of the duties is not subject to customs declaration and excise duties or other duties.
5. The border authorities are free to conclude the respective agreements concerning the issues mentioned in this Article in accordance with **Article 2** of this Agreement.

## Article 10

### Identification Card for the official and railway personnel

1. In accordance with **Article 8, Paragraph 3**, official identification cards shall be issued by the competent authorities of the Contracting Parties for the length of one year. Its term of validity and must be legalised by the competent authorities of both Contracting Parties. The model is shown in the **Attachment No.1**.
2. The issuing authority shall be obliged to immediately invalidate the identification card if the respective person does not carry out any longer his duties in the Zone.
3. The issuing authority shall immediately notify the competent authority of the neighbouring state.
4. In order to facilitate the rail dispatching operations, the railway personnel without identification card must be registered in the Staff List. The model is shown in the **Attachment No. 2**

The persons mentioned on the Staff List shall have the right to cross the state border inside the ZONE while on duty and to stay in the territory of the state of the other Contracting Party during the performance of their duties. All the persons, whose names are on the Staff List, must possess identification cards with passport photos.

### **Article 11**

#### **Communication Devices**

The domestic state shall grant the permission of installing communication devices for the border authorities of the neighbouring state on its territory. The installation, maintenance and operation of communication devices shall be subject of supplementary agreements between the respective institutions.

### **Article 12**

#### **Language**

The Contracting Parties guarantee that the border authorities are free to choose which language to use, in subsequent agreements.

### **Article 13**

#### **Management Funds of Railway Personnel**

The railway personnel shall have the right to carry the amounts collected for the rail services across the border in both directions.

### **Article 14**

#### **Border Crossing Commission**

The Contracting Parties agree to establish an independent commission - Border Crossing Commission - the objectives of which are to ensure:

- non-discriminatory access for rail undertakings into the Zone
- an environment fostering fair competition
- arbitration between infrastructure managers and railway undertakings concerning the border network statement
- arbitration between railway undertakings using rail border facilities
- solutions of problems arising from the cooperation of the border authorities in the Zone

- improvement of border services
- solution of any other differences between the Contracting Parties resulting from the present Agreement

The activities of the Border Crossing Commission do not exclude any diplomatic intervention or solution between the Contracting Partners.

The Border Crossing Commission shall include representatives of the border authorities. They are free to invite to their meetings rail undertakings and infrastructure managers that are involved in the border dispatching.

The representatives of the Rail Regulators of the Contracting Partners shall be permanent members of the Border Crossing Commission.

The Border Crossing Commission shall meet at least once a year

The rules and regulations of the work of the Border Crossing Commission shall be decided at its first meeting.

## **Article 15**

### **Validity**

1. This Agreement is concluded for an indefinite period. Any Contracting Party has the right to terminate it.
2. This Agreement shall be terminated 6 (six) months after the receipt of the diplomatic note by which the other Contracting Party notifies its intention to terminate the Agreement.
3. With the Agreement entering into force, the following Agreement(s)
  - .....shall cease its (their) validity.

## **Article 16**

### **Modification of the Agreement**

1. The Agreement may be subject to modification upon receipt of a formal request by one of the contracting parties.
2. Within **XX** days upon receipt, the contracting parties shall convene for the first time to deal with the request.
3. The result of the negotiations shall be reported to the Governments which shall decide upon the modification proposal.

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**Article 17**  
**Concluding Provisions**

The Agreement shall be subject to ratification and shall enter into force .....days after the Contracting Parties have informed each other by diplomatic notes that the ratification has been performed in compliance with the provisions of their national legislation.

All subsequent agreements mentioned in the present Agreement must be signed not later than **XX** days after the present Agreement has come into power.

IN WITNESS WHEREOF, the undersigned, duly authorised by their Governments, have signed this Agreement.

Signed in..... on ..... 200X in two (2) original copies in ..... and ..... languages, all texts being equally authentic.

**FOR THE GOVERNMENT OF .....**      **FOR THE GOVERNMENT OF .....**

## Attachment 2

### **Final Version (Version 6- 22.07.2009)**

#### **Proposal for an Agreement between**

**the (Ministry of the Interior or competent border police authority)**

**and**

**the (Ministry of the Interior or competent border police authority)**

**concerning**

**the mutual acceptance of border police fulfilling their functions on the neighbouring state's territory**

#### **Preamble**

The present agreement is a subsequent agreement to the AGREEMENT between the Government of..... and the Government of..... on Border Dispatching for Rail Transport, hereinafter the **Border Agreement**.

#### **Article 1**

Members of the border police of the contracting parties are allowed to execute their national functions in the Zone, indicated in Article 3.

#### **Article 2**

The border police of the contracting parties are allowed, to transport in the Zone, defined in Article 3 persons that are under their custody as long as such persons are not:

- 2.1 nationals of the neighbouring state or there is a likelihood that they could be nationals of the neighbouring state or there might be the likelihood that they might become nationals of the neighbouring state
- 2.2 persons that have committed a crime under the penal code of the state but their action is considered a political action or could be seen in this context as such a political action and are

therefore persecuted whereby attempted crimes or executed crimes against humanity, murder, or the participation at such actions are not considered as such penal actions.

### **Article 3 The Zone:**

- 3.1 The Zone with in which the border police of the contracting parties can carry out their functions is defined in the **Border Agreement**.
- 3.2 For the purpose of this Agreement, the zone comprises
- a) the border stations ..... and .....,
  - b) the border sections between the two border stations,
  - c) the sections between.....and.....for passenger control on moving trains
  - d) the sections between.....and.....for moving freight trains

### **Article 4 Possessions of the persons under custody**

- 4.1 In carrying out the functions according to Articles 1 and 2, the member of the border police is allowed to carry with him the possessions of the person that has been put under the custody.
- 4.2 The possessions taken into custody by the respective border police shall not have to undergo the formal customs procedures.

### **Article 5 Persecution on the territory of the neighbouring state**

- 5.1 Whenever the border police of one state takes into custody or persecutes one person on the territory of the neighbouring state, they have to immediately inform the border police of the neighbouring state indicating, if possible, the data of the person, in particular the nationality and the reason for the persecution or for taking person into custody.
- 5.2 The border police on the territory of which the action is taken by the neighbouring border police will immediately inform border police of the neighbouring state if Article 2 applies.
- 5.3 Contracting parties will officially inform each other about the competent authorities to be contacted.
- 5.4 For reasons of danger or medical emergency, the border police of both states are allowed to leave the Zone.
- 5.5 The border police in action will try to immediately inform the competent authority of such a situation.

5.6 If the number of border police acting in the neighbouring state territory is more than one person, the competent authority of the territory will be informed immediately according to Article 5.2

### **Article 6 Uniforms, Identity Cards, Use of Arms**

6.1 The border police of the respective state are allowed to wear their uniforms while carrying out their duties on the neighbouring state territory.

6.2 The members of the border police have to carry the respective identity documents with them.

6.3 The members of the border police are also allowed to use their own vehicles, arms, munitions, communication material and dogs.

6.4 The members of the border police acting on the neighbouring state territory are not allowed to carry out any other action that is not directly linked with the persecution of and the taking into custody of the person.

6.5 The members of the border police are only allowed to use their weapons in case of self defence. They can also use the weapon if the person under persecution or under custody is armed or tries to flee.

### **Article 7 Transport of persons under custody**

7.1 The transport of persons under custody by rail, by bus or other public transport is only allowed if the respective operator agrees to it.

7.2 In case of danger, it is not allowed to transport the person under custody in means of public transport.

### **Article 8 Escape of persons under custody**

8.1 Whenever the person under custody succeeds in escaping, the respective border police are allowed to persecute him.

8.2 The border police must immediately inform the competent authority of the respective state.

8.3 The persecution by the member of the border police on the neighbouring state territory ends at the moment when the border police of the state where the persecution is taking place, takes over the persecution.

8.4.1 If the person has succeeded in evading it is only possible for the respective state to officially ask the neighbouring state to continue the search for the person and eventually bring him back according to the respective bilateral agreements on mutual assistance in criminal matters in force.

8.4.2 The contracting parties agree to deliver the person under custody that has succeeded in evading to the competent authorities of the neighbouring state.

### **Article 9 Limits of actions**

9.1 Each of the contracting parties is entitled to limit the actions of the border police of the other state for reasons of emergency, danger of the public security and in cases of important international tensions. In this case, the neighbouring state has to be informed immediately.

9.2 If the situation described in 9.1 only takes place in the Zone, such limitations can be carried out in the Zone. The respective authority has to immediately inform the neighbouring state.

### **Article 10 Penal action**

10.1 Penal action undertaken against the border police of the neighbouring state territory shall be persecuted according to the force of the respective state.

1.2 In case of any penal action happening in the respective national territory of the two states, the law of the respective state shall be applied.

### **Article 11 Arbitration**

11.1 Any differences in the interpretation of the present agreement shall be settled by the governments of the contracting parties.

11.2 If the two governments cannot reach such a settlement, they can select a bilateral or international arbitration committee to settle the differences.

11.3 The decision of such a committee shall be binding.

11.4 In case of an application of the bilateral arbitration the contracting parties agree to nominate as chairman a trusted member of a third state.

11.5 The arbitration committee has to be nominated within two months as soon as the two governments have formally agreed that they cannot settle the difference and shall ask for arbitration.

11.6 If the contracting parties do not agree to appoint an arbitration committee, each state has the right to appeal to the competent European Court for the settlement of the difference

11.7 If the president of the competent European Court is a citizen of one of the contracting parties, the vice president shall be the person to decide.

11.8 The decision of the European Court shall be binding.

11.9 The costs of the arbitration shall be borne by each contracting party at the same proposition.

**Article 12 Border Police Commission**

12.1 The Contracting Parties agree to establish an independent commission – Border Police Commission - the objectives of which are to ensure:

- the solution of problems arising from the cooperation of the border authorities in the Zone,
- the improvement of border police cooperation and border police services,
- the solution of any other differences between the Contracting Parties resulting from the present Agreement.

12.2 The Border Police Cr Commission shall include representatives of the Contracting Parties.

**Article 13 Modification of the Agreement**

13.1 The Agreement may be subject to modification upon receipt of a formal request by one of the contracting parties.

13.2 Within **XX** days upon receipt, the contracting parties shall convene for the first time to deal with the request.

13.3 The result of the negotiations shall be reported to the Governments which shall decide upon the modification proposal.

**Article 14 Validity**

14.1 This Agreement is concluded for an indefinite period. Any Contracting Party has the right to terminate it.

14.2 This Agreement shall be terminated 6 (six) months after the receipt of the diplomatic note by which the other Contracting Party notifies its intention to terminate the Agreement.

14.3 With the Agreement entering into force, the following Agreement(s)

.....

shall cease its (their) validity.

**Article 15 Concluding Provisions**

The Agreement shall enter into force .....days in compliance with the provisions of their national legislation.

IN WITNESS WHEREOF, the undersigned, duly authorised by their Governments, have signed this Agreement.

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Signed in..... on .....200X in two (2) original copies in ..... and ..... languages,  
all texts being equally authentic.

**FOR THE      OF .....**

**FOR THE      of .....**