



**TRANS EUROPEAN RAILWAY (TER)
PROJECT CENTRAL OFFICE**

**TRANS EUROPEAN RAILWAY (TER)
Steering Committee
51st session, 7th and 10th December 2020**

REPORT

The 51st session of the TER Steering Committee was held online as a Webex videoconference in two sessions on December 7 and 10 2020.

PARTICIPATION

The countries that participated in the session were: on 7th December: Bosnia and Herzegovina, Poland, Russian Federation, Serbia, Slovakia, Slovenia and Turkey; on 10th December: Austria, Poland, the Russian Federation, Slovakia, Slovenia, Turkey. The representatives of the UNECE Sustainable Transport Division, the TER Deputy Project Manager and the assistant of the TER Project Manager also attended the meeting.

OPENING OF THE SESSION

The TER Deputy Project Manager welcomed the members of the Steering Committee.

1. ADOPTION OF AGENDA

The Agenda of the session (Annex 1) was approved as submitted by the Project Management.

2. ELECTION OF OFFICERS

The Steering Committee elected as its officers Mr. Pavol Hartl (Chairman, Slovakia) and Ms. Małgorzata Kopczyńska (Rapporteur).

3. HIGH SPEED RAIL MASTER PLAN

The Chairman opened the session and requested that each State presented at the meeting expresses their opinion on the latest version of the phase 2 of the TER High Speed Rail Master Plan.

For Serbia the Master Plan is acceptable, having all the necessary elements.

The Russian Federation confirmed their willingness to accept the document. It was emphasized that many comments from the TER Member States had been incorporated.

For Turkey the document is also acceptable although due to the tough schedule it hasn't been analysed by all required departments. Turkey had remarks, mainly on the names. The UNECE Secretariat assured that all geographical names will be corrected during editing process.

Slovenia expressed their gratitude to Poland for having the last version improved. Slovenia confirmed this version as the acceptable one.

Slovakia regarded the document as a background for further initiatives, like the Visegrad Group initiative, and expressed their readiness to accept the document.

For the technical reasons Bosnia and Herzegovina hasn't been able to connect by this time.

Poland asked whether their improvements, amendments, comments, and remarks are acceptable to the SC. These changes do not interfere any data concerning specific states except for Poland. There were a few amendments concerning general text in order to improve it as much as possible. In these circumstances there were no objections.

Poland emphasized that their position remains unchanged – the whole HS MP phase 2 Report should be rejected. The Polish side cannot approve this document but in order to demonstrate the open approach and flexibility proposed that the title be extended by adding at the end of the title the following expression ‘- a general background to support further required studies’. It would reflect the real characteristics of the Study and possibly allow utilization of compiled data mainly related to the States. The Russian Federation supported the opinion on the update of the title of the study. Poland proposed a step-by-step considerations splitting discussion for 3 steps – acceptance of amended text by Poland – change of the title – other technical issues, including a payment for the report to Consultant.

It was emphasized that this change (extension) of the title doesn't obliged the SC for any further steps and it is to be decided in the future whether continue the work on the TER high speed railway network or not. If yes, it needs the separate budget and procedure. Next year the TER has another obligations of completing two new projects. It means that the HS activities can be undertaken not earlier than in 2022.

It was agreed by the present members of the SC that the Report should be adopted and printed under the condition of the extended title.

Bosnia and Herzegovina managed to connect and join the meeting. The representative of Bosnia and Herzegovina questioned the step-by-step approach insisting on voting for the whole issue (approval of the text as a final one and agreement for full payment for Consultant), disagreed with the extension of the title for the reason of interfering with the contract with the Consultant. It was explained that this change doesn't

breach the contract. Bosnia and Herzegovina stated that this change was proposed in order not to pay the Consultant the remaining amount of remuneration and proposed voting.

The discussion ensued whether to connect two issues – adoption of the Report and payment.

It was proposed that the adoption of both – text and payment would be decided in one package, whilst the Polish side insisted on separating these two matters and at the same time emphasizing that all decisions of the TER SC shall be made unanimously, not by voting.

During the discussion on the payment the following states were of the opinion to pay all remaining installments: Bosnia and Herzegovina, Serbia, Slovenia, the Russian Federation and Turkey. Slovakia proposed to cut the remuneration by USD 5,000, but after explanation by representatives of UN and Bosnia and Hercegovina, that's not possible because of UN rules, Slovakia supports whole payment. . Poland repeated their position that the Consultant shouldn't be paid at all as he didn't fulfill the contract, but answering the present question – two remaining installments mustn't be paid.

The present countries agreed to adopt the report and the updated title as proposed by the Polish side. As there was no consensus on final payment, the discussion was postponed until 10th December 2020.

The TER DPM was tasked to write the report on the performance of the elaboration of the Trans-European Railway (TER) High-Speed Masterplan phase 2, as soon as possible. TER DPM offered to prepare such report until the end of 9th December 2020.

At this point the meeting was suspended and decided to be continued on 10th December 2020.

10th December 2020, second part of the session

The Chairman opened the meeting and briefed the SC on the outcomes of the previous part of the session.

The Steering Committee welcomed expeditious preparation by the TER DPM the report - summary of the whole process of elaboration of the TER HS Masterplan phase 2 done according to the decision adopted at the end of the session on 7th December.

The Chairman stated that the text of the report on TER HS MP was adopted with a provision to extend the title.

Since the report on the performance of the TER HS MP contract was submitted to the TER SC members at late evening on 9th December 2020 and the SC members didn't have time to read it, he requested that the TER DPM summarized the report. The TER DPM thanked to all persons involved in improvement of the TER HS MP and presented the content of the report on the performance of the contract (Annex 2).

The representatives of the UNECE were asked for their opinion. Mr. Nikolic stated that as an engineer he couldn't judge the legal issues. The same position was expressed by Mr. Dionori, who is an economist. They reminded a similar problem with Phase 1 of the TER HS MP. Although the quality was questionable, the whole payment was made. They

offered to contact the Executive Office for advice on finalization of the contract and payments, if the SC does not reach consensus.

Slovenia stated that if we agree to publish the TER HS MP phase 2 report and refuse to pay two remaining instalments, a problem of a possibility of taking the case to a court by the Consultant can arise.

Mr. Nikolic read a part of article 13 of the UN General Conditions for the contracts, which is a part of consultant's contract. This article doesn't specify the case of delays in work submission or bad quality of work done. The article 16 of the contract was also mentioned, provided information about amicable settlements and arbitration.

Poland emphasized that the actual work of the Consultant was finished in 2019 and it was impossible to be accepted at all. The work in 2020 was made by the volunteers. Poland reminded that money assigned for the TER HS MP Report is the money of the tax payers of each TER member state.

Slovenia arise the question of previous payments – if the SC decides not to publish the Report there would be a question from the UNECE why the first two instalments had been payed.

The Chairman asked Mr. Stanislav Dyatlov of his opinion. Mr. Dyatlov stated that the best solution was to have a compromise to avoid any legal problems. He emphasized that considering the TER HS MP as approved gives a basis for approving the payment and vice versa – disapproving the Report should consequence in refusing the payment. He added that the only option to satisfy the Polish side is to reconsider the approval of the Report towards disapproval.

Mr. Dionori considered possible answers of the UNECE legal department. The lawyers would check the output of the Report with ToR requirements. Since formally they were finally met they wouldn't oppose to the publication of the Report.

The Chairman proposed a voting procedure but it was repeated that all decisions of the SC shall be taken unanimously.

For purpose of avoiding the situation not to adopt and not to publishing of Report, Slovakia proposed that the 3rd instalment in the amount of USD 7,000 is not payed to give a signal to the Consultant that the SC is not satisfied.

Mr. Nikolic stated that it would mean that the SC approves only part of the Report. Mr. Dyatlov said that if any of the integral parts of the Report is unacceptable the whole Report deems to be unaccepted.

The Polish side reminded that for them the TER HS MP phase 2 report is unacceptable at all. They conditionally could agree on the document to find the best solution to the current situation. The Polish representative added that according to article 2 of the Contract the Consultant breached the Contract. It concerns the deadline that wasn't met, the intellectual property rights that was infringed, and the involvement of Mr. Francesco Dionori, Mr. Jerzy Kleniewski and Ms. Małgorzata Kopczyńska that had to improve the document.

Turkey stated that Poland cannot stop the publication and proposed an agreement with the Consultant and reduction the final payment by a half of remaining instalment.

Slovakia, Slovenia and the Russian Federation accepted this proposal

provided it is acceptable to the Consultant. Poland insisted on paying nothing more to the Consultant emphasizing that even the two first instalments shouldn't had been payed and if the SC cannot agree on payment, the TER HS MP phase 2 report shouldn't be published.

Mr. Nikolic said that ,if the SC decides not to pay full amount, TER project management should prepare a clear list of the ToR requirements that hadn't been fulfilled by the Consultant and the explanation why they are considered as not fulfilled.

The time assigned for the meeting has been up. No compromise on the final payment has been reached. Any decision of the TER Steering Committee on this matter shall be made in written form.

Annexes: 2