

Response to the Consultation

of Commercial Conditions Guidelines of RNE/IMs

Section One – General Overview of Commercial Conditions

1.1 Goal of Commercial Conditions

While the chapter objectively describes the background of the Commercial Conditions IM's project and the ongoing legislative initiative a higher balance might be achieved by explicitly mentioning the scope: changes in contracted capacity due to TCR planning. The goals of the mechanism might be more explicit:

- a) Stabilising allocated capacity (avoiding unnecessary changes from both IM and RU side)
- b) Make necessary changes as soon as possible

In addition to the FTE-RNE Common Understanding from June 2022, the reference to the Common Understanding on Compensation Measures from 5 June 2025 should also be included:

<https://www.forumtraineurope.eu/fileadmin/Downloads/RNE-FTE-Common-Understanding-on-Compensation-Measures.pdf>

1.2 Geographical scope

No remark.

1.3 Exclusions

Please describe what is meant by **reservation fees**. If it is meant as payment for a path request, paid regardless of whether the applicant accepts the path offer, we support the exclusion.

Please describe what is meant by **invoicing issues**.

This part provides some provisions (e.g. to Framework Agreements) that would better suit the "Project timeline" description in section three (3.1).

1.4 Current Status of Commercial Conditions

General information

Commercial Conditions is a complex topic; with high transparency, a higher understanding among stakeholders can be ensured. Namely:

- a) IMs' analyses (from 2023/2024) are mentioned, but without reference or access to them. It is stated that "IMs have available data according to their national systems". Do they also include the reasoning (the trigger of the changes) and further analyses?
- b) Overview of CC systems (potentially in an external document) might support the discussion - rather than a reference that all can be found in the Network Statements. The overview might help, for instance, to understand the level

of applied fees (absolute or as % of track access charges), the definition of the scope and exceptions.

1.4.3 Rules and incentives for the IMs

The reference to the FTE-RNE Common Understanding on Compensation Measures from 5 June 2025 should be included. It would help to include definitions from the Common Understanding on e.g. standardised rate, lump sum and cost-proof reimbursements.

<https://www.forumtraineurope.eu/fileadmin/Downloads/RNE-FTE-Common-Understanding-on-Compensation-Measures.pdf>

1.4.4 Other incentive measures:

The incentive example for passenger traffic is given (bus replacement service compensation), but no freight (e.g. traction support). The IM change types alteration and withdrawal are missing in the last paragraph.

1.4.5 Disputes

The chapter has some provisions that do not entirely fit the purpose of this chapter (current status), because it provides references to the future legal framework and future entities such as ENRRB.

Section Two – Proposal of Harmonised Commercial Conditions

2.1 Multinetwork Capacity (Framework Agreement and Rolling Planning)

2.1.2 Application of Commercial Conditions

FA and TCRs: we disagree that the capacity not available due to TCRs (Temporary Capacity Restrictions) is excluded from the application of incentives.

- a) Framework Agreements (FA) are signed for a long period, 5 to even 15 years. TCRs are the major risk for business plans (open access) and contracted traffic. If TCRs are excluded, the risk would be further borne by the RUs, who are not able to influence it. This creates an unpredictable environment, and it creates a barrier for private investments that the EU policies want to encourage. The RUs want to enter into FA contract with the IMs, to share this risk with IMs, because they are the only ones able to mitigate it. When the RU buys rolling stock, introduces a new connection or signs a long-term customer contract with fixed revenues (both PSO/freight), it is a high instability element, when the IM can, without consequences, close the line for a long-period of time. Extensive TCR planning, even if compliant with some deadlines, still generates a massive amount of work and costs for RUs, especially in cross-border traffic. Therefore, the TCRs

shall be included in the FA incentive scheme – an appropriate quota or level of risk sharing is negotiable.

- b) All versions (EC/EP/Council) of the proposed Capacity Regulation envisage that changes to capacity rights allocated through FA shall be subject to compensation/penalties (Article 35). Due to the fact that FA are signed at a very early stage, there is hardly any change from the IMs' side which is incompliant with TCR planning according to the deadlines in Annex I – Section 3, thus please clarify how would the application of penalties to IMs occur in practice.
- c) It is not realistic even in mid-term horizon to keep track on information (even with high investments in IT) whether such a change originates from compliant TCR planning or not.

FA and changes: the time in which both RUs / IMs announce changes to the allocated FA capacity, should matter, as in the Rolling Planning (2.1.4). From the Applicant's point of view, the impact on the IM is different if these changes are communicated by the Applicant before the Capacity Model finalisation. As of IM incentives, the fact whether the reduction of allocated capacity by the IMs is communicated before, e.g. X-24, may partially mitigate the negative impact on the business.

2.1.4 Cancellation of Rolling Planning capacity

- a) The incentive for Rolling Planning shall not exceed the incentive for the annual timetable, otherwise, the goal of TTR to shift to Rolling Planning gets undermined.
- b) The system shall consider differently real "cancellation" (no train run) and changes to train runs, e.g. on a different day or with different departure. Some IMs perceive this as a cancellation and a new request, but there is a clear difference. Railways (especially freight) shall be competitive with other modes of transport. Market flexibility is highly needed. The RUs shall not be penalised when the customer decides to run trains on Tuesdays instead of Wednesdays – the impact on the IMs is also lower, the IMs still collect the Track Access Charges, they only have to replan, which with digital tools would be done in no time.
- c) The changes in the scope of the incentive system shall not impose any loss of Track Access Charges (TAC) discounts and or state incentives for certain traffic.
- d) Once the conversion of capacity specifications to a path is finalised (in TTR X-2.75), the same rules should apply for all freight paths, irrespective of whether they come from Annual Timetable, Rolling Planning or ad hoc request.
- e) The chapter promotes strongly nationally defined values, which might lead to an ineffective system and a national patchwork. Similarly, the national testing period might create a risk of patchwork, where consequences are borne by the market, plus it will be difficult to draw conclusions. Either the IMs shall go for one solution, or the "pilots" shall be agreed at the local and or comprehensive (origin to destination) level. The testing period of 24 month is welcome.

2.2 Incentives for Applicants

2.2.1.3 Path cancellations

Level of international harmonisation

The sentence that “IMs are free to merge or not apply a certain threshold” shall be removed. Same as exceptions for additional deadlines are defined in such an open way that makes practically all national individual systems are compliant with the Guidelines, thus reaching no international harmonisation.

Mechanism and thresholds

- a) For transparency reasons, a reasoning why exactly these thresholds (60, 30, 5, etc.) were selected should be provided, either linked to the process or based on data/studies. How were the business timelines considered in the definition of the thresholds? For instance, the passenger RUs aim to open ticketing 6 months (M-180) ahead, but there is no motivation to release capacity for these purposes. The introduction of Rolling Planning would inevitably make important M-120. This example shows that maintaining the same step-wise timeline for freight and passenger does not fully reflect the process goals.
- b) In general, the higher effectiveness can be reached when “the level of penalty increases continuously over time rather than in a step-wise manner”, as in the French model (which is considered as best practice but compliant with this document). The continuous curve motivates for as early changes as possible, and stakeholders do not postpone the decision to the next “step increase”. This is shared not only by the RU community but also stated in the final SERAF CC Subgroup report (official body of the EC for consultation).

Penalty basis

The Track Access Charges (TAC) should not be used as a reference, but values per train-km.

- c) The TAC vary significantly between countries. In some countries, the TAC are very modest, meaning it would lead to an administrative burden without an intended motivational effect.
- d) The TAC are often based on the train parameters and are not known in advance, since it depends on the train composition on the day of the operation. The impact on the capacity is the same, regardless of whether the train weighs 1000t or 4000t.
- e) Our points are shared also by Regulatory Bodies as stated on page 40 (40.4) of the IRG-Rail Position Paper: <https://irg-rail.eu/download/5/1082/202414IRG-RailCapacityReformlongpaper.pdf>

2.2.2.1 Definitions of major and minor path modifications by RUs

Does the chapter refer to "planning changes" or "operational changes"? They shall refer only the "planning changes". The RU community disagrees with the differentiation (table) as being too rigid. The basis should be whether the "originally allocated path-timetable can still be used", because that is the key in terms of capacity utilisation. For instance, adding additional wagon/train sets often does not result in replanning and has no impact on capacity, so there is no reason to penalise this in the incentive system. The same is in other cases, e.g. when a company runs a train with a different loco of the same power/speed, it will be penalised because it is not "compatible" with the original rolling stock.

2.2.2.2 Measures in case of major path modifications by RUs

- f) The major path modifications shall not be considered in the penalty system, the same as cancellations. The system shall consider differently real “cancellation” (no train running) and major changes “train runs, e.g. on a different day or with different departure” (e.g. in Poland these are excluded from penalties). Some IMs perceive this as cancellation and a new request, but there is a clear business difference. Railways (especially freight) shall be competitive with other modes of transport. Market flexibility is highly needed. The RUs shall not be penalised when the customer decides to run trains on Tuesdays instead of Wednesdays; the impact on the IMs is also lower, the IMs still collect the Track Access Charges (train runs at the end), they only have to replan, which with digital tools would be done by IT in no time.
- g) For transparency reasons, a reasoning why exactly these thresholds (60, 30, 5, etc.) were selected should be provided. Either linked to the process or based on data/studies. How were the business timelines considered in the definition of the thresholds?
- h) The changes in the scope of the incentive system shall not impose any loss of Track Access Charges (TAC) discounts and or state incentives for certain traffic.
- i) We support that “no impact on other path” should have a lower penalty.

2.2.2.3 Measures in case of Minor path modifications

- j) “Lead to increased workload” can be interpreted widely. Such a provision does not support international harmonisation.
- k) Minor modifications shall not result in fees. The CC system is aimed at steering behaviour, not at collecting more money from RUs. Minor modification by definition does not lead to capacity waste or impact on other infrastructure users - thus shall be exempted from any fees, also on congested sections.

2.2.3.2 Measures for non-usage

- l) “The level of fee is determined at the national level” does not support international harmonisation.
- m) What does non-usage fee, “at least equal to the cost of the path”, and “additional to TAC” mean? Is it meant that Applicants shall even pay up to 200% of TAC? If yes, then we strongly object to this provision. If TAC are used, the cap shall be at 100% TAC maximum. In other industries, when a person books a service, the non-use of service is also charged a maximum of 100% of the usage price. If there should be an incentive for “non-usage”, it can also be set in the range under 100% of TAC.
- n) Clarify what the moment is from which the no-usage is counted? Is it the departure time from the origin of the first IM? The train path has a validity (minimum for international trains is 18 hours as of Commission Delegated Decision (EU) 2017/2075 (7). The moment of non-usage should be from the path validity expiration, which itself should be a minimum of 18 hours for both national and international traffic. Especially in freight, the train loading can be dependent on the terminal or other parts of the logistic chain, which causes delays in departure out of the control of the RU.

2.3 Incentives for IMs

2.3.1 Path cancellation (requested by the IM) and applicable thresholds

In the first sentence, the reasons for IM's path withdrawal are connected mainly to TCR planning, not only "late TCR planning".

2.3.1.1 Definition of path cancellation requested by the IM

Although it is not explicitly written that the IMs find the points listed as exceptions from penalties, "account of a breakdown making the infrastructure temporarily unusable" shall not be an exception in case it is caused by insufficient or non-timely maintenance.

2.3.1.2 Measures for IMs path cancellation

- a) The path cancellation/withdrawal must be more expensive option for the IM than the alteration at any time. We welcome that this is stated later in 2.3.2.2., it should also be added here.
- b) For transparency reasons, a reasoning why exactly these thresholds (60, 30, 5, etc.) were selected should be provided, either linked to the process or based on data/studies. From the passenger perspective, the first path withdrawal penalty increase only 60 days in advance cannot be accepted, since railways to be competitive need much earlier reliability for ticket sales.
- c) Why the cancellations (withdrawals) follow a different threshold than path alterations, when the alterations can result in a cancellation/withdrawal? Simpler and more appropriate would be to have compatible thresholds.
- d) We welcome that the provision from 2.1 Incentives for Applicants, "IMs are free to merge or not apply certain threshold levels" is not used here.
- e) What is the basis for the system, is it TAC or train-km rates? If TAC, we do not support that, as stated in 2.2.1.3, especially for the IMs, it would lead to an administrative burden without the intended motivational effect. See also the similar position by Regulatory Bodies, as stated on page 40 (40.4) of the IRG-Rail Position Paper: <https://irg-rail.eu/download/5/1082/202414IRG-RailCapacityReformlongpaper.pdf>

2.3.2 Path Alteration (requested by the IM)

The compliance with TCR planning deadlines (Annex I of the proposed Capacity Regulation) shall not be an exception from IMs' penalties. The reputation of railways suffers significantly, since there is no reliability for the customers that they can use the train as a mean of transport. The proposed Annex I allows changes due to "less than minor impact TCRs" at any time, but the impact is defined by the number of affected trains, not by the impact itself, where even a few-minute change can play a role if the customer still uses and pays for railways. The passenger compensation according to Regulation (EU) 2021/78233 has to be paid irrespective of the IMs' TCR deadlines. To do economical and effective resource planning, the freight RUs must have the final timetable earlier than one month in advance, and the mechanism shall reflect that. Moreover, tracking whether the path alteration is caused by "timely" or "late" alteration would add complexity and administration to the system, delaying any implementation.

2.3.2.1 Definitions of path alteration by Infrastructure Managers

The definition of minor alteration as no substantial impact on its own or another path is very open. The minor alteration can be a change that does not change the

departure/arrival/dwell times at the production and commercial stops and also does not restrict the length/weight and apply additional resources for traction (e.g. higher gradient) and station usage (e.g. shunting staff because of a change of train direction at the intermediate station).

2.3.2.2 Measures for IMs path alterations

- e) For transparency reasons, a reasoning why exactly these thresholds (120, 30, 5, etc.) were selected should be provided, either linked to the process or based on data/studies. The business does not seem to be reflected. For instance, the passenger RUs aim to open ticketing 6 months (M-180) ahead (CER goal, where IMs are also members), but there is no motivation to not alternate paths after this milestone. The introduction of Rolling Planning would inevitably make the important M-120 for freight. Moreover, the rise 5 days before the train run does not reflect the need of freight production planners, who need stable timetables at least 7-10 days in advance.
- f) We welcome that the provision from 2.1 Incentives for Applicants, "IMs are free to merge or not apply certain threshold levels" is not used here.
- g) The start of the penalty system for freight is too late, for both it shall start from the moment of the path allocation. The RU CC vision sees the segmentation not to passenger/freight but to stable and flexible traffic. In such a system, the freight RU will decide for itself in which category the traffic is. By accepting the stable traffic segment, you will become eligible for higher penalties from the IM, but also have to pay higher penalties in case of changes.
- h) What is the basis for the system, is it TAC or train-km rates? If TAC, we and the IRG-Rail (regulators) do not support that, as stated in 2.2.1.3, especially for the IMs, it would lead to an administrative burden without intended motivational effect.
- i) The changes in the scope of the incentive system shall not impose any loss of Track Access Charges discounts and or state incentives for certain traffic.

2.4 Multinetwork Capacity

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Multinetwork capacity rights are an essential positive change from the Capacity Regulation. The sector shall work together on a harmonised solution on how in practice handle IMs-RUs penalty flows in the context of a single multi-network capacity right.

2.4.2 Path modification and alteration

The sentence should be modified to clarify that applicants are not responsible for the coordination of changes between the IMs.

2.5 Other components for Applicants and IMs incentives

2.5.1 Withdrawal of allocated capacity

- a) Recurrent non-usage should be treated differently from cancellation and can have different rules, especially in freight: when a factory would stop

production for a month, and the RU duly cancels the paths in time for other RUs to use, there is no need for withdrawal of the rights.

- b) Dialogue with the concerned RU shall be part of the withdrawal process, so the RU can express the reasons why it did not use the path.
- c) In order to increase transparency, the reasoning for the selection of thresholds (30/60%) and testing period (3 months) shall be provided. Are there data, studies, or is it the common denominator of current practices?
- d) The level of international harmonisation is low, given by the open statements that IMs can decide for their own values and apply other rules for highly used lines or introduce them for non-congested parts. Furthermore, in 2.5.4, it explicitly states that IMs can deviate if they have any specific “national need”.
- e) Once a path is allocated, the rules shall remain the same regardless of which process the path was allocated to.

Section Three – Timelines and Implementation Phases

3.1 Project Timeline

The introduction (3.0) states that the present document was elaborated under TTR. The TTR has been a joint RU-IM project. However, namely the CC were not done together with the RUs; IMs developed this document separately, which should be clear to the readers.

A more comprehensive description of the transitional period (3.1) would be of benefit. For instance:

- a) Outlook on which IMs/networks will implement some of the elements earlier or launch specific projects to support the implementation.
- b) Which Framework Agreements will be under the new system? Chapter “Exclusions 1.3” mentions those which are signed after the entry into force, but is this also valid for those years that are prior to the first year with strategic planning under the new Regulation?

3.2 Monitoring, IT tools and simulation phase

The monitoring is a supported method to make future improvements to the CC system based on real data. However, the IMs shall not monitor only cancellations but also path modifications, alterations and withdrawals. Furthermore, to be able to draw conclusions from the data, the reasons for the changes should be collected.

The introduction of reciprocal CC system is needed as soon as possible. The lack of fully supportive IMs’ IT tools should not lead to delays, simple and uncomplicated procedures (as for instance in Switzerland and France) for path alteration fees could be used as a first step.

General Comments

My comments

We welcome the ongoing initiative of IMs to harmonise the systems of Commercial Conditions, although the way to a harmonised system remains long with limited improvements from the last version of the Guidelines from 2023. The key requirements of the RU community remain the same, as stated in the “FTE, ERFA, Allrail: RU position on CC” from 2022. The market needs harmonised European timelines and mechanisms that are reciprocal (for both IMs and RUs), simple, fair and transparent. In addition, the penalties must incentivise the goals, but at the same time remain bearable by the market.

Although we welcome that the document proposes a reciprocal system, the proposal is very unbalanced between RUs and IMs. There are an extensive number of exceptions for IMs, who are exempted from penalties for a wide range of external and internal reasons. On the other hand, RUs still have to pay penalties, despite the changes being due to their customers or other parts of the logistic chains. The capacity commitments shall be kept; thus, the penalty system shall start from the moment of capacity allocation and incentivise the process of changes as early as possible. The compliance with TCR planning deadlines (Annex I of the proposed Capacity Regulation) shall not be an exception from IMs’ penalties. The IMs are responsible for the planning and the execution of TCRs and the associated effects. The reputation of railways suffers significantly, since there is no reliability for the customers that they can use trains as a mean of transport (see further reasoning in 2.1.2 and 2.3.2).

The added value in terms of international harmonisation imposed by this document is very low. There is a wide system of exceptions, making most of the current unharmonised systems compliant with the document. The harmonisation vision should reflect more the best practices, rather than a common denominator or the ultimate IMs’ majority compliance with their status quo.

The best practices were, for instance, discussed in the SERAF Subgroup on Commercial Conditions (official body of the European Commission), the report of which can be used. Further best practices and recommendations are included in the RU Vision on CC. Namely, RUs suggest:

- Usage of a continuous (daily-curve) curve in the penalty system, which starts the penalty period for both IMs and RUs from the moment of allocation (French system)
- Uses train-kms as a basis, not Track Access Charges, since there is no logical connection between penalties and them.
- Segmentation between stable and flexible traffic rather than between passenger and freight.
- Penalise differently “real cancellations” of RUs, where the train will not run, compared to situations when the same traffic is newly requested on a different day/time.
- Exemption of minor modifications from the penalty system, given by the definition of “originally allocated timetable can still be used”.
- Inclusion of service facilities and train associations (train turnarounds and connecting train services)



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- Wider usage of standardised compensation mechanisms to keep railways as a means of transport attractive, and at the same time bring more predictability for the market.

The RU vision is available here:

<https://www.forumtraineurope.eu/services/capacity-projects/commercial-conditions>

The FTE/ERFA/Allrail paper on CC is available here:

https://www.forumtraineurope.eu/fileadmin/RU_Statement_CC.pdf