2026

Form for feedback gathering on draft Guidelines for modulation of the penalties

The present form is intended to ensure a structured and efficient collection of feedback and inputs provided from sector' stakeholders on the draft guidelines for the modulation of penalties related to changes in assigned capacity rights, developed by the Commercial Conditions Task Force under the upcoming European Framework for Capacity Management (EFCM). The feedback gathered through this consultation will support Infrastructure Managers' experts in refining the guidelines ahead of their formal submission for EFCM consultation in Q1 2027.

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Ch. 2 - Scope of application of the modulation

Note: The term Railway Undertaking (RU) is used in the document, however, it considers also input of other involved operational stakeholders other than IMs and their associations.

1. **General remarks on deadlines and the timing of the consultation**

The consultation took place during the holiday period. Even though the processing time has been extended to two months, this made it more difficult to consolidate the assessments of various technical experts within a single railway undertaking (RU), as well as to coordinate the positions of different RUs. Furthermore, the subject is linked to other sections of the future EFCM that remain to be discussed between IMs and stakeholders. We therefore reserve the right to provide further input on this matter as part of the consultation on the EFCM as a whole.

2. **Definition of significant**

Article 42 of the Regulation prescribes that penalties are payable only in case of "significant change". The definition of significant is the key basis element for evaluation of the modulation Guidelines, however definition was not included.

Due to involvement of FTE and several stakeholders into a task force on TCRs, we noted that RNE draft direction which could be summarised in this table:

Initiator of the change	Minor change	Significant change	No longer accepted as change -> new request
IMs	**For multi-network:** • less than +/- 15 minutes for Passenger • less than +/- 30 minutes for Freight	**For multi-network:** • More than +/- 15 minutes for Passenger • More than +/- 30 minutes for Freight • capacity right withdrawn without alternative solution	Not defined for IMs
RUs	limited changes that do not substantially affect the allocated capacity structure like change of RU, less stops, …	**For multi-network:** • Within +/- 15 minutes for Passenger • Within +/- 30 minutes for Freight	**For multi-network:** • More than +/- 15 minutes for Passenger • More than +/- 30 minutes for Freight • Changed origin, destination, intermediate stop

Within the framework of a reciprocal system, applicants expect IMs and RUs to be classified equally in the 'significant' category. If there is no reciprocal provision specifying the extent of deviation beyond which a change is no longer treated as a change but as a new order, this provision should also be removed for applicants. If this rule is to be retained, the thresholds are too low. Generally speaking, a new application involves a greater administrative burden than a change and slows down the process for applicants and IMs. IMs should act as service providers offering capacity products, and the ease of handling modifications should be made a prerequisite.

As already communicated (joint groups, SERAF), the RUs would like a different definition of 'significant'. Passenger RUs, in particular, already regard a deviation of more than +/- 3 minutes as 'significant'. Basis should be the contracted path, and the thresholds should be applicable per commercial/production stop from origin to destination for single as well as multi-network paths.

Under the proposed Single Ticket and Passenger Rights framework *EU Passenger Package*, operators may be liable for missed onward services purchased in the same transaction, considering the minimum connection times established under the Telematics TSI. For example, where the minimum connection time at a station is 13 minutes, a relatively small path alteration may cause a missed connection and trigger compensation or rerouting costs for the operator. It would be inconsistent to set minimum connection times of around 10 minutes while treating a path alteration of a similar duration as minor.

Furthermore, the RUs have defined additional criteria for classifying a deviation as 'significant' or not and would like the option to choose between a 'stability' and a 'flexibility' formula in the commercial conditions. General values are not enough for defining a reciprocal system (like the shown table). Different cases would have to be listed. E.g.

- If only origin or destination is changed and there are no consequences for the remaining path, then it should not be cancelled.

- It could be added, that if a path change leads to an arrival after the „opening hours“ of a terminal or at the customer, this extra waiting time is taken into account to determine the significance of a change and also for the modulation.

For the exact requirements, please use the link to read the detailed position paper:

RU Vision on CC:
https://www.forumtraineurope.eu/fileadmin/TTR/RU_Vision_for_Commercial_Conditions_v3.0.pdf

Furthermore, there are specific rules governing changes to capacity rights / capacity specifications for rolling planning and framework agreements, which explicitly permit changes by mutual agreement. These rules should also be listed in this section and defined in more detail.

3. Changes of part of capacity right

Concerning the sentence “The capacity right change can affect the whole capacity right or only part of it” applicants want to raise the following concern:

The service and production are linked to the entire train run, and any interruption to the path caused by a partial change or partial withdrawal could make the entire train path unusable. It is only the RU (not the IM) to judge of that partial use is (or not) economically viable, and in such cases commercial conditions should apply to the entire path. Also, in case of alternative parameters RUs should judge if the alternative is even useful for them.

In order to provide IMs with planning certainty and to prevent arbitrary interpretation by applicants, IMs and applicants should jointly define rules and scenarios specifying when a change does not constitute a commercially viable alternative.

Ch. 3 - Differentiation of market segments and modulation scheme

Market segmentation is not addressed in the paper - is this entirely left for each IM?

We support the ambition to try to find at least high-level uniform rules for segment classification, e.g. based on the studies of bearability in the context of design of track access charges.

Single-network and multi-network capacity rights might need to have different levels, since the effort involved in making cross-border changes is significantly larger due to the need for coordination.

We wish to emphasize that the Commercial Conditions obey very specific constraints for business with thin and fragile financial margins. When differentiating market segments, the requirements of end customers – the customers of applicants – should also be analysed and taken into account. Incorrectly set penalties can lead to a counterproductive change in ordering behaviour, which may ultimately result in a shift in rail traffic to other modes of transport.

Ch.4 - Modulation mechanism

General remarks

The modulation mechanism should design a system where the administrative burden does not exceed the benefits it delivers. The alteration of paths by IMs should be clearly communicated to RUs in real time, via an automated system. Invoicing should be made simple and frequent enough to allow their verification (on a monthly basis).

RUs regard this proposal as an incentive scheme designed to achieve a more efficient use of the rail infrastructure. Although the penalty calculation provides higher penalties for both parties if the change results in greater damage, the proposed scheme does not constitute genuine compensation for damage. Such compensation exists in some countries alongside the incentive scheme and should be maintained and extended to all countries.

Balance between IM and RU penalties

Naming A to F for both IM and applicant penalty values gives the impression that the penalty values may be equal; however, they must defer, because the consequences of a path change are far more damaging for an RU and their customers than for an IM. It is a key issue in the balance to be sought for to build a fair and efficient system. E.g. in SNCF Réseau's system, late suppression of a train is penalized 12 € if caused by IM and 0,9 € if by freight RU; yet this situation is still considered unbalanced.

There is therefore a strong need for guidelines on this point. Otherwise, RUs will not be in a position to bear the risk of ordering paths in advance and will massively favour ad hoc paths, leading to the exact opposite of the intended goal, with increased instability for all stakeholders, from IM timetablers to train drivers.

Ch. 4.1 - Modulation for applicants

1. **Continuous Curve vs. Waterfall approach**

IMs propose cascade/waterfall approach, we communicated already previously (last guidelines consultation, SERAF), preference to daily curve (French model) or at least a mix, this is because the impact of waterfall approach is that parties postpone the communication until the fixed deadline of changes that are already known (more information in RU vision if needed).

On the other hand, the cascade approach might have a certain advantage for the international coordination of IMs, since motivates for more synchronous processing of the alteration. But a similar advantage can also have the curve approach, in case there is a milestone (specific day prior to the train run) when the penalty significantly increases.

So, RUs request RNE to change both modulations (for applicants and for infrastructure managers) to a continuous curve. The final text should include an obligation for a curve that steepens progressively as the circulation day approaches in order to encourage the implementation of modifications as soon as possible.

2. **Timeline from Annex I is reflected in the thresholds?**

As explanation for the selected thresholds of the timeline in the table, it is mentioned in the paper that they are corresponding to Annex I. In the case there is no transition to a continuous curve like requested under point 1, an explanation should be provided as to why precisely these thresholds, within the deadlines set out in Annex I, have been selected as

key milestones. Particularly regarding the deadline of 5 days before the train run, it is unclear why exactly 5 days were chosen. Commercial conditions are one instrument to steer the behaviour of applicants and IMs. It should be explained why the chosen deadlines contribute to the overall goal to increase rail traffic.

We would like to point out a typo in the first line: 'Before X-5.25 before the train run'. Presumably, the phrase 'before the train run' needs to be deleted.

As some of the limit values implicate the same costs these should be combined. This applies both to the breakdown into the various capacity products and to the two rows in Category E. If the 24-hour limit for modulation is not relevant for applicants, it does not need to be included in the table. Further information and suggestions can be found in Section 4.2, 'Modulation of IMs', under '3. Is the timeline from Annex I reflected in the thresholds?'. The notes included there also apply to this section.

Furthermore, it should be borne in mind that the TCR Taskforce, which is responsible for developing the technical input for Annexes I.3 and I.8, is currently working on the processes relating to path alteration and path modification. This could result in changes to key deadlines, which should then be taken into account in the penalty thresholds - replacing the recent deadlines. As the taskforce's work will be completed by early October, the results must be included in an update to the EFCM as early as possible.

3. Non-usage of a train path

The Guidelines define that "non-usage shall be considered the same as a request for capacity change sent after the planned train departure time."

This is not equivalent to the definition within capacity regulation in which "a failure to use an allocated capacity right by RU shall be considered equivalent to a cancellation on the day of the train run concerned".

A change sent after the planned train departure time seems to be something different than a cancellation on the day of the train run. Please quote capacity regulation in cases where it already provides a definition as alternative formulation may cause confusion and contradicting interpretation of law.

4. Calculation based on original length or length of rerouted path

The guidelines propose to use the length of the original path for calculation of the penalty, even if the rescheduled path is longer. We request to use the longer route from original or alternative. If the re-routing is longer, the RUs naturally face higher operating costs due to longer travel time/route. If the alternative is shorter, RUs still already planned their resources, and re-planning can lead to elevated administrative costs and resources costs (loco-drivers, compatible locos availability for the new route etc.).

5. Definition of modulation factors is missing

The modulation factors associated with the classifications, ranging from 0.1 to 2 (in accordance with Article 42(5)), are not defined in the main body of the paper.

RUs would like to see a transparent, standardised, Europe-wide definition of modulation factors related to the letter A to F. This shall be also subject to consultation. National

differences should be determined solely by setting the absolute amount in euros in accordance with Annex IV.

E.g. in “use case A” a cancellation of ad-hoc requested between 29 days and 5 days before the train run is associated with 0.5 (T=0.5). RUs are requesting these real values to be shown as ‘modulation factor’ in the table, rather than the letter D.

RUs agree with the basic principle that changes made with later notice prior to the train run should be more expensive. However, it would be useful for the consultation to know exactly which modulation factors are envisaged and how these develop over time (proportionally, exponentially, etc.). In order to ensure transparency and to promote a better understanding of the proposed categories, RUs consider a sensibility study based on real-world cases, with involvement of ENIM and ERP representatives.

Naming A to F for both IM and applicant penalty values gives the impression that the values should be equal; however, they must differ, because the consequences of a path change are far more damaging for an RUs and their customers than for an IM, and because it is a key issue in the balance to be developed as explained in Chapter 3 - Differentiation of market segments and modulation scheme. E.g. in SNCF Réseau’s system, late suppression of a train is penalized 12 € if caused by IM and 0,9 € if by freight RU; yet this situation is still considered unbalanced.

As already mentioned in section 4.1, ‘Modulation for Applicants’, under ‘2’, some of the limit values implicate the same costs. These should be summarised. Both tables of IMs and RUs include a differentiation by allocation process (Framework Agreements, ATT, Rolling Planning and Ad hoc). This does not appear necessary, as only one row differs. The tables could be simplified by grouping all products together and including the specific details regarding rolling planning and framework agreements in an additional verbal explanation.

Ch. 4.2 - Modulation for infrastructure managers

1. **Timestamp of a change**

The guidelines prescribe that “the timing of the changes refers to the time when the IM communicates the need for the change to the applicant.”

We ask to replace the timestamp for penalty calculation from “communication that there will be the change” to “alternative path is allocated”. The current proposal is not useful, because on “warning” basis neither rescheduling is possible nor customers could be informed. End customers are interested in new train run data, or whether the train can run or not. infrastructure managers are indeed incentivised to provide “warning” information as early as possible; however, under this system, the development of alternative traffic solutions can take an indefinite amount of time without any financial consequences for the infrastructure manager.

2. **Continuous Curve vs. Waterfall approach**

As mentioned above, also for IM penalties RUs prefer a continuous curve instead of waterfall model as any day is relevant (see explanation above).

3. Timeline from Annex I is reflected in the thresholds?

As mentioned above, if there is no transition to a continuous curve like requested under point 1, an explanation should be provided as to why precisely these thresholds, within the deadlines set out in Annex I, have been selected as key milestones.

We would like to point out a typo in the first line: 'Before X-5.25 before the train run'. Presumably, the phrase 'before the train run' needs to be deleted.

4. Iterative process of applicant-involvement

In this chapter is explicitly mentioned that "details and criteria to estimate the potential impact are still under discussion."

We very much welcome the fact that we are already being involved, even though the discussions have not yet been fully concluded. It is only through an iterative process and ongoing dialogue that the best possible outcome for the sector can be achieved. As the details and criteria for calculating the potential impact are of particular importance to us, we would ask RNE to consult the applicants should any changes be made to the current draft.

5. Factor Q = 0

We propose to rephrase the sentence where it is defined that Q is equal to 0, if no alternative could be offered. In this logic, "Q equals 0" would mean that the highest quality of a path alternative had been achieved. This makes little sense. That would indirectly mean that no alternative path at all would be the best path in terms of quality.

So, a proposal would be: "Q factor is applicable only when alternative capacity is provided; otherwise, ~~Q is equal to 0~~ Q is omitted and a term for 'no alternative capacity' (NA_{alt}) is inserted instead; this is explained in the next section."

6. Calculation of the factor Q

As freight and passenger transport have to meet different customer requirements, different calculation methods should be used to reflect this. As night trains carrying passengers are similar in nature to freight trains, the costing methods used for freight transport should also apply to them. RUs propose the following alternative method for calculating the quality factor:

(a) Passenger Transport

As explained above, the table for re-allocation timing should not contain letters; instead, modulation factors should be entered directly. RUs propose a range between 0 and 1.0 for the various modulation factors A to F in the table of timing.

These values are indicative suggestions, the suitability of which should be verified jointly by RUs and IMs through a joint simulation. This note also applies to all the modulation factor values listed below.

For clarity all fields in the table "Distance – Time" should be filled, despite in some cases it is rather a theoretical or very rare to happen. In any case the main factor in assessing quality is the increase in journey time in minutes. As it seems of little practical use to alter the route for passenger services to serve intermediate stops, it is not necessary to consider the

distance in kilometres. The matrix can be replaced by a one-dimensional table. Instead, the omission of intermediate stops can be considered by means of an add-on factor, which is explained below.

To provide greater incentives to minimise the increase in journey time, it is recommended that time intervals be broken down into 5-minute increments – starting at 3 minutes – as smaller deviations fall below the threshold for 'significant' as defined by the RUs. We propose a range between 0 and 1.5 for the various modulation factors in the table of increased travel time. The highest factor is achieved with a two-hour travel time prolongation. Visualisation:

Increased travel time or time shift **(t+ in min)**	**Modulation factor**
t+ ≤ 3	0.00
3 < t+ ≤ 6	0.12
6 < t+ ≤ 10	0.20
10 < t+ ≤ 15	0.28
15 < t+ ≤ 20	0.36
20 < t+ ≤ 25	0.44
per additional 5 minutes up to 60 minutes	+ 0.08
55 < t+ ≤ 60	1.00
60 < t+ ≤ 65	1.04
per additional 5 minutes up to 120 minutes	+ 0.04
115 < t+ ≤ 120	1.44
120 < t+	1.50

Other factors that significantly limit the ability to meet customer needs or substantially increase production costs should be considered in the form of add-ons to the modulation factor. In case of alternative parameters RUs should judge if the alternative is even useful for them. A rejection of the alternative on these grounds should not be regarded as a cancellation on the part of the RU, but rather, with reference to the penalty, as analogous to a cancellation on the part of the IM. The RUs are requesting a clear definition of the add-ons, including the assignment of modulation factors. Proposal of the RUs:

Quality limited due to …	**Modulation factor**

Minor change or missing of selected intermediate stops	0.3 per stop
> 33% reduction in length	0.3
Major change or missing of most intermediate stops **(equivalent to end of business)**	2.0
Traction change (push loco needed, electric vs diesel, other safety system, more power, …)	2.0

For cost reasons, no railway operator in Europe is in a position to keep locomotives/rolling stock on standby and maintain them, only to use them for all possible diversion routes. Changing a locomotive is therefore unreasonable in many cases and should be penalised with a charge equivalent to a cancellation fee. The same applies to a passenger train which is unable to serve the commercially important intermediate stops, as it is therefore not possible to meet passengers' requirements and collect sufficient revenues for the business model.

When all factors are added together, the total may exceed 2.0. As the Capacity Regulation specifies a range of between 0.1 and 2 for the modulation factors, whereby the highest factor is to be applied in the event of cancellation, RUs propose values above 1.95 are capped at 1.95.

The RUs oppose to reducing the individual targets, as each target, taken on its own, has a significant impact on customer satisfaction and increases production costs. It is rare for all factors to occur simultaneously; they should therefore each be eligible for a certain level of incentive, even when considered independently of one another.

(b) Freight Transport and Passenger Night Trains[1]

The principles set out above also apply to rail freight transport and passenger night trains. Only the deviations are explained here:

No further breakdown into 5-minute intervals is required for travel time extensions, as customer requirements in freight transport differ from those in passenger transport. The breakdown proposed in the guidelines is sufficient here, but it should also be presented in one dimension instead of a matrix and filled with specific modulation factors. The values start at 30 minutes, as minor deviations are, by definition, considered as not significant and therefore do not result in a penalty.:

Increased travel time or time shift **(t+ in min)**	**Modulation factor**

[1] Sleeper trains, not regular passenger trains, that operate overnight.

t+ ≤ 30	0.5
30 < t+ ≤ 60	0.75
60 < t+ ≤ 120	1.0
120 < t+	1.50

In addition to the increase in journey time, the increase in route length also plays a significant role in freight transport and passenger night trains. As an analysis has shown that these factors do not necessarily develop in a linear fashion, the following table shall apply to freight transport in addition:

Prolongation of distance (d+ in %)	**Modulation factor**
d+ ≤ 10%	0.3
10% < d+ ≤ 50%	0.6
50% < d+	1.0

The more significant of the two constraints – the increase in distance (d+) and the increase in journey time (t+) – should be used for the calculation. The factors are not added together; instead, the higher value is used to reflect the increase in cost. A matrix is rejected, as each factor must be considered individually.

Regarding add-ons, too, different criteria apply to freight transport and passenger night trains, as set out in the following table:

Quality limited due to …	**Modulation factor**
Change or missing production stop	0.7
Change or missing commercial stops	1.5
Reduction in length ortonnage	
- deviation ≤ 10%	0.3
- 10% < deviation ≤ 50%	1.0
- 50% < deviation	1.5
Non-fitting profile / gauge	2.0
Traction change (push loco needed, electric vs diesel,	2.0

other safety system, more power, …)	

The gauge is often a key factor, particularly in combined transport, in determining whether a train can use an alternative route. Therefore, a non-compliant gauge should also be penalised to the same extent as a cancellation.

(c) Additional comments

- **Assessment of multi-network capacity requests**

For multi-network capacity requests, it should be clarified whether the distance criterion applies to the *entire* capacity right or only to the section within the network of the infrastructure manager concerned. Since the Capacity Regulation requires infrastructure managers to ensure consistency between capacity rights for the entire train run, any increase in travel time or distance should also be assessed for the entire train run.

- **Continuous modulation of penalties**

Penalty modulation should apply continuously, both in terms of time and in terms of its final effect on the railway undertaking. Large interval increments may encourage planning efforts to focus mainly on avoiding the next higher threshold. Shorter intervals would create a stronger incentive to remain as close as possible to the originally planned timetable.

- **Cumulative impact of multiple alterations**

In addition, where multiple TCRs or more than one rescheduling occur, the impact of the alterations for the purpose of calculating penalties should be assessed cumulatively rather than separately. For example, two alterations of 20 minutes each should be treated as a combined impact, rather than as separate changes that may fall into a lower category.

- **Clarification of CPspec criteria**

If the CP_{spec} table is retained despite the suggestions made by railway undertakings, its content must be improved in line with those proposals. Railway undertakings expect a precise definition of what is meant by “reduction or change” and clear guidance on which scoring value applies to each criterion. Profile changes, as well as length and load, should also be defined precisely.

7. Definition of modulation factors is missing

As mentioned in the part 5 of modulation for applicants and in the paragraph above, for RUs the modulation factors corresponding to the letters A to F are of high importance. RUs request information about the foreseen modulation factors for applicants and IMs, in order to assess whether these are fair and provide sufficient incentive for optimal use of capacity. As already mentioned above RUs consider a sensibility study based on real-world cases, with involvement of IMs and RUs.

8. Modulation factor for cancellation

The guidelines state that “in case no alternative capacity is available (NAalt), the IM withdraws the capacity. It is included in the algorithm with a value assigned comparable at least to the one assigned for alternative paths with significant deviations.”

Capacity Regulation defines differently in Article 42 (5) that the maximum modulation may only be applied in situation where the capacity right is cancelled.

Therefore, RUs request that cancellation should be weighted with a higher factor than significant changes and that it should not be defined as ‘at least’ but ‘more than’ the one assigned for alternative paths with significant deviations. In the proposals above, RUs suggest limiting the highest modulation factor for significant changes to 1.95.

In situations where no alternative capacity is available, the interaction with disruption and crisis management procedures under Article 48 should be clarified. The Guidelines currently do not explain how operational priorities and coordinated traffic management measures are reflected in penalty modulation.

9. Partial cancellation

Partial cancellation by the IMs (withdrawal) shall only be possible with the consent of the applicant to judge its economic viability, see explanation in chapter 2.

General considerations

1. Modulation Scheme tree

In the text above, ‘medium’ has two sub-categories: limited and significant. This is missing in the scheme tree.

2. No additional burden on competitiveness

Implementation of Commercial Conditions shall not lead in the further upraise of infrastructure charges. The system is intended to provide incentives to achieve a more efficient use of infrastructure and to maximise the quality and availability of capacity, thereby strengthening the sector’s competitiveness. The penalties paid by the IMs shall not be recoverable by the track access charges.

3. Exemptions

Clear and transparent mechanism for identifying the party responsible for initiating a path modification will be essential, as penalties are to be applied to the party triggering the Path Alteration or Path Modification. Changes requested by RUs which are caused by interdependencies to other changes caused by IMs should be excluded from penalties when the issue is attributable to the IM.

In general exemptions should be clearly defined in the guidelines for modulation of penalty. A final list should be agreed between ERP and ENIM. The following points might be included:

- It happens often that poor quality paths are allocated with the annual timetable, whereas the constraints that cause this situation subsequently disappear. It should

then be possible for an RU to request a higher quality path without incurring a penalty.

- The penalty implications shall consider the train concepts in its entirety, trains do not run in isolation, they do have turnarounds and connecting trains (exchange of passengers and/or wagons). A fair solution should be developed here, if a train on the way to destination is delayed due to a TCR (or altered by IMs), the delay shall not count as RU-caused on the way back.
- Operational change between RUs by mutual agreement
- Path run through midnight is only one path
- International path through border that requires particular demands on coordination (e.g. special transport load (size, volume))
- Modification requests that do not need path modification (train number, any change which has no consequence on the path)
- linked paths
- loss of business

IMs should provide RUs with appropriate tools and mechanisms to manage capacity changes effectively, particularly train cancellations.

4. Interrelation between different networks

RUs are missing a clarification in the paper that changes and/or delays due to one network should not lead to incentive fees on another network. Changes caused by IMs should not lead to higher charges for RUs:

- Service Facilities: Alignment of slots / common offer is foreseen. So, no penalty for RUs on one infrastructure if on the other side IM or terminal changed slot
- Multinetwork paths: RU gets penalty for O/D capacity right from responsible IM causing the change. So, on the other networks where the path has to be adapted no penalty for RUs as another IM caused the change.

This is also applying for the calculation of the significance of a change. The significance of the modification must be calculated by considering all consequences (and not only those occurring within the country whose IM modifies the path). There is a need to harmonize the definition of a "significant modification" triggering the penalty to make the multi-network penalty effective.

5. Special rules for adaptation of capacity specification (Rolling Planning and Framework agreements)

Concerning Framework Agreements, it should be clear that the commercial conditions set in Article 42 do not replace the specific conditions set as part of the Framework agreement.

The guidelines should express when amendment of Capacity Specifications allocated by Rolling Planning and Framework Agreements are eligible for penalties and this should be consulted.

6. Monitoring

In particular, the respective penalty levels applicable to IMs and RUs have to be closely monitored, and a system of exemptions should consider the volatility of the business. For

instance, the German system only penalizes RUs, which leads to a massive use of ad hoc paths; the French system offers a better balance, even though freight RUs still complain that it should be improved. However, early results suggest that it is beneficial to the system.

7. Abuse of capacity by IMs

RUs would like to point out two additional cases for which an incentive system may help to improve capacity use:

- RUs request a compensation for delayed network upgrade: RUs have to rely on information published by IMs about network upgrades. They invest huge amounts in new locomotives and wagons based on this information, and the cost-benefit-analysis is built on the available information. That´s why RUs ask for a penalty for IMs for deviating from the announced network upgrades to protect investments in the rolling stocks.
- RUs request penalties for non-use of TCR-windows: An increasing number of infrastructure managers have regularly scheduled maintenance windows, but these are not always used for works. Ultimately, this wastes capacity just as much as the non-utilisation of a booked train path. To increase the efficient use of the European rail network, railway undertakings are therefore calling for penalties for the non-utilisation of maintenance windows.