Report

SERAF subgroup Commercial conditions and infrastructure charges

Co-Rapporteurs: CER, Flix

TABLE OF CONTENTS

1. Introduction

While this subgroup also intends to work on the subject of infrastructure charges, the present report addresses the topic of “Commercial Conditions”. This term refers to application of rules meant to provide economic incentives to infrastructure managers (IMs) and to applicants for infrastructure capacity – railway undertakings (RUs) in particular – with a view to promote the stability of their commitments to offer or to use infrastructure capacity, as envisaged in the **proposed Regulation on the use of railway infrastructure in the single European railway area (“the proposed Capacity Regulation”)[1].** The topic of this report therefore goes beyond the measures laid down in Articles 35 and 36 of Directive 2012/34/EU establishing a Single European Railway Area (recast) (”the recast Directive”)[2], and does not address the issue of possible claims for damages suffered as a result of changes or cancellations to allocated capacity.

The report presents different views and approaches on the topic and includes contributions from various stakeholders. RailNetEurope (RNE) represents the views of infrastructure managers (IMs), while Forum Train Europe (FTE) represents the views of railway undertakings (RUs). Both organizations have worked on Commercial Conditions for several years. Additionally, the report draws from the experiences of France, Sweden, and Switzerland - three countries already applying a system of Commercial Conditions. It also reflects the perspectives of individual subgroup members.

While this report does not aim to establish a common position among all stakeholders, it seeks to identify general criteria based on stakeholder input. **The goal is to provide the European Commission with expert input for possible implementing provisions in the area of economic incentives and Commercial Conditions in the context of the proposed capacity Regulation.**

[1] Proposal for a Regulation of the European Parliament and of the Council on the use of railway infrastructure capacity in the single European railway area, amending Directive 2012/34/EU and repealing Regulation (EU) No 913/2010 (COM(2023)443 final). See in particular the rules laid down in Article 40 of the proposal ('Compensation for changes to capacity rights’).

[2] Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast) (OJ L 343, 14.12.2012, p. 32).

2. RNE's and FTE's work on Commercial Conditions

The goal of RNE's initiative is to prevent infrastructure capacity waste by encouraging applicants to book the capacity actually needed, and to incentivize infrastructure managers on to stick to their commitment to offer the capacity already allocated and, thereby, improve the stability of the timetable. RNE has always considered Commercial Conditions a key part of the new capacity management process introduced in the Timetable Redesign (TTR) project, which is also to a large extent reflected in the proposed Capacity Regulation.

In 2023, an RNE Task Force developed guidelines on Commercial Conditions, considering also input from applicants. These guidelines introduce a reciprocal incentive system for allocated train paths. However, they do not cover compensation for extra costs stemming from service disruptions, administrative fees, performance schemes during operations as per art. 35 of the recast Directive, or force majeure cases.

Many IMs note that current IT tools cannot fully support the collection of all data necessary to model a system of Commercial Conditions, nor can they be run to "simulate" such an incentive system. While some IT developments are planned to address these shortcomings, RNE considers that a stepwise approach is necessary before implementing a full set of Commercial Conditions, for instance through the conduct of a pilot/simulation phase to make sure that the economic impacts of such incentive schemes on the involved parties are carefully assessed before a full implementation.

At the moment, the level of harmonization between the different existing incentive schemes remains low to none, and IT tools will be critical for monitoring and implementing the new system successfully. Under the proposed Capacity Regulation, this will change as IMs will be required to cooperate on the definition of harmonised conditions for implementing such incentive schemes.

At present and taking into account developments in the negotiations between co-legislators on the proposed Capacity Regulation, RNE continues to work on Commercial Conditions in consultation with stakeholders and is anticipating upcoming work on the preparation of the draft European Framework for Capacity Management and the Network Statement Common Structure, as well as subsequent implementation steps.

Further information on RNE's work on Commercial Conditions can be found on the RNE webpage on Commercial Conditions, as well as in the RNE Guidelines on Harmonised Commercial Conditions for TTR first wave implementers 1.0[3].

Until 2020, IMs and RUs worked closely together on Commercial Conditions under the cooperation between FTE and RNE. Since the joint project was discontinued, through FTE, RUs developed their own independent recommendations on Commercial Conditions.

Drawing form experiences and best practices from countries such as Sweden, France, Spain, Italy, Czechia, Hungary, Germany, Slovenia, Switzerland and the United Kingdom, FTE has developed a vision for a system of *balanced* and *reciprocal* Commercial Conditions meant to incentivise both IMs

[3] Last updated in December 2023

and RUs to stick to their capacity-related commitments, with the goal to improve capacity management in Europe while increasing market predictability, especially for new or enhanced rail services. The vision covers only the planning aspect, thus performance scheme (Article 35, Directive 2012/34/EU) being out of the scope.

FTE's work not only reflects the vision of its member RUs but also considers feedback collected in 2024 from other stakeholders, including experts from IMs, Regulatory Bodies, and international associations.

The so-called RU "vision" for a system of Commercial Conditions developed by FTE includes four main components:

- **"Incentive Mechanism":** this component is meant to promote the stability of capacity-related commitments by discouraging late and significant changes to allocated capacity (by IMs and RUs).
- **"Standardized Compensation":** this component serves to improving predictability for RUs by requiring IMs to compensate them for the unexpected costs arising from the impacts of changes to allocated capacity by the IM (such as canceled trains, rerouting, longer travel times, and unwanted train composition changes) using flat or lump- sum, standardised rates to minimise administrative burden for both RUs and IMs. The lump sum model provides a fixed amount once certain conditions are met. This is the approach used in Switzerland. The flat rate model, on the other hand, calculates the total amount based on actual values, such as the number of additional train-kilometres operated or the extra time required. This method is used in countries like Germany, Slovenia, and Spain.
- **"Traction Support":** this component is meant to ensure the continuity of rail transport services during major infrastructure works through the provision, by the IM, of locomotives which are adapted for an alternative route with lower or different infrastructure parameters than that of the route under works.
- **"Multiannual Commitment Charge":** this component intends to prevent the misuse of multi-annual capacity bookings for strategic advantage.

Further information on FTE's work on Commercial Conditions can be found on the FTE webpage on Commercial Conditions, as well as in the RU Vision on Commercial Conditions.

From February to May 2025, FTE and RNE organised several dialogue meetings with the focus on the "compensation" aspect, aiming also to clarify its technical differentiation from the "penalties". Several "compensation" practices and systems were presented and discussed, and the dialogue resulted in the common IM-RU understanding which is available online[4] .

[4] https://rne.eu/wp-content/uploads/RNE-FTE-common-understanding-on-Compensation-Measures.pdf

3. The French case

This section reflects the input which was provided by SNCF Réseau and Autorité de Régulation des Transports, the French regulatory body, to subgroup members during the SERAF subgroup meeting of 13 February 2025, along with written input provided after the meeting.

Current market situation in France

As requested by the French regulatory body in a dispute settlement decision issued in 2013, the reciprocal incentives scheme was initially introduced in 2015 as an experimental model. Since then, the initial scheme has undergone several updates to improve fairness and ensure its efficient application. Over time, the scope of the French incentive scheme was broadened to cover nearly all allocated train paths, including paths allocated through the annual allocation procedure, paths allocated following the submission of late capacity requests, and *ad hoc* paths.

Current practices in France

The overarching objective of the French reciprocal incentive scheme is to ensure the stability of the timetable by discouraging any unnecessary modification to allocated train paths while providing incentives to make unavoidable changes as early as possible. Under this scheme, both applicants and the infrastructure manager are required to pay (differentiated) penalties in the event that they initiate a change to, or cancellation of an allocated train path.

An important aspect to underline is that this scheme is not intended to replace claims for damages to applicants induced by alteration or deletion of their paths, but to act as an incentive mechanism in order to avoid such situations. There is a separate process for claims for damages.

The key benefits of the incentive scheme for the railway system include greater stability in allocated paths, as applicants are encouraged not to overbook capacity, and to cancel allocated paths early on, whereas the infrastructure manager is incentivized to plan infrastructure works sufficiently long in advance to minimise dirsuptions.

The French reciprocal incentive scheme takes effect one month before the start of the new annual timetable (ATT). It applies to all allocated train paths, whether granted through the annual, late, or ad hoc allocation procedures. However, new path requests received in the 7 days prior to the departure are are excluded from this scheme (while changes to allocated capacity remains penalized between D-7 and D).

The penalty applies only to the first change made to an allocated train path, meaning that there is currently no additional penalty for possible subsequent changes. It is calculated based on the following principles:

- The level of the penalty is proportional to the length of the train path and increases with time (the later the change, the higher the penalty) along a continuous curve. This incentivizes applicants and the infrastructure manager to make changes as early as possible.

- The penalty grows exponentially (see Figure 1), doubling every 30 days for applicants and every 90 days for the infrastructure manager. This growth continues until it reaches a pre-determined maximum threshold on the day before the train is scheduled to run. Higher penalties apply to cancellations made by applicants on the actual day of operation.

Figure 1: Scales of the reciprocal penalties (Source: SNCF Réseau)

- Penalty levels are influenced by different factors for applicants and the infrastructure manager:
    - For the infrastructure manager, the penalty varies based on the type of change: (major) alterations incur a lower penalty than full cancellations, as cancellations have a greater impact on applicants. However, the penalty owed by the infrastructure manager does not differentiate between passenger and freight traffic to ensure that the infrastructure manager does not favor one type of traffic over the other.
    - For applicants, however, the penalty does depend on the type of traffic: passenger traffic incurs a higher penalty than freight due to its greater ability to absorb costs. However, no distinction is made between cancellations and modifications, as both types of change prevent other railway undertakings from accessing the affected capacity.

In 2021, SNCF Réseau improved its path allocation IT-tool, leading to more efficiency in path allocation, and less changes. As a consequence, the net effect of the scheme in timetable years 2023 and 2024 was in favour of SNCF Réseau. For the timetable year 2024, penalties paid by the infrastructure manager to applicants totalled EUR 13.5 million, while passenger companies and freight companies had to pay SNCF Réseau EUR 12.6 million and EUR 7.6 million respectively.

Learnings & outlook provided by the representatives of this specific country case

Following the introduction of the reciprocal incentives scheme, SNCF Réseau reported a significant decrease in the number of path changes from 2016 to 2019. The number of path changes dropped

by more than 50%, falling from 294.000 in 2016 to 140.000 in 2019. Since 2022, they have seen an improvement for the infrastructure manager and for passenger RUs. However, the situation is more complicated for freight companies. If freight RUs control their modifications, they continue to cancel an important part of their capacity, mainly in the last month before the forecast circulation. The rise of cancellation is due to an extension of the system.

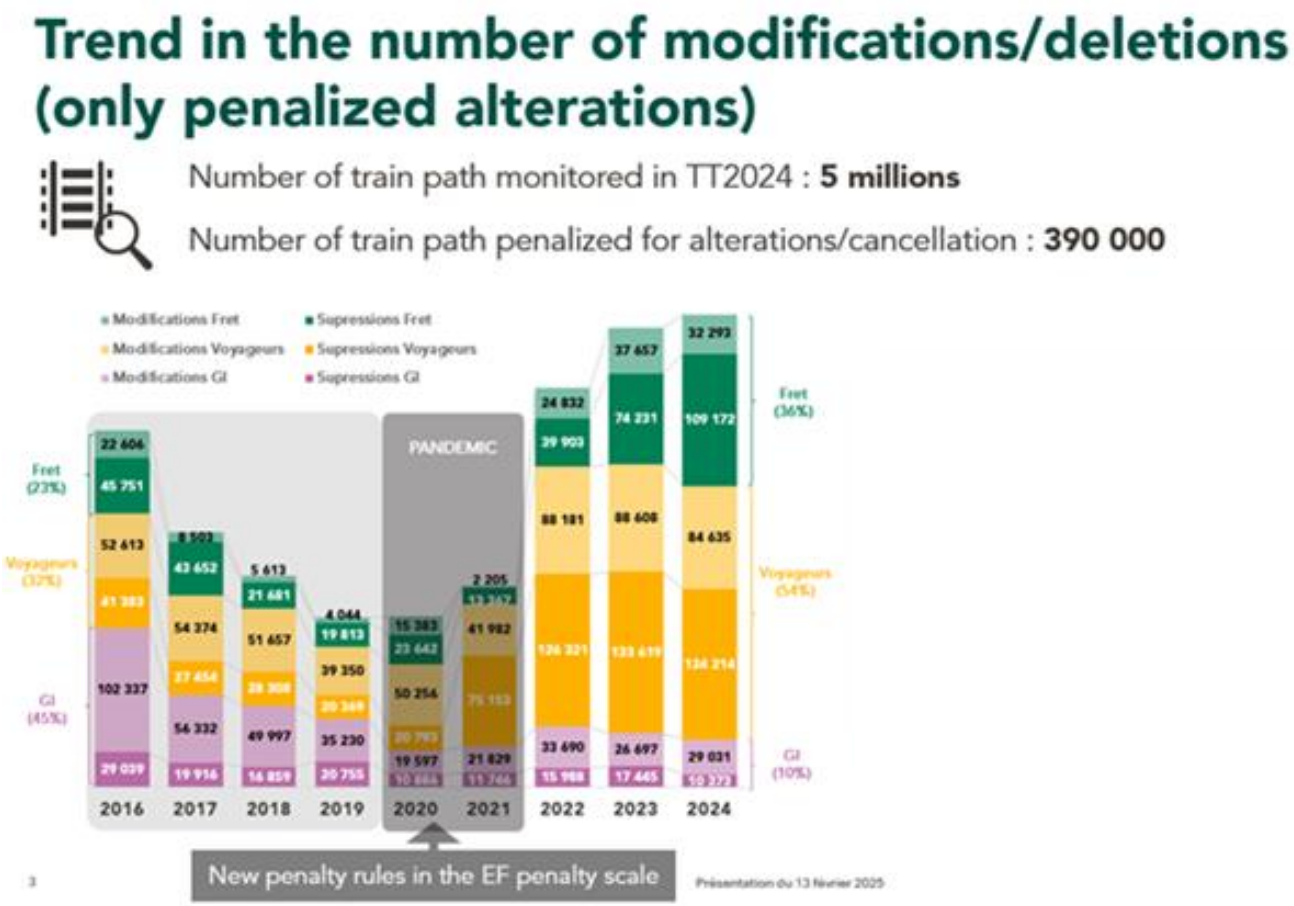

Figure 2: Trend in the number of path changes from 2016 to 2024 (Source: SNCF Réseau)

Following the introduction of a continuous penalty formula in 2020, applicants no longer delay their path modifications or cancellations until the final moment before each penalty step. Instead, they proceed with the changes as soon as a decision is made. This adjustment has further increased the incentives to free up capacity earlier (see Figure 3). The system is bearing fruit in terms of SNCF Réseau's results, whereas mixed results can be observed on the RU side. The French regulatory body was informed in this regard.

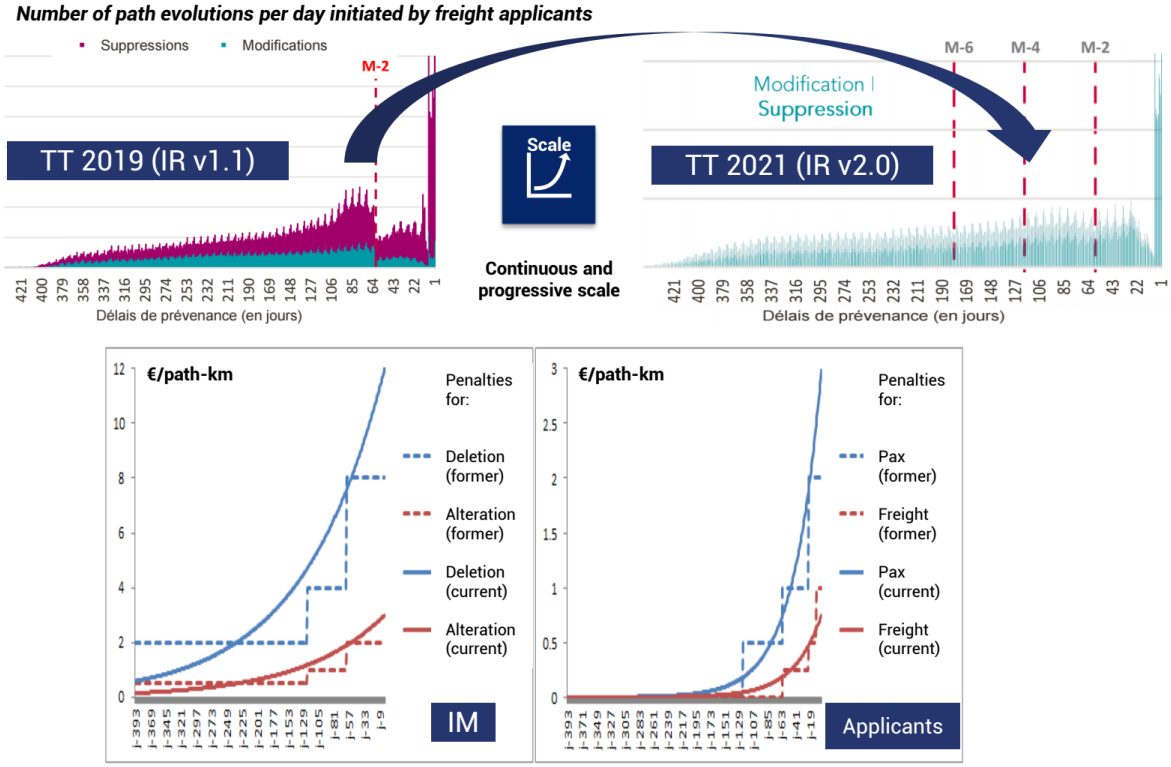

Figure 3: Spread and anticipation of path evolutions observed when switching to a continuous exponential instead of a step-shaped penalty formula (Source: SNCF Réseau)

The French regulatory body identifies short-term improvements to the reciprocal incentive scheme which could focus on two main areas. First, the scheme could be designed to discourage subsequent changes to an already modified path, which is not the case today seeing as penalties only apply to the first modification of a path, but not to subsequent modifications. This change would encourage more timely adjustments to the path allocation as needed. Second, there is a need for a more precise determination of the path length affected by alterations or modifications. At present, the penalty is applied to the entire length of the path, even if only a subsection of it is impacted by the change. To implement these improvements, significant software upgrades may be required, and a revision of penalty scales might also be needed to ensure that penalty levels are proportionate.

In the longer term, other changes to the reciprocal incentive scheme could be considered. One potential evolution is the exclusion of certain low-traffic antenna lines from the mechanism. This would prevent penalties from being applied when cancellations or alterations have minimal impact due to the low traffic on the line. Another possible adjustment is to cap the level of penalties for each party at a percentage of their overall turnover or of the turnover they generate for SNCF Réseau. This would take into account the varying financial capabilities of the different actors who are subject to the scheme.

Furthermore, the incentive scheme will need to be adapted to align with the TAF/TAP Technical Specifications for Interoperability (TSIs) and the proposed Capacity Regulation. In this regard, particular emphasis will need to be placed on addressing changes to allocated paths involving

multiple IMs. Additionally, the French Regulatory Body finds it beneficial to include Temporary Capacity Restrictions (TCRs), such as deletions and alterations, within the scope of the scheme.

4. The Swedish case

This section reflects the input which was provided by Trafikverket, the Swedish Transport Administration, to subgroup members during the SERAF subgroup meeting of 13 February 2025, along with written input provided after the meeting.

Trafikverket is responsible for long-term infrastructure planning for transport: road, rail, shipping and aviation. In railway transport, Trafikverket exercises the role of infrastructure manager: it owns, constructs, operates and maintains the country's railways.

Current market situation in Sweden

In Sweden, numerous RUs (passenger and freight) operate in the railway market. For timetable year 2025, a total of 53 applicants or customers were involved in the capacity allocation process, including RUs, transport buyers, and public service providers, all of whom play a crucial role in shaping Sweden's railway services.

Current practices in Sweden

Since 2011, Sweden has implemented a Commercial Conditions scheme for both RUs and IMs to enhance quality and performance across its railway network.

From 2015 the used scheme was expanded to include measures that optimize capacity usage. This includes reservation charges for RUs and cancellation charges for cancelled trains for IMs, which are designed to reduce unused capacity and improve the efficiency of the railway system.

Since 2019, applicants also have the right, unrelated to Commercial Conditions, to apply for compensation in cases where events caused by the infrastructure manager result in disruptions or additional costs. This provides a mechanism for applicants to recover losses due to infrastructure-related issues. This particular redress right is based on COTIF Appendix E (CUI) which offers a right for recourse of financial damages in the framework of the COTIF legislation[5].

The system of **commercial conditions cancellation charges** was introduced in 2015/2016. Initially imposed only on applicants and customers, since 2017/2018, they also apply to the IM.

According to that system, a **reservation charge is** imposed on a **railway undertaking** (or traffic organizer) when the latter requests a modification to allocated capacity in a manner which reduces the required capacity or cancels the capacity altogether. These charges are applied on an increasing scale, beginning 48 days before the start of traffic and continuing until the traffic begins (as shown in Figure 4). Railway undertakings or traffic organizers must also pay for unused, non-cancelled capacity (“no show”). If more than 60% of allocated capacity remains unused annually, it may result

[5] https://otif.org/fileadmin/docs/LegalTexts/COTIF/COTIF1999/Extract-5-3.1-CUI.pdf; https://otif.org/en/?page_id=172;

in consequences in the form of lower priority when allocating train paths for the following timetable year.

Also according to that system, a **cancellation charge** is applied when the Swedish Transport Administration (**Trafikverket**) is directly responsible for modifying or cancelling allocated capacity. The charge is based on information on allocated capacity, causes for modification or cancellation, and time of registration for modification or cancellation. The level of the charge varies according to an increasing scale. Cancellation charges start applying 125 days before the start of traffic and continuing until traffic begins (as shown in Figure 4).

In short, the reservation charge is the fee to be paid by Applicants, while cancellation charge is the fee to be paid by IMs.

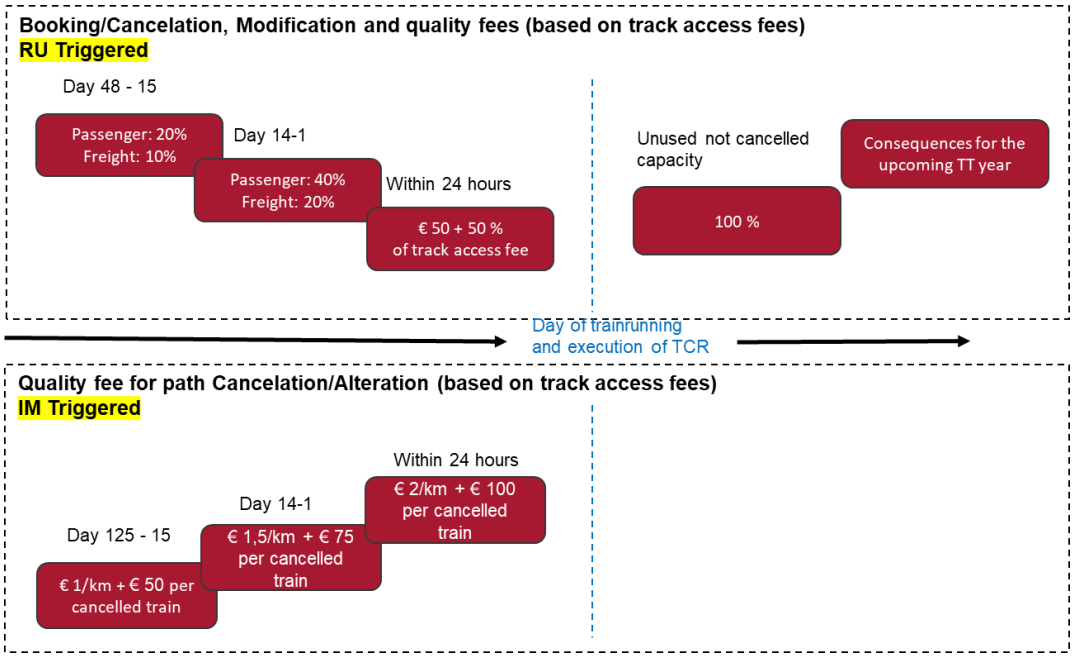

Figure 3: Scales of cancellation charges in Sweden (Source: Trafikverket)

Data from the years 2019 to 2021 shows a consistent trend in terms of the **financial impact of the system on the IM and on RUs** respectively: In 2019, the total amount of penalties paid (reservation and cancellation charges) totalled EUR 5.2 million, 66% of which was paid by the IM whereas the rest (34%) was borne by RUs. In 2020, the same split (66%-34%) prevailed, for a total amount of penalties of EUR 4.3 million euros. Likewise, in 2021, cancellation charges paid by the IM represented 64% of all penalties owed, while reservation charges paid by Rus represented 36% of the total (EUR 6.2 million).

Learnings & outlook provided by the representatives of this specific country case

Setting the right level of penalties is key to the success of such an incentive system: charges which are too low will not have a sufficient impact and will not provide the desired incentives; on the other hand, excessively high penalties risk to affect certain actors disproportionately or might make the

capacity allocation system too rigid. One possible approach to overcome this problem is to proceed to gradually adjust the level of the charges (starting at a low level, followed by increases). Information and agreements regarding the implementation of the model must be approved at the highest level within the Infrastructure Manager and the Applicants/Customers to be generally accepted.

5. The Swiss case

This section reflects input which was provided by Schweizerische Trassenvergabestelle ("TVS"), the Swiss Allocation Body, to subgroup members during the SERAF subgroup meeting of 13 February 2025, along with written input provided after the meeting.

Current market situation in Switzerland

In contrast to the division of powers between Member States and IMs in the EU, in Switzerland, the Federal Office of Transport (FOT) has a significant margin of influence over the cost of services provided by undertakings of the railway sector, including track access charges . The legal basis for compensation payments by the IMs to the RUs can be found in Articles 11b and 11c of the Railway Network Access Ordinance and in Articles 10a ff of the supplementary FOT Ordinance on Rail Network Access (RNAO-FOT; systematic collection of laws 742.122.4).

Current practices in Switzerland

Under the Swiss incentive system, IMs are required to compensate RUs for planned capacity restrictions due to construction work. For passenger traffic, the level of the compensation owed by the IM must cover the costs of the necessary replacement services. For freight traffic, compensation is provided through a flat-rate fee structure. If the capacity resrtriction is communicated in a timely manner[6], IMs must pay CHF 800 when a path is rerouted and CHF 1,500 for a cancellation. If the capacity restriction is notified late, the compensation increases to CHF 2,000 for a rerouting and CHF 3,000 for a cancellation. This differentiated fee structure aims to encourage timely communication of disruptions by the IM, to minimize operational impacts, and to provide adequate financial relief to RUs affected by infrastructure works.

On average, the amount of compensation paid to RUs under this scheme ranges between CHF 8 and 11 million on an annual basis. This represents approximately 0.7% of the IM's revenue collected from track access charges and from basic and additional infrastructure services, or around 0.08% of the total annual federal rail traffic costs.

It must be noted that, even in situations where compensation is due by the IM, RUs remain responsible for covering their own operational costs, including expenses related to planning and preparing replacement services and diversions, as well as customer care and communication.

[6] The deadlines can be found in Art. 11b NZV

To claim compensation, RUs must submit documentation to IMs demonstrating the costs of replacement passenger services. For freight traffic, a list of affected trains is sufficient. According to FTE members, this is done through a simple process which RUs are generally satisfied about.

When it comes to incentives addressed to applicants, a factor-based incentive model is used across different market segments to discourage late path cancellations and improve the stability of the timetable. Under this factor-based system, the level of penalty is proportional to the length of the path and is differentiated according to the market segmentof the RU concerned (including long-distance passenger services, regional passenger services, and freight trains) and to the planned time of operation (e.g. peak vs off-peak hours), such that the price per kilometre is multiplied by a predetermined factor. The model does not include any train-weight-related price component. The following cancellation factors apply:

- A factor of **0.2** if a train path, or a part of it, is canceled more than 60 days in advance.
- A factor of **0.5** for cancellations made between 31 and 60 days before departure.
- A factor of **0.7** for cancellations made between 5 and 30 days before departure.
- A factor of **0.8** for cancellations made between 24 hours and 4 days before departure.
- A factor of **1** for cancellations made less than 24 hours before departure, up until the scheduled departure time.
- A factor of **2** if the cancellation occurs after the scheduled departure time.

The scheduled departure time refers to the moment the train enters the Swiss train-path pricing system to account for multi-network trains that have a different departure time than the service time in Switzerland. In cases where disruptions or route alterations occur due to engineering work in all countries the train passes through, no cancellation or modification charges are applied.

In Switzerland, when an RU requests a change to a train path after allocation, that change is considered as an additional service provided by the IM which incurs an additional cost. For nearly all standard-gauge, interoperable Ims, this additional cost entails a charge of CHF 50 per application and train path, regardless of whether the change concerns a single or a recurring train path.

Swiss railway law does not contain specific provisions for invoicing no-shows, so general Swiss contract law applies in cases of non-fulfillment. The three largest IMs, which account for over 98% of all train-path kilometers sold, follow standardized values. For example, they charge a default weight of 1050 tonnes for any freight train that is either not operated (no-show) or for which the Railway Undertaking (RU) has not provided the necessary data for invoicing.

Learnings & outlook provided by the representatives of this specific country case

The majority of freight RUs seem to indicate that they are satisfied with the Swiss train-path pricing system and their respective regulations for cancellations (e.g. thresholds, factors)[7]. The phased introduction of incentive factors from January 2017 until January 2019 has successfully encouraged

[7] See Art. 19d NZV

RUs to cancel train paths earlier. This has helped free up valuable capacity on Switzerland's highly congested rail network, allowing other applicants to utilize available train paths more efficiently. At the same time, freight RUs value the predictable, standardised flat-rate compensation for additional costs, along with the stronger incentive created by higher rates in cases of late notification by the IMs.

Switzerland remains committed to continuously improving its train-path pricing system. The legal framework governing this system is reviewed every four years and updated as necessary. Additionally, Switzerland aims to assess to what extent the proposed Capacity Regulation might affect the Swiss incentive system and plans to integrate these findings into the national TTR implementation project.

6. Additional views from Subgroup members

This section summarises the comments and views shared by subgroup members that are not linked to the specific cases discussed earlier in the report.

Several stakeholders stressed that many IMs currently do not have the required IT systems to collect data needed to simulate the impact of a potential commercial conditions system. Further, it was added that IMs need to further develop IT systems to manage the future commercial conditions system, as well as for supporting the simulations needed. At the same time, stable legal framework and adequate funding is also needed for IMs to properly plan and proceed with the implementation needed. One member added that this situation could be addressed by introducing a standardized impact calculation system. Due to a lack of transparency in how commercial conditions are set—both within and between countries—RUs may be overpaying. Nevertheless, they clarified, that the introduction of a Commercial Condition system is demanded by them as soon as possible, to increase the reliablity of railways and customer-satisfaction in an economically sustainable way.

It was also highlighted that the level of fees for RUs can potentially be implemented in a step-wise approach to mitigate the risk of overpayment and business harm, whereas the level of fees for IMs could in the intial phase follow a simple flat-rate procedure, as in the case in Switzerland for instance.

Apart from the cases outlined in this report, many Member States currently do not collect data on commercial conditions or monitor national markets.

Furthermore, some RUs stated that the current system gives little incentive to IMs to provide reliable and timely information about their TCR planning, execute TCRs according to plan and consider commercial/customer needs in path/capacity offers. The introduction of the reciprocal system is demanded by those subgroup members as soon as possible, since the alternative path offers (and changes to the capacity rights) are in many countries provided only days or weeks before the train run, which undermines the business stability, passenger/customer satisfaction, ability to plan resources and the reputation of the railways as a transport mode. One subgroup member added that the provision of alternative paths by the IMs that can meet the commercial needs of applicants is

sometimes indicated as an existing incentive. However, it is seen as a necessity but not a suitable incentive. Regarding TCRs, other subgroup members pointed out that the handling of infrastructure works — whether unplanned or planned only outside the timelines set in Annex I, Section 3 of the proposed EU Capacity Regulation — sould be explicitly addressed in the commercial conditions. Another subgroup member highlighted that sanctioning in case of the late notification or modification of TCRs should not be mandatorily applicable in any Commercial Conditions scheme as IMs are not always in the position to foresee every aspect of TCRs. Further, it was suggested that TCRs should be included in Commercial Conditions unless they do not result in any change to allocated capacities.

One member added that, from the IMs' perspective, TCR planning should always respect the timelines set out in the current regulatory framework. Without this clarification, every TCR could be subject to commercial conditions, which would be inconsistent with existing rules and the IMs' responsibility to carry out infrastructure works. It was added that, seeing as IMs need to plan and carry out infrastructure works, the mechanism should incentivize IMs to improve their efficiency but should not have the effect of limiting or penalizing the fulfillment of important tasks such as infrastructure works.

Some subgroup members highlighted that in their view reciprocity does not mean that the monetary values of RU and IM payments are the same. According to them, the monetary value of the fees must be determinated from the damage/impact caused, thus might vary for the applicants and for IMs.

Some subgroup members highlighted that fees should stimulate capacity friendly behavior and at the same time avoid economic downturns. Respecting different starting levels, alignment of fee levels might be done over several years.

Some subgroup members added that national law might also apply in term of damages.

Some subgroup members highlighted that the system of Commercial Conditions envisaged in the Commission proposal should be clearly distinguished from the provisions on performance schemes and reservation charges contained in Articles 35 and 36 of the recast Directive respectively.

Subgroup members also highlighted the importance of a shared understanding of incentive schemes in the context of commercial conditions across countries. This includes whether such schemes replace or complement damage-based compensations. It also covers differences in how penalties are defined—some being labelled as reservation charges, others as performance charges.

One member underlined the importance of reciprocal Commercial Conditions to help optimise the use of existing rail capacity. Commercial Conditions should be applied reciprocally to Railway Undertakings (RUs) and Infrastructure Managers (IMs), and should be designed to incentivise capacity-friendly behaviour. Commercial Conditions should remain contractual agreements between IMs and RUs/applicants. They must also be defined in legislation in a way that allows for swift adjustments when necessary. Finally, this member emphasises the importance of clearly distinguishing Commercial Conditions from claims.

One member highlighted that before introducing an incentive mechanism or significantly changing an existing one, a proper assessment of the economic impact on infrastructure managers and applicants should be carried out. According to this member, this process should also involve regulatory bodies and, where applicable, Member States (Ministries of Transport).

Regarding segmentation, it was suggested that it should also reflect the market characteristics of each segment. In general, the passenger segment tends to be more stable, while the freight segment is more prone to late changes.Finally, subgroup members discussed if, TAC provides an appropriate reference point for setting effective Commercial Condition incentives. For some subgroup members, particularly IMs, TACs provide a reference point for setting effective incentives. One member added that the connection between the TAC and penalties -although other measures could be considered- aims to guarantee the sustainability of the mechanisms for the IMs, whose financial framework is mostly based on regulated tariffs and public funding. For the same reason, transparency is ensured also on the definition of incentive measures, which are often defined by Regulatory Bodies or MoT. Others object to such a reference, considering it inappropriate for establishing effective incentives. They warn it risks creating administrative burden without achieving the intended goal, especially if capped at three times the TAC of the IM initiating the alteration. Several subgroup members noted that this would fall far short of compensating applicants for unexpected additional costs and may not provide a meaningful incentive for either IMs or RUs to behave in a capacity-friendly manner - even if the penalty reaches the maximum of 3x TAC. One subgroup member stated that specific level of this limit/limits should not be defined in the regulation itself. Instead, the regulation should set out the overarching framework or guiding principle, with the details to be determined through other means, as in the process described in Article 40(4) of the draft capacity regulation, which forseen the involvement of ERP, ENRRB and ENIM.

7. Consolidation of views on Commercial Conditions

The table below highlights key features of Commercial Conditions and compares the approaches taken by various stakeholders. These key features were chosen based on the input received from subgroup members. This list is not intended to capture every possible characteristic of Commercial Conditions, but rather serves as a summary of the most commonly mentioned and relevant elements discussed within the subgroup thereby improving comparability between these different approaches to design Commercial Conditions.

	RNE	FTE	France	Sweden	Switzerland
Involved parties Does the Commercial Conditions scheme provide for reciprocal incentives (addressed to both IMs and RUs), or is it addressed to only one side of the market? Are other stakeholders covered (e.g. IMs, RUs, service facilities operators (SFOs) or other)?	• Reciprocal application to IMs & RUs. • Involvement of service facilities in the scheme is out of scope. • Many SFs are out of the contractual relation between the IM and the Applicant and are managed by SFOs different from the IMs, therefore the incentive system would not be applicable. • Possible involvement of SFOs in stakeholder consultation phase is expected, in line with the Regulation (EU) 2017/2177, and supported.	• Reciprocal application to IMs and RUs. • The whole logistic chain is considered as a transport system, thus including service facilities. IMs should pay only for changes initiated by facilities in their (co)ownership. The associations between trains and turnarounds considered.	Reciprocal application to IMs and RUs, both for path modifications and cancellations.	Reciprocal application to IMs and RUs.	Reciprocal application to IMs and RUs.
Start time of application At which point in time do penalties for changes to capacity rights start applying?	• Penalties paid by RUs can start from the moment of path allocation, with flexibility to adjust this starting point based on different capacity products. • Penalties paid by IMs can also start from path allocation.	The penalty for both IMs and RUs applies from the moment of path allocation.	• The penalty starts applying 1 month before the beginning of the new annual timetable (ATT). • No penalties are due for subsequent changes to a path, which had been modified before the penalization started.	• IMs are charged a penalty starting 125 days before the start of traffic up to the time for traffic start for Ims. • RUs are charged a penalty starting 48 days before the train run and and continuing until the day of the train run.	The penalty for both IMs and RUs applies from the moment of path allocation.
Basis for calculation of CC How is the level of penalty calculated? On the basis of what parameter(s)?	• Specific values should be set at national level. • The overall mechanism is defined in the European Framework for Capacity Management (as per Art. 40(3) of the proposed Capacity Regulation). • The system should differentiate penalties based on the type of change, such as withdrawal, alteration, cancellation, or modification. • Track access charges (TACs) are the preferred calculation basis for incentives, though IMs may consider other measures.	• Specific values should be set at national level. • The overall mechanism is defined in the European Framework for Capacity Management (as per Art. 40(3) of the proposed Capacity Regulation). • The system should differentiate penalties based on the type of change, such as withdrawal, alteration, cancellation, or modification. • A standard monetary value per train-km should be applied for the affected path section, unrelated to TACs.	The level of the penalty is proportional to the length of the path (even when the change concerns only a section of that path), and is determined based on a continuously growing curve (exponential formula: the level doubles every 30 days for the applicants and 90 days for the infrastructure manager, before reaching a predetermined capon the day before the train runs; the cap is exceeded for changes made on the day the train runs).	The level of penalty is defined as a percentage of the level of TAC due.	• The level of the penalty is proportional to the length of the path (“Kilometre-based price”) and varies according to the market segment and operating time. • Penalty levels are calculated by applying a predetermined factor. • No weight-related price component is used.
Development of penalties over time Does the level of penalty remain constant over time, or does it increase the closer we get to the	• Penalties should increase over time. • Increases should be applied considering pre-determined deadlines (e.g., 60/30/5 days in advance). Other options are being explored based on IT requirements.	• Penalties should increase over time. • Increases should follow a continuous curve with the level increasing day after day, thus not only being bound to pre-determined deadlines when the fee raises.	• Penalties increase over time. • The increase follows a continuous exponential curve (with penalties doubling every 30 days for applicants and every 90 days for the infrastructure manager), until a	• Penalties increase over time. • Increases are applied in a step-wise manner. • Reservation charge (paid by RUs): for modifications or cancellations requested between X-48 and X-15 (X	• Penalties to be paid by RUs increase over time, in a step-wise manner, based on the following factors: 0.2 for changes requestedbefore X-60, 0.5 for changes requested betwee X-60 and X-31, 0.7 for changes requested between X-30 and X-5, 0.8 for

train run? Is there a cap on the value of the penalty?			maximum threshold is reached on the day before the train is scheduled to run. For changes made on the actual day of operation, the applicable penalty is in excess of that maximum threshold. As regards penalties to be paid by the IM, the maximum threshold is differentiated based on the type of change (alterations incur a lower penalty than full deletions), while for applicants, it is differentiated based on the type of traffic (passenger traffic incurs a higher penalty than freight). • A possible evolution of the current system would be to cap the penalties for each party at a percentage of their turnover or the turnover they generate for SNCF Réseau. This would take into account the varying financial capabilities of different actors involved in the system.	being the day of the train run), the penalty equals 20% of the TAC due for passenger trains and 10% of the TAC due for freight trains. The penalty equals 40% and 20% of the TAC due for passenger and freight services respectively for changes requested between X-14 and X-1, and 50% + EUR 50 of the TAC due for changes requested on X-1. The penalty for "no show" (unused but not cancelled path) equals 100% of the TAC due. • Cancellation charge (paid by the IM): The penalty equals EUR 1 per track-km + EUR 50 for changes made between X-125 and X-15, EUR 1.5 per track-km + EUR 75 for changes made between X-14 and X-1, and EUR 2 per track-km + EUR 100 for changes made on X-1.	changes requested between X-4 and X-1, 1 for changes requested on X-1 or on X but before the scheduled departure time of the train, and 2 for cancellations after the scheduled departure of the train. • Penalties to be paid by IMs: are higher or lower depending on whether the required deadline for communication of the disruption was met (if communicated on time, CHF 800 for a diversion and CHF 1,500 for a cancellation; and if not, CHF 2,000 and CHF 3,000 for a diversion or a cancellation respectively).
Segmentation Are penalty levels differentiated according to the type of rail transport service concerned, or based on some other criterion?	• The level of penalty could be differentiated according to some specific criteria, such as the type of traffic (passenger or freight, or other segments), the level of utilisation of the line concerned (e.g. highly utilised or congested lines) and the type of capacity requested.	Penalty levels should be differentiated between "stable"" and flexible" traffic. The passenger segment is considered as stable, while freight can select its category in each case. If freight RUs choose stable instead of flexible, commercial conditions will be stricter for IMs, but also for themselves.	• Penalties owed by the IM: no differentiation based on traffic type, as the IM should treat all types of traffic in the same way. • Penalties owed by applicants: differentiation based on traffic type (higher penalties for passenger traffic, as passenger RUs have a higher ability to pay).	-	Segmentation acording to traffic type (long-distance passenger services, regional passenger services, freight trains) and operating time (peak hour vs off-peak services).
Treatment of multi-network capacity Do specific rules apply in the case of changes affecting multi-network capacity rights?	• Inclusion of multi-network capacity in a Commercial Conditions scheme is planned and under discussion. • Connection with the Track Access Charges (TAC) is generally supported by IMs (Art40(4) Coucil) as well as the cap to the incentive, yet clarifications are needed on the applicable incentive in the relevant infrastructure. The incentive mechanism should be connected to the IM-Applicant relation also for multi-network capacity changes, whereas the responsibility of more than one IM in one capacity change should be excluded as an exceptional case.	• The proposed system is multi-network (origin-destination), for instance, no prejudice in the choice of re-routing (national vs. international). The IMs act as a single network provider and may re-route via the network of another IM, even if such network was originally not involved in the train run. • The obligation to pay the penalty applies to the IM responsible for the alteration (as of Art.40 (5)). However, it might be questioned if the limit by TAC would provide sufficient manoeuvre space for reasonable compensations, the same as if it would be sufficient for a working motivational incentive mechanism.	To better address multi-IM and cross-border paths in the future, it would be particularly important if the incentive scheme would be adapted to align with the TAF/TAP Technical Specifications for Interoperability (TSIs) and future European regulations on capacity allocation.	-	In cases where disruptions or route alterations occur due to engineering work in the countries the train passes through, no cancellation or modification charges are applied.
Exemptions Are there any exceptions or exemptions forseen in the incentive system?	• Minor changes to allocated capacity, as defined in Article 39(8) of the proposed Capacity Regulation, should be excluded from the scope of the incentive mechanism. • In the event of changes by an IM related to the scheduling of temporary capacity restrictions, penalties should	• Minor changes to allocated capacity, as defined in Article 39(8) of the proposed Capacity Regulation, should be excluded from the scope of the incentive mechanism. • Situations where the involved RUs and IMs agree on changes to allow for	• Requests received in the 7 days prior to the departure are excluded from this scheme. • One potential evolution of the current system could be the exclusion of certain low-traffic antenna lines from the mechanism.	-	-

	not be due if rules on the planning of such restrictions are met.	more train runs, i.e. consensual optimisation.			
Compensation of additional costs Does the incentive system provide for the obligation to compensate RUs for the costs arising from the changes to allocated capacity? If so, which costs?	-	• Paid by IMs to RUs, irrespective of any TCR announcement deadlines, in cases when capacity is already contracted: allocated path, capacity specifications in Framework Agreements (Art31(6)) and Rolling Planning (not in Art33), in case the number of affected trains in the upcoming timetable period exceeds a certain defined limit (quota). • Nationally defined flat standardized rates will cover the sum of all individual items that were not maintained as originally allocated in the path/specification. This includes extra or interrupted train-km, prolonged travel time, shorter train lengths, and other similar factors.	The incentive scheme is not a damage compensation mechanism - it complements the existing and independently operated compensation of the damages to the applicants induced by major alterations and withdrawals. Regarding, the compensation element, RUs have to apply for it (Annexe 3.5.2 to NS).	Since 2019, applicants have had the option, unrelated to Commercial Conditions, to apply for compensation in cases where events caused by the infrastructure manager result in disruptions or additional costs. This provides a mechanism for applicants to recover losses due to infrastructure-related issues. This particular redress right is based on COTIF Appendix E (CUI) which offeres a right for recourse of financial damages in the framework of the COTIF legislationProperty damage is subject to financial negotiations and regulations between the applicant and the infrastructure manager.	Despite the Commercial Condition compensations, RUs remain responsible for covering their own operational costs, including expenses related to planning and preparing replacement services and diversions, as well as customer care and communication.
Multiannual Commitment Charge Does the incentive system also cover allocated capacity which spans multiple timetable periods?	• RNE is working on recommendations concerning the possibility for incentive systems to take into account capacity allocated through Framework Agreements and Rolling Planning. The RNE Task Force on Commercial Conditions is closely monitoring the work of the RNE/FTE FA and RP Task Force to harmonize approaches for multi-annual capacity products. • RNE considers that amendments to Framework Agreements (FA) should be allowed within certain limits, including both the volume and duration of assigned capacity.	For framework agreements, an RU should pay a penalty if, during the annual allocation procedure, it requests less than 80% of the capacity requested through the framework agreement. The level of the penalty should be proportional to the amount of capacity which was not requested. The charge is lower if the intention to change capacity is communicated by X-24, in alignment with the Capacity Model process. Similar rules should apply for Rolling Planning.	-	If more than 60% of allocated capacity remains unused annually, it may result in consequences in the form of lower priority when allocation trainpaths for the following timetable year.	-
Traction support Does the incentive system also provide for the obligation on the IM to offer traction support where such a need arises from a change to a capacity right?	-	M-provided locomotives should be made available to any RU on the rerouted line if it is not electrified or requires stronger traction power, e.g. if it requires an extra locomotive due to steeper gradients.	-	-	-

8. General principles for Commercial Conditions

The following general principles regarding Commercial Conditions as outlined in the definition earlier in this paper were derived from the input provided in the SERAF subgroup for commercial conditions and infrastructure charges. This section does not provide commonly agreed recommendations, but rather draws general characteristics from the previous chapters that reflect different views of subgroup members on Commercial Conditions.

- **Reciprocity:** A common system of Commercial Conditions could include reciprocal incentives where both Railway Undertakings (RUs) and Infrastructure Managers (IMs) face financial consequences for changes to the capacity rights. The collected data shows that all inputs, from organizations like RNE and FTE, but also the real-life cases of Commercial Conditions propose or consider reciprocal Commercial Conditions to incentivice all involved parties to act in a capacity friendly way and increase predictability for both parties.
- **Progressively increasing fees:** A Commercial Conditions system could incorporate charges that increase as the date of the train run approaches, as seen in all evaluated cases. This would encourage applicants to free up unused capacity and the IMs to alternate capacities as early as possible, even more so if the level of penalty increases continuously over time rather than in a step-wise manner. This approach reflects the fact that late changes have a greater impact on network stability and capacity utilization and could help optimize the use of the rail network's capacity. The system could reflect whether the released capacity can be reallocated and used by another applicant. It could also differentiate the impact of the change, allowing minor adjustments to be exempt from penalties.
- **Segmentation:** Different market segments, such as freight and passenger services, could be treated separately, as seen in Switzerland, where the ability of each segment to sustain the financial impacts of the system is considered. Similarly, France's current system also differentiates based on the type of traffic and its ability to pay, particularly between freight and passenger services. Hence, a system could also differentiate between high-traffic corridors and low-density lines to ensure that penalties or incentives are proportional to the impact of path changes. The market characteristics of each segment could be taken into consideration.
- **Simple, fair, transparent and predictable calculation methods:** Predictability and transparency in pricing models including simple and uncomplicated procedures could be a key consideration, as indicated by the Swiss and French systems, which base their charges on predefined formulas. This could help infrastructure managers and railway undertakings better anticipate the possible costs associated with train path modifications. Data availability can also be relevant to define adequate level of incentives. Commercial Conditions mechanisms could take into consideration that some non-use of paths will be outside the control of railway undertakings. Especially in the case of multi-network paths, it could be

considered that changes and/or delays on one network do not lead to incentive fees on another network.

- **Harmonized European Framework:** A common structure across European countries could be beneficial for international train operations. Such a framework could facilitate cross-border rail traffic by reducing administrative complexity for multi-country rail operators. When introducing an incentive mechanism or significantly changing an existing one, a step-wise approach or proper assessment of the economic impact on stakeholders could be carried out.
- **Inclusion of Temporary Capacity Restrictions (TCRs):** The impact of planned and unplanned infrastructure works in the timetable could be explicitly included in commercial conditions, as is considered in France. SNCF Réseau and SBB I/BLS N are already incentivized to anticipate and minimize the impact of such capacity restrictions. Subgroup members had differing views on the limitations of including TCRs in the Commercial Conditions that are reflected in chapter 6 of this report.
- **Regular review and adjustment:** The Commercial Conditions system might require periodic review and adjustments (as reported in Switzerland, France) to reflect operational realities and stakeholder feedback, taking into account the roles of the stakeholders as defined in the draft capacity regulation. The real impact of the system is experienced only once the system is put in place. A European-wide system could follow a similar approach to ensure continued relevance and effectiveness. Respecting different starting levels, alignment of sytems might be done over several years.