



Brussels, 2023

Orientation Paper

Proposal for a Regulation on the use of railway infrastructure capacity in the single European railway area

CER Orientation Paper on Proposal for a Regulation on the use of railway infrastructure capacity in the single European railway area

1. Introduction

CER welcomes the publication of the 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 (Hereafter: the Regulation). The Proposal repeals the Rail Freight Corridors Regulation and makes the necessary adjustments to the Single European Railway Area Directive. It is a timely and necessary piece of legislation to ensure modal shifts and to help achieve the ambitious targets of the Green Deal and Smart and Sustainable Mobility Strategy. However, the regulation still needs some readjustments and include the most recent inputs from the sector in order to help IMs in Europe optimize their network capacity, coordinate and harmonize essential procedures with the goal of enabling rail to grow its market and bring more people, goods and businesses on rail.

The sector appreciates the work done by the European Commission, and believes it is a good Regulation to begin discussions with the sector and policy makers. CER would like to react with an orientation paper that will give the basis for following Positions Papers and amendments to the Regulation, as well as cooperation with other sector associations.

2. Capacity Management

2.1 Positive elements on Capacity Management

The provisions on capacity management address the current lack of harmonization, synchronization and coordination of the capacity allocation processes in the EU as well as the insufficient use of existing common sector tools. CER is pleased to see that the capacity related elements in the Regulation are generally in line with the sector's TTR concept. It is important that **all stages of capacity planning and allocation** remain in the Regulation, making the process aligned and harmonized, while allowing detailed timelines in annexes easier to adapt following experience from the sector. The sector welcomes the introduction of early planning in the form of *Strategic capacity management phase*, however it should be amended to better include the needs expressed by market operators (including shippers and operators) to make it an efficient and accepted process. In particular, CER welcomes the possibility to design/offer capacity products based on advance planning processes, e.g. as part of annual timetable, "rolling planning" and ad-hoc capacity products, accessible to applicants through a harmonized European process supported by common digital sector tools. The new product **rolling-planning**, provided it is granted with flexibility, will additionally ensure that the strategic capacity management fits the market needs. A common list of services included in the capacity supply plan and common means of publication will ensure coordination. It is also highly welcome that IMs

shall coordinate **capacity restrictions** and related train path amendments for cross-border traffic more strongly and more pro-actively.

Capacity Specifications for Framework Agreements and Multiannual Rolling-Planning are especially favorable to secure the capacity for stable traffic based on longer-lasting end-customer contracts and to reduce the efforts of RUs in the request phase since pure repetition of input for stable capacity needs can be significantly reduced and reliable products can be offered to all involved customers.

Multi-network capacity rights and the right of applicants to request these in a single "digital system" place and in a single operation (Article 27 (2)) are welcome to enable a fair allocation of scarce train paths, facilitating the implementation of a Single European Railway Area. The right for RUs to request multi-network capacity in one place contributes to the intermodal competitiveness and is a valuable step forward for internationalisation and lowering of rail administrative burden. Moreover, taking into account the multi-network perspective at different stages of the process - such as the recognition of force majeure along the entire route in case of an incident happening on one network only - is a logical and positive development.

We appreciate that under Article 28 (3), there is a new requirement that the **quality of international paths** must be the same as for national paths. This contributes to an increased acceptance of international capacity products use and intermodal competitiveness.

In addition, it is positive to see the **consensual conflict resolution mechanism** in the Regulation, making the planning and allocating of capacity more transparent with the involvement of all applicants and resulting in consensual solutions. This procedure for requests seems logic, fair and transparent bringing an optimization of the network usage while taking into account the market needs. It is also worth noting that putting in place competing conflict mechanisms for international and national network traffic is counterproductive and leads into inconsistency. The provisions aimed at incentivising applicants to request capacity in line with the capacity supply plan (especially on densely used networks), will help to make better use of capacity in the interest of both IMs and applicants.

However, while TTR has not been fully implemented yet, it is crucial to keep the flexibility needed to adjust and make necessary changes based on lessons learnt and experiences. It is of utmost importance that the sector does not need to wait for a legislative process to take place and to revise the current Regulation in 7-10 years. In this regard, the sector welcomes the concept of the European frameworks for capacity management, traffic management and performance management, which allow the sector some flexibility to design details of the processes described in the legislation.

All in all, the afore-mentioned measures should be implemented in a way that will not prolong the capacity allocation process or reduce available capacity (i.e. due to the procedures related to the closures).

2.2 Temporary Capacity Restrictions (TCRs)

The Regulation requires IMs to publish information and consult applicants as early as possible on planned **temporary capacity restrictions (TCRs)**, their impact on capacity

available for commercial purposes and on alternative capacity. It also requires IMs to coordinate among each other wherever the restrictions take a cross-border nature. If supported by other frameworks (e.g. stable investment planning from Member States) this will help to reduce the negative impact of TCRs by obliging IMs to provide alternative planning for the capacity restriction to the RUs. Also, a better international coordination of TCRs is facilitated by this Regulation.

For capacity restrictions with a major impact on the capacity available, applicants may request the IM to provide alternative planning for the capacity restriction with a view to identify and select an option that takes into account the impacts on applicants and infrastructure managers in a balanced way. The IM shall provide those applicants with an indicative planning of alternative capacity available during the capacity restriction (Article 10 (4)). This is supported by CER. However, in order to reduce the admin burden for RUs and IMs, there should be a limited number of TCR variants and it could be specified in Network Statements and/or the European Framework.

2.3 Delegated/Implementing Acts

CER takes note that the European Commission can adopt **delegated acts** to amend sections 4,5,6, and 7 of Annex I (Art. 38(3)) with a view to ensure an efficient allocation process. Delegated and Implementing acts should be understood as the ultima ratio, e.g. when ENIM will not perform. They should not give rise to instability and lack of transparency and shall be based on the advice of involved stakeholders: ENIM, ENRRB, Applicants, an Railway Undertaking (RU) Platform or Advisory Group (which is so far missing in the recent proposal) and SERAC. It is crucial that the objectives of delegated and implementing acts is known beforehand and the sector is properly consulted and its position is duly taken into account.

2.4 Capacity Needs Announcements

To provide the sector with an efficient Strategic Capacity Management Phase this has to be complemented with the possibility for applicants to provide their needs during the preparation of capacity models (referred to as "Capacity Needs Announcements" in TTR). The draft Regulation allows for regular consultation, but should be reinforced to provide a framework of dialogue between IMs and applicants. Inputs from applicants should remain the main source of information for the IMs when elaborating deliverables of the strategic capacity management phase, especially as the key input for open access in capacity production including advance planning phases. Furthermore, specific attention needs to be paid to multi-network circulations as they are more difficult to coordinate.

2.5 Socio-Economic and Environmental Criteria

The Regulation specifies that in cases of scarce infrastructure and where the consensual conflict resolution mechanism has not resolved capacity conflict, the IM will have to use **socio-economic and environmental criteria** to resolve the conflict. Overall, there is limited experience with application of socio-economic and environmental criteria among IMs in Europe until now; thus it is important that the legislation will provide for sufficient room to gain experience and it allows for a gradual finetuning of the concept over time

based on lessons learnt. The Regulation could be complemented with further provisions to meet certain concerns over this obligation:

- 1. Finding the right balance for process standardization:** It is questionable whether within the whole EU the same importance and understanding of parameters/criteria is reachable. It should be clarified that the socio-economic criteria shall be based on standardized and representative values.
- 2. Ensuring the use of socio-economic and environmental criteria remains manageable:** It might be a challenge to identify specific data for every case. In case data is needed by the IM, this provision should include an obligation for applicants to provide said data. In addition, there are doubts whether criteria, such as operating costs, adopted in Art. 8 (4), which are to be assessed by the IMs in order to resolve the capacity conflicts, are available to IMs due to the trade secrets of RUs.

In order to establish robust criteria valid throughout Europe (that also take into account market opening), to determine necessary data, to define standardised and representative values and to adapt existing processes, a Europe-wide investigation should first be carried out. The implementation period for the application of the socio-economic and environmental criteria should be extended and defined together with the industry.

2.6 Further improvements on Capacity Management

Article 9 (1) states that “**Infrastructure managers shall provide** interested parties, in particular applicants, potential applicants and regulatory bodies, with **accurate and up-to-date information on the availability of infrastructure capacity throughout the entire capacity management process**, including in the strategic planning phase”. In CER’s view, such information might not be feasible during the entire strategic planning phase (capacity strategy, model, supply) since this information is not generated at every point in time.

Article 12 (3) states that “in strategic capacity planning, in particular in the capacity model referred to in Article 17 and in the capacity supply plan referred to in Article 18, IMs shall indicate the pre-planned capacity suitable for the provision of multi-network transport services.” CER would like to highlight that at the borders the capacity model and supply are harmonized. Distinguishing between national and international capacity does not add any value in our opinion.

Concerning **Capacity Strategy** (Art. 16), it is unclear whether and how the market is involved in the study by third parties and whether the procedure is appropriate. The studies must involve the market similarly as already stated in Art. 15 (4) where ENIM shall consult applicants and customers of rail transport services and their associations and national and EU public authorities will be fully involved for the carrying out of the study. This way, the whole available picture of the market shall be taken into account while creating the Capacity Strategy.

Updates of Capacity Strategy (Article 16 (4)) and Capacity Model (Article 17 (2, 3)) are not always feasible especially when the next stages for the same timetable year (i.e. Capacity Model or Capacity Supply respectively) have already started and could be used for the update. Thus the same changes in several strategy documents for the same target timetable in parallel should be avoided. The obligation to justify deviation of the capacity

model from the capacity strategy as well as deviation of the capacity supply from the capacity model as already required by the draft Regulation renders updates obsolete.

Article 18 (9) states that the Regulatory Body shall analyse the capacity supply plan and may take a decision requiring the infrastructure manager to amend the capacity supply plan. CER believes that this might lead to a waste of resources. Infrastructure works for which capacity must be reserved and which require a long planning and allocation process of resources might be postponed on short notice due such a decision of the regulatory body. This would lead to high cost for the IM and a complex update of the planning and allocation process for resources for construction works. What is more, this point is not mentioned in the Annex timeline. There is a need for a specific provision in the Regulation to define the scope and the reasons for the RB's interference and a duty to handle multi-network capacity in specific way, for instance to consult ENRRB in such cases.

According to Article 21 (1) "IMs shall declare without delay an element of infrastructure either to be **highly utilised or to be congested** if infrastructure works resulting in capacity restrictions scheduled in accordance with Article 10 result in capacity becoming scarce." The conditions to declare an infrastructure highly utilized or congested are confusing. CER does not think that it is reasonable to declare infrastructure as highly utilized in case of TCRs, which are, as the name indicates, temporary, especially since this label comes with legal consequences and required actions. We recommend differentiating between measures for highly utilized and congested infrastructure. On a similar note, Annex II (1) deals with the **thresholds for the declaration of highly utilized and congested infrastructure**. Depending on the agreed calculation method and the thresholds included in this Regulation, in some countries a major part of the rail network might be automatically labeled as highly utilized or congested which automatically triggers legally required actions determined in this Regulation. Therefore, CER proposes to reconsider the thresholds in Annex II.

It is highly important that IMs can ensure that **capacity is available for allocation for different rail traffic types and products** (annual timetable, rolling planning and ad hoc). Article 24 introduces **rules for specialized infrastructure**, meaning that IMs can, in certain cases and after consultation with involved parties, **designate particular infrastructure for use by specified types of traffic** such as freight or passenger traffic.

Article 25 on **Partitioning of infrastructure capacity** on the basis of socio-economic and environmental criteria could be challenging for the railway sector. Railway capacity is not 'fixed': it depends on the number and quality of requests by RU's. The set of criteria in Article 25 is not clear and the definition in Article 4 is too limited.

Article 28 deals with the **coordination of the allocation of multi-network capacity rights**. If IMs fail to appoint a single point of contact, the IM on whose network the first place of departure is located shall be responsible to act as the single point of contact for enquiries related to the specific capacity request. In general, CER welcomes this provision. However, it should be somewhat amended, because it is not always practical for RUs that run "train pairs". Passenger RUs for instance usually have train runs from location A to B and then back from B to A. The current proposal could lead to two different points of contact for one single "train pair".

Article 28 (2,a) should be clarified if the **single point of contact** in charge of communication with the applicant has to be appointed for each request for multi-network capacity right or it should be considered as a contact manager for all requests.

Concerning the **coordination of the allocation of multi-network capacity rights** (Article 29 (1 & 3)), due to different ownership of service facilities, it is very difficult for the IM to act as a single point of contact. There is no legal obligation for the owner of the service facility to cooperate with the respective IM but the IM is forced by the Regulation to provide information and make accessible capacity at a service facility not operated by her.

Article 31 (1) states that "the infrastructure manager shall allocate such capacity through **framework agreements** concluded with that applicant". CER notes that the obligation to offer framework agreements included in this Regulation triggers a revision of Regulation 2016/545. Framework agreements are regulated in Regulation 2016/545 in a way which leads to huge administrative burdens for the IMs when offering them. Until now, most IMs have decided not to use framework agreements at all. Therefore, Regulation 2016/545 shall be adapted to reduce the bureaucratic burden for IMs and applicants. In addition, the possibility of multi-network framework agreements should be further discussed and reflected upon. However, any legal provision in this regard shall avoid additional administrative burden for RUs and IMs.

Article 31 (4) highlights that framework agreements shall not be such as to preclude the use of the relevant infrastructure by other applicants or services. For this purpose, IMs shall set the maximum shares of total capacity that can be allocated through framework agreements and include these in the network statement. CER recommends harmonizing these thresholds at least to some extent across borders between neighbouring countries to avoid inconsistencies with negative impact on rail capacity and traffic.

Art. 32(8) defines the late path requests; however, the reference to final deadline in point 4 of Annex I is unclear, as the only "final deadline" in this Annex is X-5.25, which would however imply that late path requests would have to be placed almost at the same time as annual timetabling (ATT) requests. Today, based on point 2 of Annex VII in Dir 2012/34, the deadline to answer late path requests is X-1 (= when today the final working timetable is published), which could be accelerated.

The **possibility to refuse requests** (Articles 32 and 33) shall be limited. It must be clear that non allocation is a measure of last resort (duly justified), once the consensual conflict resolution, including a common search for feasible alternatives by all potentially involved IMs has led to no result.

For some passenger traffic, the possibility to order a so-called "**Late-Path-Request**" in the annual planning is extremely important. This is described in the following sections: Art. 4 (7), Art 32 (6), Annex I (Point 4.2). The topic "Late Path Request" is not described precisely and also not designated as such. The above mentioned points should therefore be clearly designated as "Late Path Request for the annual timetable". Furthermore, the proposed text does not say how long or until when a "Late Path Request for the annual timetable" can be submitted. This should be specified, in a way that offers are provided as soon as possible.

Generally, clearer definitions are needed, for instance when a request has to be considered as rolling planning request (Article 33) or as ad hoc request (Article 34) to increase the acceptance of this new useful instrument. These definitions should bring sufficient flexibility in the implementation of rolling planning, allowing RUs to adjust their request compared to the capacity supply plan, and IMs to deviate – until quality criteria are satisfied – to make optimum effective use of the available infrastructure capacity and accommodate other capacity requests.

Under Article 34 and Article 39, the **time schedules to prepare an offer for ad hoc requests** or to offer an alternative when changing infrastructure capacity rights – especially for single network capacity rights (1 day) – may be impractical without at least partial digitalization, thus the legislation should impose it unless service facilities operators are bound by the same Regulation. Many service facilities do not offer their services 24/7, so especially on weekends the time schedule of 1 day even for single network capacity rights will be impossible to meet. For multi-network capacity rights it seems difficult to respect the time schedule. If there is need to change a higher number of capacity rights (e.g. force majeure, necessary infrastructure works according to Annex I/2/7), it is not possible to plan all necessary alternatives within five days. Thus in addition to the general timeline requirement, certain exceptions for force majeure, network crisis and so forth should be foreseen.

According to Article 35 (6) "IMs shall include all capacity restrictions resulting from TCRs in the capacity model and in the capacity supply plan, irrespective of the moment when they are scheduled." In CER's view, **there should be a definition which TCRs have to be considered in the capacity strategy, model and supply**: e.g. Strategy: Major impact TCR, Model: Major and as far as known high impact TCR, Supply: Major, high and as far as known medium impact TCRs. Also, in Annex VII of 2012/34 the addition „ as far as known" was included and this should be included in this Regulation too. Hence, CER recommends amending Annex I (3.1) to include "to the extent they are known".

It appears as if Article 36 allows for national ways **how Regulatory Bodies exercise their checks on capacity contracts**. This may lead to a continuation of today's problems where neighbouring countries have different approaches, resulting in unharmonised provisions of path offers for cross-border traffic. A common approach/timeline should be required.

Article 37 (3) states that "in case of conflicting capacity requests involving rail services with similar characteristics and socio-economic profile, the infrastructure manager shall assign capacity on the basis of an **auction** or in a way providing access to the largest number of applicants. The latter method shall be applied subject to approval by the regulatory body." In the case of insufficient capacity, a tool of auctions may be applied, and this could harm the whole system. The final assignment of a path must however derive from a well-reasoned choice and cannot be random. Also, several IMs who have had experience with auctions confirmed this kind of tool inefficient and barely used.

Finally, the **timeline for strategic capacity management stated in Annex 1 (2) is not in accordance with current internationally aligned TTR process handbook**. CER highly recommends adapting it so that it is in line with the RNE process handbook to avoid problems. For instance, the current Proposal includes "Publication of the first elements of the capacity strategy", while it should only be "Start of the first elements of the capacity strategy". By including the first publication already in X-60, this leads to a situation where IMs have to create several capacity strategies in parallel leading to unnecessary bureaucracy, workload and costs.

2.7 European Frameworks

Concerning the European framework for capacity management, traffic management and performance management, the role of ENRRB should be executed and clarified in a way that they check the compatibility of the European Frameworks, proposed by ENIM, with the regulatory objectives of this Regulation. Also, regulatory supervision should be

Orientation Paper

Proposal for a Regulation on the use of railway infrastructure capacity in the single European railway area



designed in a way that national decisions cannot undermine the harmonized procedures described in the frameworks. Moreover, it is important that RUs are sufficiently consulted in the development of the European frameworks, especially for capacity management and traffic management.

2.8 Commercial Conditions

We welcome the introduction of **reciprocal commercial conditions** for IMs and RUs in case of non fulfilment of commitments with respect to an allocated capacity right. Reciprocal commercial conditions will incentivize involved parties to act in a capacity friendly way and thereby avoiding waste of capacity.

However, it seems that there is an ambiguity of the Commission's terminology, i.e. "compensation for changes to capacity rights". The Commission seems to be aiming for a system of incentives and penalties. The problem is that this term is also used for claims. It might be worthwhile to require some clarification in this subject, for instance by adding a definition for "compensations" to Article 4 that limits the meaning to "fees paid due to commercial conditions".

It is in both IMs' and RUs' interests to run a train and claims for compensation should not offset it. It is essential to ensure that compensation incentives do not jeopardize optimum effective use of the available infrastructure capacity (as enshrined in Article 26 SERA) but mitigate the economic impact on all actors. Principles of commercial conditions should be maintained.

3. Coordination of Traffic, Disruption and Crisis Management

CER believes it is important that there is no centralization of traffic management (Art. 42) but supports common rules and procedures mostly for disruption and crisis management. The provisions on the coordination of traffic management, disruption and crisis management are built on IMs' current practices in the framework of the European Traffic Management Network (ETMN) and International Contingency Management Handbook. The sector appreciates the work currently done within the ETMN and welcomes that it is aligned with the chapter and articles of the coordination of traffic management in the Regulation. However, the application remains mostly on a "voluntary" basis; this could ideally be strengthened as an obligation.

4. Performance Review

It is appreciated that KPIs and regular monitoring will be developed by the sector but is important to go for simple KPIs, with a good set of preconditions. It is important to use a well defined but limited set of KPIs.

The definition of KPIs should involve both IMs and RUs, and potentially other stakeholders, in order to ensure balance between internal performance and the needs of the market, and should be common across the European Network.

It should be also clarified that the Performance Review Body incorporates experienced knowledge of IMs and RUs in a balanced manner.

5. Governance Structure

5.1 European Platform of Infrastructure Managers (ENIM)

Generally speaking, it is crucial to avoid duplication of governance structures which could lead into too much bureaucratic burden and inefficient processes for IMs and the sector as a whole. Also, CER believes that the exact distribution of tasks between the different proposed structures is not always entirely clear from the draft text, which could lead to risk of overlaps.

Under Article 4 (3), there is a very broad definition of “operational stakeholders” which can lead to high efforts in coordination for IMs. A more limited and precise definition of operational stakeholders, as those using the infrastructure or placing the orders for applicants, including their associations, is important to enable proper implementation of the various coordination and consultation obligations.

Furthermore, ENIM should not be limited to IMs from EU Member States. All IMs or Allocation Bodies responsible for the core and extended core network shall be allowed to become members of ENIM if they act according to the provisions of this Regulation to minimize the coordination efforts between EU & non-EU members.

5.2 Railway Undertaking Platform

While CER welcomes the provisions on the new governance, there is no legal mandate for an “**RU Platform**” similar to the IM one (PRIME/ENIM), as well as technical working groups, similar to the current RFC structure of RAGs/TAGs (with the inclusion of passenger RUs). This is highly important to keep the market voice balanced and to provide a counterpart to ENIM towards the Commission, as well as an interface for ENRRB. There is a need for a continuity between the work of the RAG and this new “RU platform” to secure a smooth transition between the two entities. IMs will also benefit from a regular, structured, open, institutionalized and constructive dialogue with RUs and other applicants by gaining valuable market information, enabling them to act more quickly and provide a better service. Besides the RU platform, the terminal platform should include other service facilities addressed by this Regulation. In addition, consultations of stakeholders shall be strictly monitored and taken seriously. Furthermore, involving expertise from RUs and IMs in the Performance Review Body set up by the European Commission in Article 52 would ensure that customers are part of the oversight of services provided by the IM.

5.3 Network Coordinator

Concerning the new entity called **Network Coordinator**, it is not clear who that is going to be and what the organizational structure would be. The Regulation states that this entity will be impartial and competent. Both aspects are important and need to be specified. Also it is important to have transparent rules and criteria according to which the Commission will approve or reject appointments, as well as clear rules of procedures of this entity.

According to the Art. 53 (2 (d)) it should be better clarified what the matters having Union relevance are, which require the involvement of ENIM or the Network Coordinator in the coordination process.

Finally, a clarification is needed about the leading entity to be appointed by IMs based on the Art. 53 (2 (e)), since it could create an additional layer in the coordination process bringing additional burden.

6. Digitalisation of Capacity and Traffic Management

CER welcomes that the proposal defines clear targets for the sector in terms of ensuring that capacity management and traffic management processes under this Regulation are carried out using common digital tools and digital services. CER supports the proposed approach, which promotes use of common sectoral tools as well as European standards such as the ones in the TAF/TAP TSIs. In this context, it is important to emphasize that digital systems must not be considered in isolation, but a complete digital landscape must be developed from planning to operation using the same reference data and including all actors of the sector (IMs, RUs, SFs, etc.). The coordination of the development of a digital sector landscape could be supported by the Network Coordinator.

The proposal on common IT eco-system and train-related data sharing among stakeholders significantly increases the transparency, efficiency and credibility of the railway part of the logistic chain. The proposal sets up a coherent process of digitalization.

It is also important, while building up the new IT agenda, that the whole infrastructure network is covered. DCM with its central IT-system could be developed by the Network Coordinator. Both IMs and RUs shall be included in the development process to ensure efficient and customer-oriented solutions. DCM is a prerequisite for the full rollout of Capacity Model and Capacity Supply Plan.

We would also like to stress that there are already on-going important projects in the field of capacity allocation and management in the framework of Europe's Rail Joint Undertaking partnership (ERJU), which includes major European IMs and RUs, as well as sectoral stakeholders.

7. Financing

It is crucial for the rail sector that the deployment and implementation of **Digital Capacity Management** is sped up. For this, the EU, including via the next Connecting Europe Facility Call should provide sufficient financing for full TTR implementation, including DCM, as well as operation of relevant IT systems, for all market actors. Moreover, continuous EU funding will be crucial to ensure proper implementation and operation of the activities required under the draft Regulation.

8. Timeline and transition of RFCs

The Regulation will revoke the RFC Regulation in 2029, however it is not clear what RFCs' role will be the years prior and how the transition will take place. A transition regime is very important and will allow smoother implementation of new capacity management system within IMs. Activities with added-value of the RFCs should be integrated into the works of ENIM/Network Coordinator. Similarly, the continuity of work between the current RAGs and the proposed "RU Platform" must be included.

One thing that is not clear to CER Members is the status of Article 65 of the TEN-T regulation in the transition phase. Is for example a merger of the Corridors Rhine – Alpine and North Sea – Mediterranean still sought?

Finally, to facilitate European Green Deal ambitions, it should be assessed with the sector, to implement a number of provisions earlier than from the yearly working timetable 2030 (as currently foreseen in Article 77), where feasible. Provided that IT-tools required are available, provisions such as multi-network capacity rights, reciprocal commercial conditions, and framework agreements can be implemented earlier, as they are beneficial for the rail sector within the current SERA Directive, and within the new TTR-like approach. With the sector having advanced already in TTR implementation, also process-related elements should be accelerated, in case proposed improvements are taken into the Regulation.

9. Missing aspects in the Regulation

The sector believes that the following aspects are missing in the proposed Regulation:

- **Multiannual funding of IMs by the Member States** is not mentioned at all. Legally oblige (and reinforce current legal solutions such as Art. 8 of Directive 34/2012) Member States to provide IMs with stable and timely announced multiannual funding for the maintenance, renewal and new construction of rail infrastructure for a period of at least 5 years. Also, ensure that multiannual funding tries to balance the costs of TCRs for IMs and their negative impact on rail services.
- The **long-term financing of the development and operation functions** and the digital implementation is not sufficiently taken into account in the proposed legislative financial statement accompanying the draft Regulation. The budget indicated in the Regulation covers only part of the operation of the central components, but lacks the full investment in the new digital systems. Since the systems need to be built primarily by IMs and Network Coordinator as soon as possible to cover the indicated timeframe, sufficient funding should be provided. The next call for proposals for the 2023 CEF for transport should include sufficient funds for the implementation of the Regulation and the direct financial resources foreseen in the Regulation should be increased.
- The provisions of the new capacity management allow for continuation of **national or local market approaches** (as long as they do not contradict international processes) to be reflected in the timetable such as regular-interval timetables versus more demand-based timetables. However, it is important for the rail sector to add this point explicitly in the Regulation to avoid misunderstandings and/or misinterpretations, while

keeping the requirement to have equal quality for national and international paths and treating all capacities within the same process.

- In addition to consultations for each step, the Regulation must support the logic of **dialogue between IMs and applicants throughout the Strategic capacity management phase**. Market involvement will help solve potential capacity conflicts, set capacity products as close as possible to the needs of the market and provide relevant information to the IMs to ensure capacity is planned in accordance with RU production models and economic constraints faced by future applicants and by this optimising the capacity usage.
- **Updates of Capacity Supply Plan require functioning central IT-systems** with interfaces to national systems. The Network Coordinator has the responsibility for the central IT-systems and could also lead the sector coordination to come to a digital sector landscape. Similarly, changes to a multi-network capacity right by the IM includes a high level of coordination with stakeholders for which central IT-support is required.
- Include a legal provision that makes sure that **national capacity tools** remain allowed only if the newly introduced capacity process which is based on the TTR project is not undermined.
- Various digital TCR tool functionalities shall be developed within DCM in such a way to ensure a **European perspective on TCR** at least on the TEN-T extended core network. Also efficient traffic management elements for trains, including digital and real time solutions, shall be gradually elaborated. The IM making a change to a multi-network capacity right shall be responsible for the process to coordinate. This is associated with significant administrative effort, which requires central IT-support, otherwise, it is difficult to handle.
- Definition of capacity objects should be added in Article 4 as well as traffic types and products. Detailed definition for partitioning and the products (Working Timetable, rolling planning including "multi-annual rolling planning" and ad hoc) should be included. The definition of "incident" needs to be correlated with the definition provided in Directive (EU) 2016/798.
- The time schedules for ad hoc requests need to be more differentiated. There is no need to decide for an ad hoc request for a train before the relevant requests in the preceding phases have been settled. Instead of one fixed time schedule for ad hoc requests, there should be possibilities for longer time schedules in the annex for ad hoc requests submitted before the start of the working timetable.
- Article 26 (5): There should be clear consequences when an applicant does not inform the IM and the regulatory body about its intention to request capacity for a new passenger service on railway infrastructure with existing public service contracts (Article 11 Directive 2012/34). If RUs do not meet the mentioned deadline the IM shall have the right to not consider these capacity rights. Also, Article 26 (5) shall refer to operating an "open access passenger service" instead of "passenger service".
- Art. 32(5) should also explicitly require from the IMs to do the utmost effort to offer an alternative path in case of a request not consistent with the capacity supply, taking

Orientation Paper

Proposal for a Regulation on the use of railway infrastructure capacity in the single European railway area



into account the applicants' needs (i.e. as an alternative to acceptance or rejection provided for in the draft).

- Clear description about the coordination of ENIM with ETC Coordinators is missing from the Regulation.
- Clear description how different platforms (ENIM, Network Coordinator, Focal points, SERAF, etc.) will coordinate among each other is missing from the Regulation. Who should be the "liaison"?

About CER

The Community of European Railway and Infrastructure Companies (CER) brings together railway undertakings, their national associations as well as infrastructure managers and vehicle leasing companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises, representing 71% of the rail network length, 76% of the rail freight business and about 92% of rail passenger operations in EU, EFTA and EU accession countries. CER represents the interests of its members towards EU policy makers and transport stakeholders, advocating rail as the backbone of a competitive and sustainable transport system in Europe. For more information, visit www.cer.be or follow [@CER_railways](https://twitter.com/CER_railways) on Twitter.

This CER document is for public information.

Although every effort is made to ensure the accuracy of the information in this document, CER cannot be held responsible for any information from external sources, technical inaccuracies, typographical errors or other errors herein. Information and links may have changed without notice.