

Joint Vision on Capacity Regulation

8 March 2024

Joint Vision of the Sector on Capacity Regulation

The European Rail Sector stakeholders welcome 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”) and appreciate the work done at the level of the co-legislators.

Rail is the most sustainable option for freight and passenger transport with one train emitting nine times less CO₂ emissions and using six times less energy compared to road traffic. The status quo is not an option: rail modal shift has to increase and the international rail system in Europe needs to be adapted to face the challenges of the climate and energy crisis. An interconnected and competitive network of rail freight and passenger services will strengthen the economic, social, and environmental sustainability of Europe. It will drive towards the timely implementation of the EU Green Deal and help meet the targets of the Smart and Sustainable Mobility Strategy, increasing modal shift and strengthening European cohesion by reinforcing connectivity and fair development.

Shifting more freight volumes and people to rail leads to more trains in the future. However, it is no secret that the current rail infrastructure will not be able to meet the increasing demand. The accelerating deadlines foreseen in the TEN-T infrastructure requirements will help in the medium and long-term future, but solutions for a more efficient use of capacity are needed now.

The sector believes that the Regulation is a timely and necessary piece of legislation to optimise the use of existing rail infrastructure, boosting the efficiency of capacity and traffic management and thereby improving the quality of rail services and contributing to the achievement of a Single European Rail Area. It will improve the coordination among Infrastructure Managers (IMs) and Allocation Bodies (ABs), increase dialogue with their customers (Railway Undertakings (RUs) and other Applicants) and other stakeholders, and help drive the establishment and interconnections of relevant digital tools to optimise and implement international processes. Moreover, it will provide the needed flexibility to the freight operators whilst ensuring the necessary predictability to the passenger operators.

The rail sector is aware that improvements in the Regulation can help achieve a 4% increase of capacity.

Therefore, we urge the co-legislators to keep in mind the following:

1. The Commission’s proposal is technically mostly based on the **TTR** project as well as on other projects (e.g. European Traffic Management Network; collaborative decision-making and commercial conditions). The sector welcomes this bottom-up approach. The key elements of the “TTR”, duly incorporated in the final text of the Regulation will ensure a swift and successful implementation of the projects.

2. The Regulation specifies that in cases of scarce infrastructure and where the consensual conflict resolution mechanism has not resolved capacity conflict, the IMs/ABs, provided that they possess the necessary data, will have to use **socio-economic and environmental criteria** to resolve the conflict. It is crucial to guarantee that these criteria are tested and fully transparent, understood and accepted by the sector stakeholders, that they are delivered on time and that they are based on standardized and representative values to avoid a patchwork of national allocation priority rules. Open details (e.g. who defines the values, application in case of TCRs) should be clarified and/or must be defined in later phases and thus certain flexibility in the Regulation is required.
3. IMs/ABs shall remain responsible for developing and operating supporting **IT tools to fulfil capacity and traffic management processes**. All systems should use processes and specifications based on TAF/TAP TSI and be interoperable to enable a common European IT architecture.
4. The EU, including via the next **Connecting Europe Facility** Call and with CEF3, should provide sufficient financing for full TTR implementation, including Digital Capacity Management (DCM), and virtual ETMN as well as operation of relevant IT systems, for all market actors. Data sharing and access to data is imperative for a working IT architecture.
5. The sector calls for a stronger and well organised **RU/Applicant dialogue** in capacity processes. Provisions supporting active RU/Applicant input (e.g. Capacity Needs Announcements) shall be added, facilitating that IMs/ABs can create strategic planning according to market needs.
6. The possibility of IMs/ABs to **refuse requests** due to mismatch with capacity supply plan shall be limited. Non allocation is a measure of last resort (duly justified as it could be for instance in the case of congested infrastructure or temporary capacity restrictions (TCRs)), once the consensual conflict resolution, including a common search for feasible alternatives by all potentially involved IMs has led to no result.
7. The majority of the elements of the Regulation shall come into force in 2030. The sector welcomes **accelerated implementation** of certain elements of the Regulation or piloting of process components to ensure best benefits of the Proposal whenever possible in accordance with legal basis, while ensuring that such acceleration is balanced and does not disproportionately impact certain stakeholders.
8. The sector welcomes that IMs/ABs are empowered to manage their network to make optimum use of capacity. For this, it is important that they coordinate in line with the proposed mechanisms. The strengthened role of IMs also requires adequate involvement of applicants at all stages of the process. A **dedicated RU/Applicant body** composed of all categories of applicants will help to identify and bundle market needs and strengthen the dialogue with ENIM. This applies in particular in the development phase of the European frameworks by ENIM.

9. **Effective and independent regulatory supervision** of the activities of ENIM is crucial. In particular, regulatory activities should be designed in a way that harmonised procedures described in the European frameworks should not be undermined by relevant national decisions. This should be achieved through finetuning of the ex post role and competence of the European Network of Regulatory Bodies (ENRRB). ENRRB should assess and provide an opinion of the European Frameworks to ENIM. National Regulatory Bodies should work closely together in ENRRB to avoid those national deviations. This must not lead to slowing down the process of allocation with different ex ante consultations.

10. The **Performance Review Body** should incorporate experienced knowledge of the relevant stakeholders in a balanced manner so as to ensure an unbiased and independent review process.

11. The **creation of new bodies or the extension of tasks of existing entities** is unnecessary and potentially counterproductive. The sector urges the co-legislators not to create new entities or extend the powers of existing entities in addition to those already proposed by the Commission and the sector. The overall governance must remain lean and efficient while still involving all relevant stakeholders. Additional entities risk creating an additional layer of work and wasting millions of current investments which will add complexity and increase inefficiencies. These issues will ultimately delay the process and the deliverables beyond the timeline proposed in the regulation, which would be detrimental for the entire sector.

12. The sector welcomes the better planning as required by the Regulation, which requires IMs to publish/provide information and consult applicants as early as possible on planned temporary capacity restrictions (TCRs) and their impact on capacity and requires IMs to coordinate among each other. If supported by other frameworks this will help to reduce the negative impact of TCRs. In this context, it is important to explore ways to further increase coordination among IMs and dialogue with RUs when it comes to scenarios in which capacity is impacted due to unforeseen events, such as natural disasters, so as to quickly restore traffic on the impacted routes.

13. In order to ensure that information on TCRs can be published in a timely manner, **Multiannual funding of IMs by the Member States** should be added. The Regulation should 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 to keep TCR planning stable. This should also ensure that multiannual funding tries to balance the costs of TCRs for IMs and their negative impact on rail services.

14. **Multi-network capacity rights** and the right of applicants to request these in a single interface chosen by the applicant and **in a single operation** are welcome to enable a fair allocation of scarce train paths, facilitating the implementation of a Single European Railway Area. The right for RUs/applicants 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 burdens.

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.

About EIM

EIM, the association of European Rail Infrastructure Managers, was established in 2002 to promote the interests of the infrastructure managers in Europe. EIM's primary goal is promoting growth of rail traffic and the development of an open sustainable, efficient, customer-oriented rail network in Europe. To find out more about EIM, visit www.eimrail.org