FORUM TRAIN EUROPE

RU Vision

on Commercial Conditions

version 2.0

Versioning

Version	Responsible	Date	Description
0.1	Sebastian Carek	05 July 2023	First draft by the FTE RU Core Team.
0.2	Sebastian Carek	27 September 2023	Elaboration by the FTE WG P/F
0.3	Sebastian Carek	23 January 2024	Elaboration by the UIC ECCO WS
0.4	Sebastian Carek	14 February 2023	Elaboration by the FTE WG P/F
0.5	Sebastian Naundorf	22 April 2024	Incorporation of ideas from RBs and further input from UIC ECCO
0.6	Sebastian Carek	14 May 2024	Finalisation of mature version by the FTE WG P/F
1.0	Sebastian Carek	06 June 2024	Agreement by the FTE Plenary Assembly
1.1	Sebastian Carek	26 August 2024	Conversion to a document, proposed remarks from the consultation of experts from IMs, RBs and other RU associations.
2.0	Sebastian Carek	02 September 2024	Decision on the inclusion of the remarks placed in the consultation rounds be the FTE CC Task Force.

Important notices

Disclaimer: This document is a draft vision of RUs, which was subject to consultation of other railway stakeholders with the intention to provide input for policy-makers in their decision-making, including SERAF, and with the final aim to reach a European mechanism.

Acknowledgement: The FTE community would like to express many thanks to all volunteers and experts from the Railway Undertakings, Infrastructure Managers, Regulatory Bodies, and international associations for their input, contributions and remarks. A special thanks has to be expressed to the UIC ECCO Group, which organised a dedicated workshop and provided the results to the FTE Working Groups.

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1. Introduction

Since the beginning of the TTR Programme, it was highlighted that reciprocal Commercial Conditions (hereafter CC) should be introduced to support the functioning on the new capacity management process.

In July 2023 the European Commission (EC) launched a legislative proposal on the use of railway infrastructure capacity with certain rules for CC and the potential possibility of issuing a delegated/implementing act.[1] In 2024, this was followed by establishment of the SERAF Sub-group on CC, to bring in the experience on best practices and potential solutions to implement them in practice.[2]

The RUs in FTE actively addressed the topic and developed their own vision for CC. Feedback was gathered from experts including Infrastructure Managers, Regulatory Bodies, and international associations. The FTE CC Task Force then incorporated as much of this feedback as possible to gain broader support.

This document presents the proposal for the CC system for both IMs and RUs to the relevant decision-makers. The main document is accompanied by further reasoning, data and best practices in the annexes. Abbreviations are included in Annexe 4.1.

2. Commercial Conditions for IMs

2.1. General aspects and exceptions

These general requirements are proposed for the system of reciprocal Commercial Conditions:

- The system shall make it more attractive for IMs to seek re-routing options rather than withdrawing a path without an alternative.
- The system is multi-network (origin-destination), for instance, no prejudice in the choice of re-routing (national vs. international). The IMs shall 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 costs emerging from the CC for IMs should not be eligible to be included into the TAC, charged to RUs.
- This system is independent of the performance regime, which is out of scope of this vision.
- This system aims to steering the behaviour of the parties (IMs and RUs/applicants) and encourage them to fulfil their commitments in relation to an allocated capacity right. Therefore, any rights of the railway undertaking resulting from losses or damages based on other grounds, such as according to the CUI Uniform Rules[3] - remain unaffected by the system outlined in this document

[1] The final legal text and competences are in the process of reaching agreement between the legislative institutions of the EU: the Council of the European Union, European Parliament and the EC.
[2] SERAF SG Terms of Reference, Ref. Ares(2024)1247611 - 19/02/2024
[3] Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI) - Appendix E to COTIF.

There are situations when the CC should not be applicable, as the goal to incentivise behaviour cannot be reached; the following exceptions are suggested:

- Force majeure according to the definition of the "capacity regulation", decision of state authorities out of IM control (border checks, military orders), relevant court rulings, and strikes of IMs' staff
- Paths ordered through total closure TCRs which were duly announced by the IM by X-12, the re-routing is planned before ATT and when the capacity rights are contracted after this deadline. Except two cases, where CC are still applicable, namely:
  - FA / RP capacity rights contracted before X-12
  - traction support (see chapter 2.2.3)
- Changes in the operation timetable that are already in the scope of the performance regime
- Consensual Optimisation (involved RUs and IMs agree on changes to allow for more train runs)

Changes demanded by the TCR construction companies shall not be considered as an exception. The IMs should be motivated for TCR stability already via their contracts with construction companies.

2.2. Components of CC for IMs

It is proposed that the CC for IMs are established via three different components, of which each aims to reduce the consequences on RUs and their customers. Each of the components stand independently, and payment under one component cannot exclude obligation of the payment under another component. The following three components are in the subchapters explained more in detail.

Component	Goal of the component
Motivational incentive	Make changes to paths due to TCRs as soon as possible.
Standardised compensation	Compensate additional costs due to IM decisions, not envisaged by RUs when signing the contract with their customers.
Traction support	Keep railways competitive even during big infrastructure works and prevent a shift to the road.

2.2.1. Motivational incentive

The goal of the motivational incentive is to make changes in paths due to TCRs as soon as possible. The IM(s) initiating the Path Alteration (replanning after allocation) – pays the motivational incentive. Article 40 (5) sets the penalty/compensation[4] dependent on the Track Access Charges (TAC). Despite this can be a valid option, the preference is to rather base it on nationally pre-defined value X € per train-km. The problems related to the usage of TAC for this purpose are explained in Annexe 4.3. Only the affected train-kms, where the alterated path does not match with the original path shall be counted.

[4] While in the draft proposal of the European Commission and of the European Parliament the term "compensation" is used, the Council uses the term "penalty". This document uses the term "penalty".

The RU community proposes a continuous curve, daily-formula-based increase.[5] In this model every single day from the moment of the path allocation[6] counts, making it every day a little bit more expensive for replanning, "the later IMs replan, the more they pay".

In case of multiple major alterations of a particular path at the same time, the penalty should be levied to the IMs only once. Nevertheless, in case the alterations of the same path are done at different times, this should be again subject to the motivational penalty.[7]

KPI system shall be introduced to monitor the stability of TCRs (comparison of the plan and the reality)[8] and measuring the magnitude of the IM-replanning impact on the train paths. The system shall have the highest possible level of automation and transparency and be IM-independent.

Penalty differentiation: level of impact
Overall penalty basis in the formula has to reflect the impact on the traffic to be really motivational, three categories of IMs' changes exist.

- Path Withdrawal (no train run)
- Major Path Alteration
- Minor Path Alteration

Path withdrawal
Path withdrawal is the situation when the alteration leads to the situation when there is no train run or RU is pushed to change the day of operation. Path withdrawal requires a higher level of penalty than path alteration because it is very harmful to the railway business. The higher payment should incentivise the preference of a major alteration rather than withdrawal of the path.

In case an IM withdraws only part of the path, it shall be up to the RUs, to judge whether it should be considered as a complete path withdrawal.[9] For multi-network capacity rights, the right for judgment shall be for all networks of the train run.

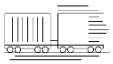
In case one of the IMs does not allow any more transport of the planned dangerous goods, such a case should be treated as a complete path withdrawal from the IMs.

Major/Minor Path Alteration
Path Alteration can be further differentiated between Major and Minor (the same philosophy is also applied to RU incentives).

[5] For explanation why this approach is preferred from the cascade one, see Annexe 4.2.
[6] or conversion of the capacity specification to a path. Note that the CC for capacity specifications are handled by the other component (multiannual commitment charge).
[7] This is because effort and costs appear on the RU side when they adjust to the IM's alteration. When the IMs trigger a new alteration of the already alternated path, the RUs experience new costs due to second replanning, not speaking about freight customers and passengers, whose timetable is again changed.
[8] The risk of "over-announcement "of TCR is further described in Annexe 4.4
[9] If an RU runs commercial passenger traffic between two large towns, and few kms in the entry to one of the towns are withdrawn, it may be not commercially viable to keep the path, as passengers might not be willing to disembark at the outskirt. Similarly for freight, if a freight RU is tasked to pick up goods in a terminal and is not allowed to do so at specific location due to a TCR, the customer might not be interested anymore in using rail.

Minor alterations are those which have no commercial impact on timetable, thus should be left without payment for the IMs.

Major alterations on the other hand shall be subject to a penalty. The list of major alterations is as follows:[10]



Freight paths

Train is re-routed with degradation of train parameters, such as restriction in weight, length, max axle load, profile, dangerous good allowance.

Timetable is shifted beyond +/- 30 mins in origin, destination and or selected important points for commercial or production purposes (including e.g. time at border/handover point).

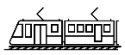
Maximum journey time between origin and destination is prolonged by +60 minutes.

Timetable is shifted, leading to loss of slot in service facility or necessary time for shunting, provided that the link to the service facility was communicated to the IMs in advance.

Timetable is shifted, leading to a loss of association(s) between trains; provided that the associations were ordered in the capacity request.

Same route is used, but train parameters a downgraded:

- Traction change: RUs required to change from electric to diesel,
- Traction change: RUs required to use additional/more powerful engine,
- Restriction: weight, length, max axle load, profile,
- Speed increase: RUs required change engine, train composition,
- Dangerous goods are not allowed anymore.



Passenger paths

Train is re-routed with effects on selected important points for commercial or production purposes.

Timetable is shifted, delaying any departure from +3 mins (no minus) at commercial station with booked connections or major hubs[11] or selected important points for production.

Commercial train station is changed to a run-through point.

[10] The list is supported by the IMs (meeting of Capacity Management Advisory Group on 15 May 2024), except for parts highlighted in yellow, where consensus was not reached, and IMs asked for later exchange.

[11] Conditioned that the deviations below 3 min are handled in the operation (Austrian model), otherwise only + 1min. Minus is not supported, due to harmful impact on passenger.

Timetable is shifted, leading to a loss of association(s) between trains (time for turnarounds, min/max transfer times for passengers), provided that the associations were ordered in the capacity request.

Change in allowed rolling stock with impact on traction, train length and or min. speed.

Timetable is shifted, leading to loss of slot in service facility or necessary time for shunting, provided that the link to the service facility was communicated to the IMs in advance.

Penalty differentiation: stability / flexibility formula

The formula has to provide effective motivation. Nevertheless, it should also reflect the business specifics of different market segments, considering the aspect of competitiveness with other modes of transport. Therefore, two types of formulas should be used:

- Stability formula:
  - Market requirement: higher need for path stability,
  - Formula design: higher payments in case of changes are already from the earlier stage for both IMs and RUs,
  - Applicable to: all passenger paths, and option for freight paths to opt-in.
- Flexibility formula:
  - Market requirement: higher need for flexibility,
  - Formula design: lower payments for periods earlier in time prior to the train run for both IMs and RUs,
  - Applicable to: for all freight paths, which do not opt-in to the stability formula.

2.2.2. Standardised Compensation

The second proposed component of CC is “standardised compensation”. The goal of this component is to compensate newly emerged costs due to IMs (e.g. their re-planning) that were not envisaged by RUs when signing the contracts with their customers and or starting new supply-driven business.

The standardised compensation system shall be applicable irrespectively of TCRs announcement deadlines[12], but only for those cases,[13] where the capacity is already contracted:

- in the form of a path,
- in the form of capacity specification in the Framework Agreement, in case the number of affected trains in the upcoming timetable period exceeds a certain defined limit (quota),
- in the form of capacity specification in the Rolling Planning, in case the number of affected trains in the upcoming timetable period exceeds a certain defined limit (quota).

[12] Currently the deadlines are listed in the Capacity Regulation Annex I but with the outlook to update them with a delegated act.

[13] In these cases, the revenues/costs are already fixed in contracts with customers or RUs already have done investments in the new open-access business case. Further reasoning and explanation you can find in Annexe 4.5.

In order to prevent a bureaucratical burden to both IMs and RUs (data collection, disputes etc.) the calculation shall not be done case by case, but using flat standardised rates applied in cases of withdrawal, re-routing, prolonged travel time, degradation of parameters and similar.[14]

Below are proposed flat standardised rates items to compensate for extra unexpected costs. They are based on the commercial impact on RUs and their customers, thus different for freight and passenger operations. The standardised values can further differ per market segment such (for instance passenger long-distance/regional. It has to be highlighted, that the values are expected to be defined nationally or locally, not being European-wide.

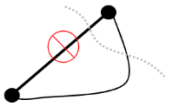
The total compensation for a train run is a sum of all individual items that were not kept as allocated in the original path/specification.[15]

The compensation is paid by the IMs, depending on the specific case:

- after the annual timetable allocation, for capacity specifications contracted via Framework Agreement exceeding defined quota that were not converted to paths (no train path allocation),
- after the deadline for annual conversion of Rolling Planning slots to paths, for capacity specifications contracted via Rolling Planning exceeding defined quota that were not converted to paths (no train path allocation),
- after the path withdrawal (no train run),
- after the altered train run, where the subject to comparison for the calculation of the standardised compensation is the path after the last alteration with the originally contracted capacity (not the real / operation timetable).

Passenger

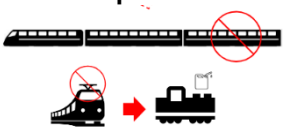
Type of impact	Items subject to standardised compensation payments
No train run 	• X € per each train-km withdrawn by the IMs

Re-routing 	• X € per each extra train-km in case the train is re-routed on a longer path
	  ○ The standardised value considers both aspects, extra RU costs and extra TAC to be paid for the longer route.
	  ○ In case the alternative route is shorter, with a lower total TAC and with no commercial stop removal, this point is not applicable.

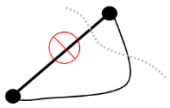
Interrupted train run 	• X € per interrupted train-km • X € per replacement-bus-km ○ In case the alteration leading to bus-replacement service is announced less than 1 month in advance, instead of the flat rate, real costs are reimbursed • X € per extra minute over the originally non-interrupted travel time
Prolonged or shifted travel time	• X € per minute of prolonged or shifted travel time.

[14] The standard rates might not in all cases match with the actual extra RU costs, but the sector will benefit due to predictability, lower bureaucratical burden and the fact that the reveal or processing of confidential data is avoided.

[15] Where more items belong to the same “type of impact”, each of the items stands independently and is counted to the sum.

	○ In case this prolongation due to IM alteration also prolongs the payable parking period on the sidings of the IM, the RU is not charged for the prolonged time. • X € per loss of association ○ with another linked train-path (turnaround of the rolling stock), charged per train-path ○ at a commercial station with other train(s), charged per station
Undesired change of rolling stock / train composition 	• X € per each diesel train-km in case the original train path was allocated with electric traction • X € per each 10m of reduced train length of the rolling stock irrespectively of a commercial class, number of seats.

Freight

Type of impact	Items subject to standardised compensation payments
No train run 	• X € per each train-km withdrawn by the IMs
Re-routing 	• X € per each extra train-km in case the train is re-routed on a longer path ○ The standardised value considers both aspects, extra RU costs and extra TAC to be paid for the longer route. ○ In case the alternative route is shorter, but with higher TAC, the TAC difference is compensated. ○ In case the alternative route is shorter, with a lower total TAC and with no commercial stop removal, this point is not applicable. • Depending on the situation, the affected RU can apply for TAC-free extra loco runs on the re-routing line for driver training.
Prolonged travel time 	• X € per minute of prolonged or shifted travel time. ○ The compensation is paid only for minutes that are above ▪ 120 minutes of the prolonged total journey time ▪ 30 minutes delayed arrival to the RU interchange point ○ In case this prolongation due to IM alteration also prolongs the payable parking period on the sidings of the IM, the RU is not charged for the prolonged time. • X € per loss of association with another linked train-path (e.g. turnaround of the rolling stock, wagon feeding train), charged per train-path.
Undesired load restriction / train composition 	• X € per extra train loading/unloading that has to be performed by the RUs, as a result of parameter restriction imposed by the IMs. • X € per each diesel train-km in case the original train path was allocated with electric traction • X € per extra reorganisation of loading/servicing ○ The compensation is paid only for minutes that are above certain time shift.

2.2.3.Traction Support

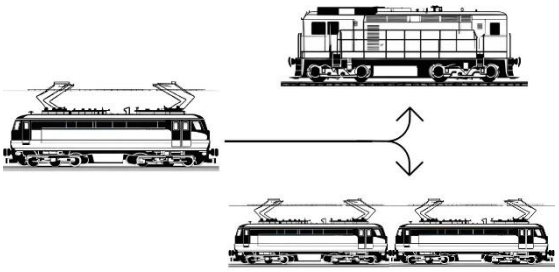
The aim of the traction support component is to keep railways competitive during big infrastructure works and prevent customers shift to the road and do not return to rail. It is mostly dedicated to keeping competitive rail freight, despite certain situations when passenger services are supported as well.

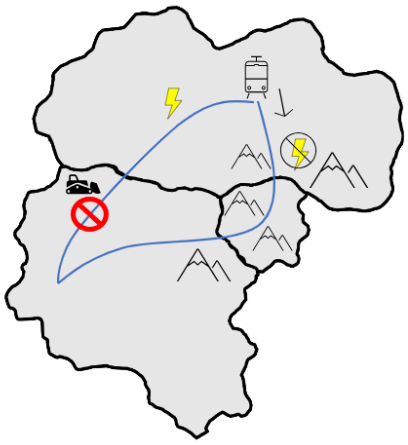
Proposed concept

The traction support is not a commercial condition element linked to a specific track access contract; it is rather a mitigating measure in a specific TCR situation, where the re-routing option has worse infrastructure parameters than the original route. The support should be provided to any RU that requests a path during the period of the TCR. Ideally, the traction support should be part of the IMs' TCR investment plan. The support should have a form of IM-provided locomotives available for any RU on the re-routing line.

The traction support should be applicable to significant TCRs with significant impact on the network flows, where the available re-routing has worse infrastructure parameters than the line affected by the TCR. Namely it is either

- not electrified OR
- requires stronger traction power (e.g. extra locomotive due to higher gradient)





3. Commercial Conditions for RUs

3.1. General aspects and exceptions

These general requirements are proposed for the system:

- The penalties must be bearable: to stimulate capacity-friendly behaviour but avoid economic downturns.
- The system is multi-network (origin-destination).
- This system is independent of the performance regime, which is out of the scope of this vision.

There are situations when the CC should not be applicable, the following exceptions are suggested:

- Freight and passenger: a contract handed over to other RU(s) - successive carriers or using substitute carriage (subcontracted), or other RU appointed by the applicant.

- Freight and passenger: transport-related service facility changes/cancels the slot for the RU, the original path is not usable, and RU must initiate a change.
- Freight: the customer cancels the contract (shift from rail) and RU cancels the path within 7 days.
- Force majeure according to the definition of the "capacity regulation", decision of state authorities out of RU control (border checks, state security, ships stuck in the Suez Canal and so forth) and relevant court rulings.
- RU cancellation following partial IM withdrawal: if one IM of the train run withdraws (partially) the path, the RU(s) can cancel the remaining parts of the path for free within 14 days, including paths that are in association (e.g. roundtrips).
- Consensual optimisation (involved RUs and IMs agree on adaptation to allow for more trains)

3.2. Components of CC for RUs

It is proposed that the CC for RUs are established via 2 different components, of which each aims to tackle different aspect of capacity booking. Each of the components stand independently, and payment under one component cannot exclude obligation of the payment under another component. The following two components are in the subchapters explained more in detail.

Component	Goal of the component
Motivational incentive	Do RU-changes of paths as soon as possible, to allow usage of capacity by others
Multiannual commitment charge	Avoid any strategical misuse of multi-annual booking of capacity

3.2.1. Motivational incentive

The goal of the motivational incentive is to encourage RUs to modify or cancel their path as soon as possible, by this allowing other users of the capacity to utilise it.

The motivational incentive should depend on a continuous curve a daily-formula-based increase.[16] In this model every single day from the moment of the path allocation[17] counts, making it every day a little bit more expensive for replanning, "later RUs replan, the more they pay". The penalty increases until the day of the train run and includes an extra increase in case the RU does not depart within 18 hours[18] from the planned path timetable (no show). The payment for the "no show" shall not exceed the total amount of TAC.

The RUs pay the motivational incentive for the Path Modification or Path Cancellation. The preference is to base it on a nationally pre-defined value X € per train-km rather than TAC. If TAC are used, the basis shall be derived from the distance/traffic type (i.e. reservation

[16] For explanation of why this approach is preferred from the cascade one proposed by IMs, see Annexe 4.2.

[17] or conversion of the capacity specification to a path. Note that the CC for capacity specifications are handled by the other component (multiannual commitment charge).

[18] In line with the practice in Delegated Decision 2017/2075 (Annex VII, paragraph 7), the IMs of the other network shall not consider the train path cancelled or request application for another train path, in the case of trains crossing from one network to another which arrive with a presumed delay of not more than 18 hours.

charges), and not to consider the train characteristics.[19] Only the affected train-kms, where the modified path does not match with the original path shall be counted for the penalty.

Penalty differentiation: level of impact

Overall penalty basis in the formula has to reflect the impact on the traffic to be "really" motivational, three categories of RUs' changes exist:

1. *Path Cancellation (no train run)*

Path cancellation is the situation when the train run is cancelled. Path cancellation requires a higher level of penalty than path modification to incentivise the booking of a path only in cases when it is needed for the train run.

2. *Major/Minor Path Modification*

Path Modifications can be further differentiated between Major and Minor (the same philosophy is also applied to IM incentives).

Minor Modifications are those which have no commercial impact on the timetable, thus should be left without payment for the IMs.

Major Modifications on the other hand shall be subject to a penalty. The list of situations when a modification is qualified as minor is listed below.[20]

Change in	Conditions to be qualified as minor modification
Stops	RU uses fewer stops and extra time is used as a buffer.
Stop time	The change has no impact on other paths.
Length/Weight/Load	Originally allocated path-timetable can still be used.
Traction type/n. locos	Hauling vehicle(s) performance is strong enough to use the originally allocated path-timetable.
Different RU nomination (in case of non-RU applicant)	In all cases.
Rolling stock	Hauling vehicle(s) performance, same as the train parameters allow to use the originally allocated path-timetable.
Re-routing in Service Facility (incl. stations)	The change has no impact on other paths.

Penalty differentiation: stability / flexibility formula

The formula has to to provide effective motivation. Nevertheless, the overall penalty basis in the formula has to reflect the business specifics of different market segments and thus have a different basis depending on the impact of the change and whether the capacity can be re-allocated and used by another applicant.[21]

[19] For explanation see Annexe 4.3.1.
[20] The list is with the IMs (meeting of Capacity Management Advisory Group on 15 May 2024)
[21] In line with Article 40 (4).

Therefore, three types of formulas should be used:

- Stability formula for modification/cancellation:
  - Market requirement: higher need for path stability,
  - Formula design: higher payments in case of changes are already from the earlier stage for both IMs and RUs,
  - Applicable to: all passenger paths, and option for freight paths to opt-in.
- Flexibility formula for modification/cancellation:
  - Market requirement: higher need for flexibility,
  - Formula design: lower payments for periods earlier in time prior to the train run for both IMs and RUs, the main penalty increase comes in the last weeks/days before the train run
  - Applicable to: for all freight paths, which do not opt-in to the stability formula.
- Flexibility formula for cancellation with new path order:
  - Market requirement: higher need for flexibility,
  - Formula design: lower payment compared to the flexibility formula for cancellation, in case the freight RU at the same time orders another path for the same traffic with a similar operation pattern including for instance a change of the day of operation
  - Applicable to: for all freight paths, which do not opt-in to the stability formula.

3.2.2. Multiannual Commitment Charge

The goal of the multi-annual commitment charge is to avoid any strategic misuse of the new capacity products with multi-annual validity. Thus, the charge is applicable for Rolling Planning (RP) and Framework Agreements (FA), but only until the moment of yearly capacity specification conversion to train paths, afterwards, the motivational incentive applies (as described in chapter 3.2.1).

<u>Proposed system Framework Agreements</u>

- The charge is levied on the RU with the FA in case it particular annual timetable at X-8.5 orders less than 80% of contracted capacity, the charge is proportional to the number of train (not) runs.
- The charge is lower if the intention to order less than contracted is announced to the IMs by X-24, which is equal to the Capacity Needs Announcement deadline,[22] , the penalty is proportional to the number of no train runs.
- The calculation system should be as much as possible automatised and without confidential data.

<u>Proposed system Rolling Planning</u>

- The penalty is levied in case more than 20% of contracted Rolling Planning capacity is cancelled at X-5[23] for the upcoming timetable period, the charge is proportional to the

[22] This motivates to give the IMs information useful for the construction and coordination of the Capacity Model.

[23] In TTR, the RU should ask for the conversion of the multiannual capacity Rolling Planning (RP) capacity rights to paths for the upcoming year at X-5.

number of no train runs. The penalty is not levied, in case the RU changes the day of operation (customer wish) or submits a major modification.

- The penalty is not levied if the intention to order less than contracted is announced to the IMs by X-24, which is equal to the Capacity Needs Announcement deadline.[24]
- The calculation system should be as much as possible automatised and without confidential data.

4. Annexes

4.1. Table of abbreviations

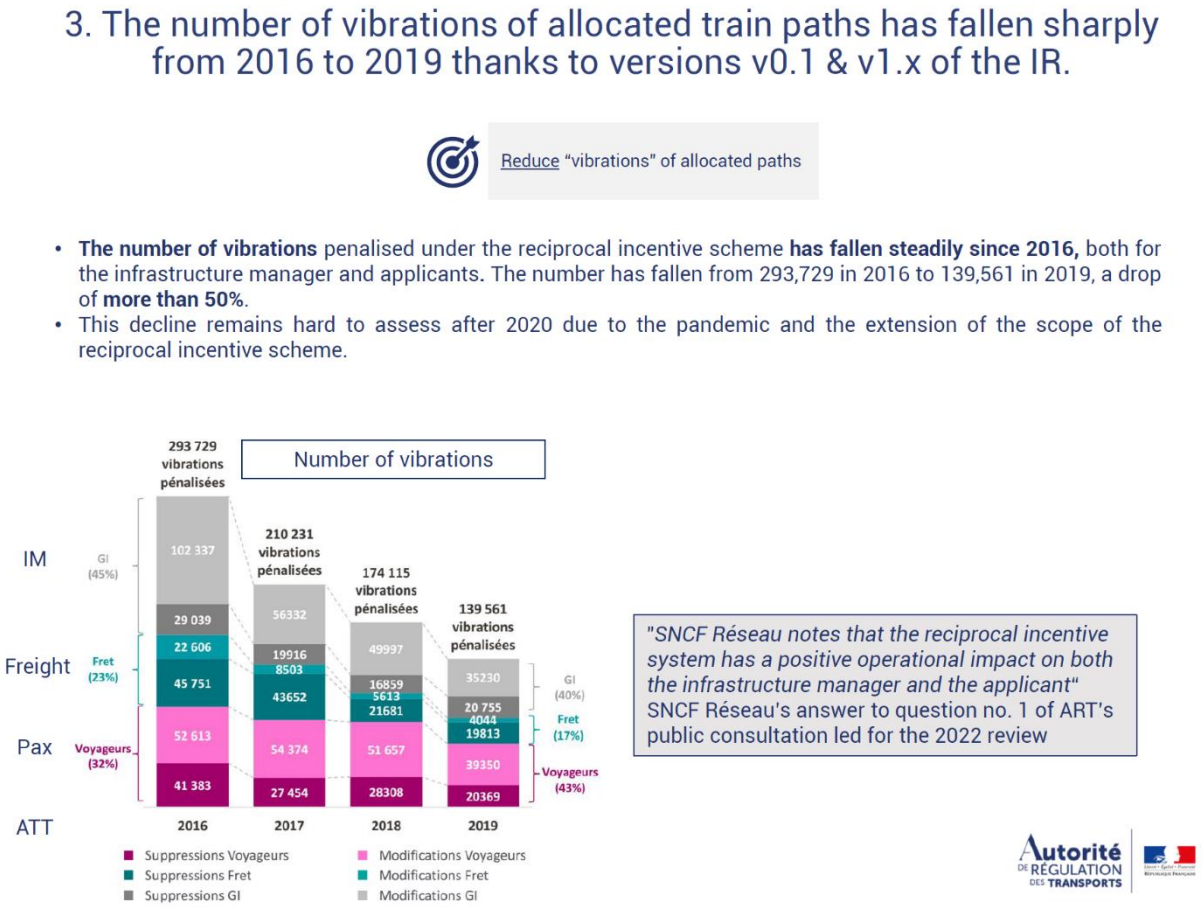
ATT	Annual Timetable
CC	Commercial Conditions
CER	Community of European Railway and Infrastructure Companies
COTIF	Convention concerning International Carriage by Rail
CUI	Contract of Use of Infrastructure in International Rail Traffic
EC	European Commission
ERFA	European Rail Freight Association
FA	Framework Agreement
FTE WG P/F	FTE Working Group Passenger / Freight
IM	Infrastructure Manager / Allocation Body
KPI	Key Performance Indicators
PSO	Public Service Obligation
RB	Regulatory Body
RP	Rolling Planning
RU	Railway Undertaking
SERAF	Single European Railway Area Forum
SF	Service Facility
TAC	Track Access Charges
TCR	Temporary Capacity Restriction
TT	Timetable
TTR	Timetabling and Capacity Redesign
UIC	International Union of Railways
X	change of annual timetable (X-4 meaning 4 months prior to the timetable change)

[24] In line with Article 40 (4), it is assumed that the Rolling Planning capacity can be easily sold to other freight RU, especially such in advance. This might be different for the passenger traffic, since starting preparation of an alternative service even at X-24 might be more challenging (comparison with FAs).

4.1. Reciprocity and RU positions

The key requirements were summarised by two position papers, one published by RU associations FTE-ERFA-Allrail[25] and one published by CER,[26] both calling for introduction of reciprocal (for both RUs and IMs) commercial conditions. In June 2022, the IMs and RUs reach a Common Understanding[27] on the CC, including agreement on reciprocity, which was supported by both the RNE General Assembly and the FTE Plenary Assembly.

In parallel, Sweden and France have introduced reciprocal CC. Below is highlighted the positive impact of the French reciprocal CC on both applicants and the IMs.



The RUs would like to highlight that in order to keep the reciprocal system effective, the CC system (and values) should be set by an independent actor and the preference is expressed for the Regulatory Body. Alternatively, it can be also considered to involve other players:

- CC for RUs: Proposed by the IM, after consultation with RUs, and decided by the RB.
- CC for IMs: Proposed by RUs, after consultation with the IM, and decided by the RB.

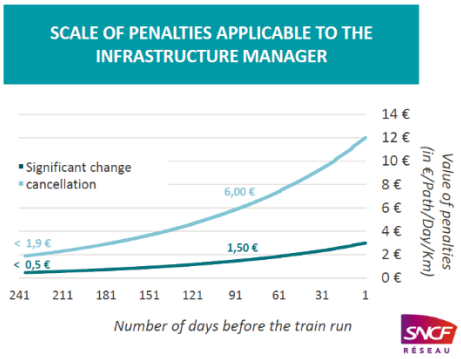
[25] Available at: https://www.forumtraineurope.eu/fileadmin/RU_Statement_CC.pdf
[26] Available at: https://www.cer.be/images/publications/positions/230201_CER_Position_Paper_Commercial_Conditions.pdf
[27] Available at: https://www.forumtraineurope.eu/fileadmin/2022-06-13_CC_RNE-FTE-CommonUnderstanding.pdf

4.2. Curve vs. cascade approach

There were two approaches discussed by the RU community, the curve approach (daily-formula-based) and the cascade (or stepwise) approach.

The preference is on a continuous curve that gradually increases the penalty to be used, applying the principle: "the later IMs or RUs replan, the more they pay".

The best practice is seen by RUs in the French model[28] with a daily-formula-based increase. In this model every single day from the moment of the path allocation counts, making it every day a little bit more expensive for replanning.



Les pénalités applicables à SNCF Réseau au profit des candidats affectés par des vibrations après certification de l'horaire de service sont les suivantes :

$$Pénalité\ (J-n) = Pénalité\ (J-1) \times 2^{(1-n)/N}$$

Où n est l'anticipation de la vibration considérée calculée en jours par rapport au jour J de circulation du sillon-jour considéré, et où :

Type	Sillons-jours attribués		Sillons-jours à l'étude	
	Modification importante du sillon-jour attribué	Suppression du sillon-jour attribué	Passage « à l'étude » à « attribué »	Passage « à l'étude » à « non-attribué »
Métrique	*€/sillon-jour-km applicable au linéaire total du sillon-jour visé*			
Pénalité à J-1	3€/s-j-km	12€/s-j-km	3€/s-j-km	12€/s-j-km
Période de doublement N	90 Jours		30 jours	

It has to be noted that the IMs' proposal as of 2023[29] is very different, it uses the cascade approach when specific days prior to the train run increase the penalties (see example below). The cascade approach has two disadvantages:

Path alteration threshold before train run*	Alteration penalty
more than 120 days before the train run	A
120 to 60 days before the train run	B≥A
60 to 31 days before the train run	C≥B
30 to 5 days before the train run	D≥C
less than 5 days before the train run	E≥D

Major path modification threshold before train run*	Alteration penalty
more than 60 days before the train run	A
60 to 31 days before the train run	B≥A
30 to 5 days before the train run	C≥B
4 days to 24 hours before the train run	D≥C

[28] ART (RB FR): Presentation of the French Reciprocal Incentive Scheme (IRG-Rail WG Charges 6 June 2024.

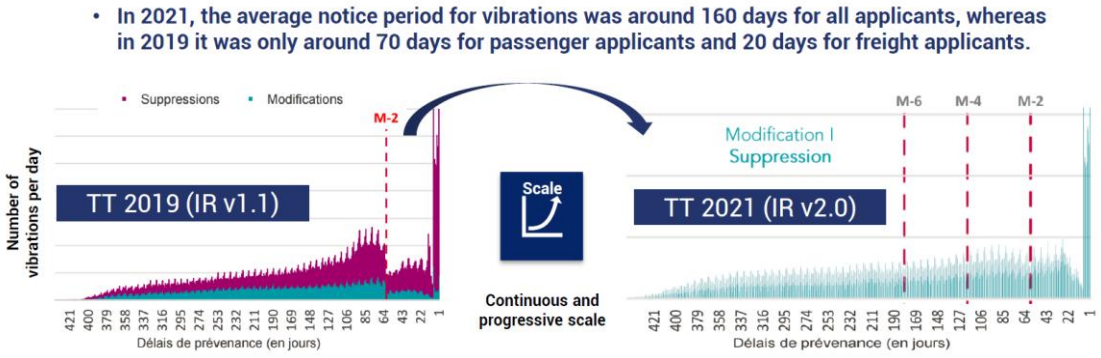
[29] Available at: https://rne.eu/wp-content/uploads/Guidelines_for_harmonised_Commercial_Conditions_V1.0.pdf, please note that the concept is in the development, and IMs might change it in the mean time.

less than 24 hours before the timetabled departure time of the train up to the timetabled departure time of the train	E≥D

Firstly, the alteration/modification/cancellation penalty does not start from the moment of the allocation but is quite late. There is no motivation to inform and incorporate changes earlier, even when they are known to the RUs and also when they are known and processable by the IMs. Earlier the RUs are aware of the adjusted paths, easier it is to:

- adapt to new situations and safeguard resources in production,
- mitigate the potential negative impact on the freight customers and logistic chain,
- improve passenger satisfaction by informing them about the new (correct) timetable, giving them more time to adjust their travel plans (and it matters if they get the information 29 or 6 days in advance).

Secondly, the cascade approach leads to the behaviour of both applicants and IMs, that they perform the changes just before the next "cascade increase of the penalty", despite it was possible to perform changes earlier. This is well demonstrated on the data from France.[30] Until 2019, SNCF Reseau (IM FR) has a hybrid model, there has already been a daily-formula-based increase from the allocation, but at the same time there was a milestone 2 months before the train run (M-2), when the penalties increase significantly. You can observe that a lot of changes are concentrated just before M-2, while after the removal of the cascade milestone, the curve becomes flatter, and changes are triggered earlier.



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

One of the examples of not-desired outcomes, in case the proposal of IMs is implemented, would be a motivational incentive to perform passenger RU changes only 4 months (or even later) before the train run. However, the passenger RUs for long-distance services aim to increase their competitiveness towards other modes of transport by opening ticketing 6[31] or even 12 months[32]. Nevertheless, the IMs' proposal will not motivate for earlier capacity

[30] ART (RB FR): Presentation of the French Reciprocal Incentive Scheme (IRG-Rail WG Charges 6 June 2024.
[31] Current goal of RUs, in line with the ongoing work on the proposal for new TCR process.
[32] CER goal available at: https://www.cer.be/images/publications/positions/210920_CER_Position_Paper_Ticketing_Roadmap.pdf

cancellations, in order to allow other passenger RUs to book the capacity for their services and open the ticketing.

4.3. TAC as basis for calculation

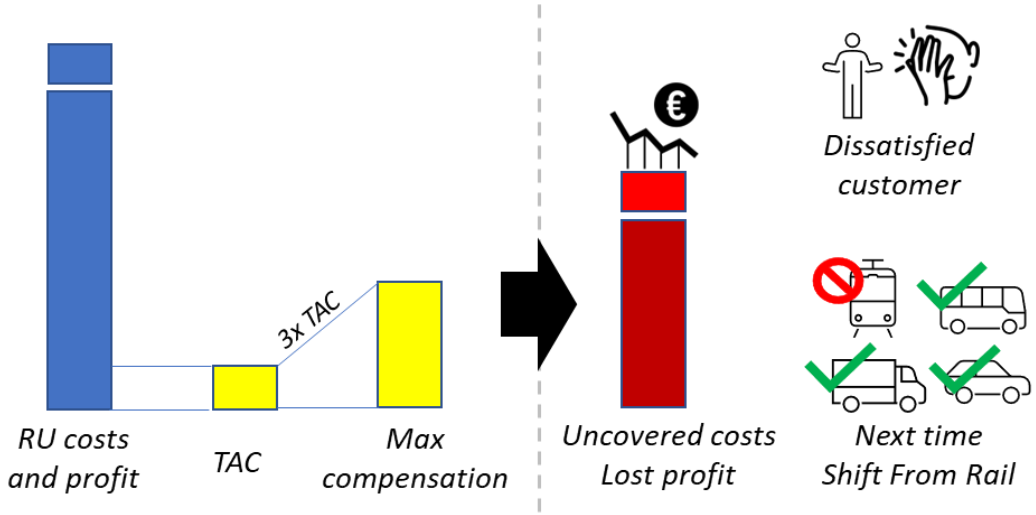
4.3.1. Limit of commercial conditions amount by TAC

The EC in the proposed Regulation 433 Article 40 that for the IMs the "*The compensation for the entirety of the capacity right shall not exceed the compensation due for the capacity right allocated by the IM multiplied by three."* The Council in its position proposes further lowering to "multiplied by two".

Taking into account that usually there is only one single IM triggering the path alteration/withdrawal, in the international traffic the compensation amount might be quite low compared to the cost burden on RUs and their customers. We can have an example of a train from Prague to Brussels via Germany, where the change in the path is triggered by the SZCZ (IM CZ), which stands for a very minor part of the path and even has modest TAC, nevertheless, the RU is exposed due to the change extra costs for the entirety of the journey (Germany, Belgium).

Setting compensation on the basis of track access charges (TAC) is an incentive for process behaviour, and can tackle an unstable capacity restriction planning. Such a basis might be used, and was considered in the RU vision for the motivational component of the CC for IMs "motivational incentive". However, it has to be highlighted that such a basis or proposed limit is very far to compensate for the unexpected higher costs occurring to applicants and which customers will have to pay to use rail as a mean of transport.

The picture below demonstrates that TAC is only one component of the costs, and the example below is applicable only in case of national traffic, if the compensation limit is only up to the TAC of the triggering IM, it would be even lower.



Several IMs and states already introduced reciprocity including standardised compensation to make rail more resilient to unexpected changes impacting their customers, and more reliable.

If some interpret the compensation in Article 40 as the only compensation, limited by 2-3x track access charges of the triggering IM, it will contradict already existing schemes.

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RU's costs to consider in case of...	Cancellation	Diverted train	Load restriction
Energy	NO	YES	YES
Drivers	YES	YES	YES
Maintenance	NO	YES	YES
Amortization	YES	YES	YES
Access charges	NO	YES	YES
Terminals	NO	NO	YES
Total	6,41 €/km	11,53 €/km	13,67 €/km
	Journey cancelled	Additional distance	% load restriction

</td>
</tr>
<tr>
<td><u>Czech Republic:</u>
4km closure and regional train is replaced by bus → the compensation can be as low as 3 x 2€ = 6€.
Negligible amount to cover the bus / driver / effort to inform passengers.</td>
<td><u>Spain:</u>
Initiatives like the proposed Spanish one are reducing the cost shock on rail customers much realistically. They go beyond 3x TAC in all cases.</td>
</tr>
</table>

4.3.1.TAC Discount in Compensations

If TAC is used as a base for the compensation, the base shall be on TAC before any external elements (such as reduction due to member state support) come into place, to avoid that the penalties become meaningless.

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<tr>
<td><u>Belgium:</u>
Introduction of 0% TAC for passenger night trains:
→ the compensation will always be 0 €
→ 3x 0€ = 0€!</td>
<td><u>Slovakia:</u>
High TAC discount for freight (45-90%) means no real financial incentive to plan TCRs in advance.

Compensation for a cancelled RFC 7 transit train up to 3x40 =120 € → symbolic payment</td>
</tr>
</table>

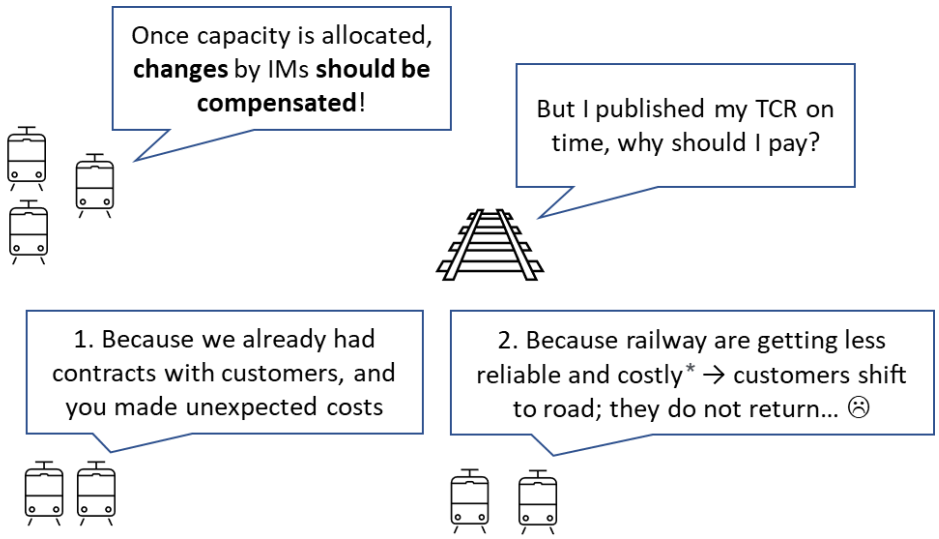
4.3.1.Train parameter factors in TAC

If TAC are used, the basis shall be derived from the distance/traffic type (i.e. reservation charges), and not to consider train characteristics. In many networks, TAC is based on the weight, however, exact loaded-train weight, especially in freight planning, is not predictable in

advance. In the RU community's opinion, the capacity consumed is the same. The system shall be transparent and not incentivise booking paths with potentially underestimated weight. The usage of weight comes from the charging of marginal cost, so the wear and tear caused by an individual train. However, this is relevant only if (or once) the train runs, thus it is irrelevant to apply this also for changes of a train – which has not run yet or will not run at all.

4.4. TCR deadline compliance – still harmful to the market

Often raised topic during the political negotiations was if compliance of IMs with the TCR deadlines (currently in Annex VII, in the future in Annex I) shall lead to compensation as well. To make railway mode competitive, it is necessary to consider certain aspects of CC also irrespectively if the Temporary Capacity Restriction (TCR) is processed in line with the deadlines in the regulation or an implementing/delegated act. The RUs are subject to CC for allocated paths, also irrespectively of their internal-company planning.



4.4.1. Multi-annual aspect

Furthermore, if IMs can avoid the compensation by early TCR information publication, this provides a clear incentive to “overbook” capacity for TCRs, which RUs already experience today as well. This overbooking can have different forms, for instance:

- an IM might publish the package of TCR from which will only execute those mature enough in the running timetable,
- an IM might tend to overestimate the TCR duration and magnitude of the impact to avoid payments in case more time/capacity is needed for TCR execution in reality.
- an IM might reserve unnecessary (or too long) maintenance windows

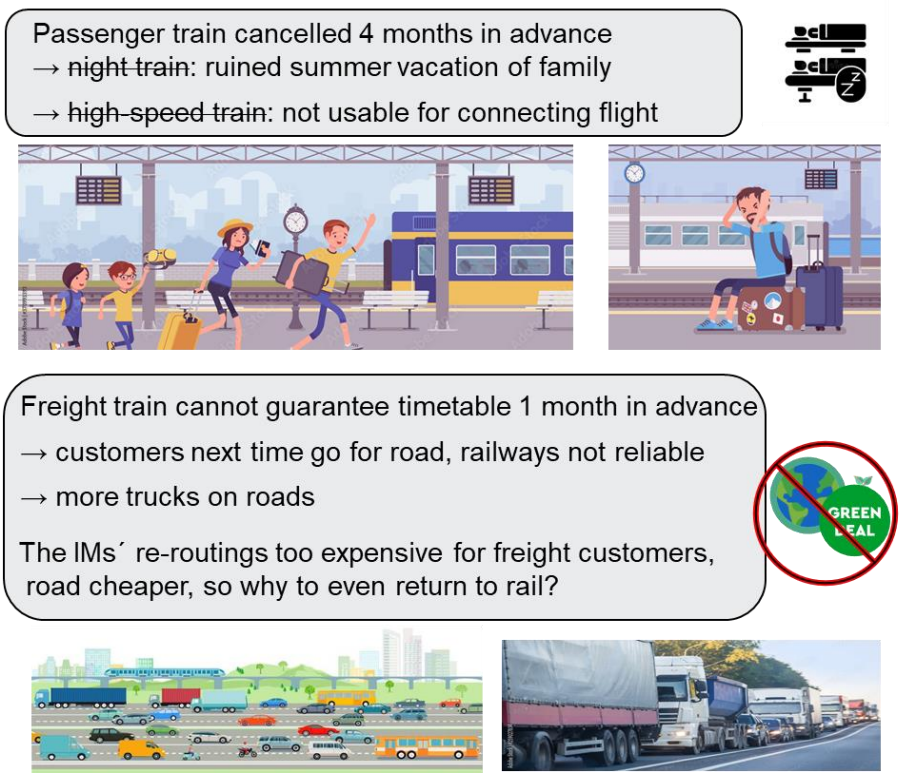
A potential solution to this issue is to:

a. introduce a KPI system for IMs to monitor the stability of TCRs, comparison of the plan and reality, and to measure the impact on the paths. The RU community has started to work on a proposal.

b. Apply standardised compensation independent from the TCR announcement for cases, where the capacity rights were already contracted.

4.4.2. Running timetable aspect

If compliance with Annex I deadlines exempts IMs from the compensation it would mean:



Both IMs and Passenger RUs expressed the goal of extending the ticket booking horizon (CER Ticketing Road Map). The reasonable timeframe would be at least 6 months before the train run. Nevertheless, how can RUs open ticketing without final timetables from the IMs? As of today, the RUs do not open ticketing on such horizon, or bear the high risk of unsatisfied customers and paying compensations to passengers. The compensation according to Regulation (EU) 2021/782[33] has to be paid irrespectively of the IMs´ TCR deadlines. Even a 5 min alteration in the timetable can, due to lost connection, lead to a delay of over 1 hour, which results in compensation to be paid by the RU to the passenger.

To do economical and effective resource planning, the freight RUs must have the final timetable earlier than 1 month in advance. This is also necessary to be compliant with for instance national labour laws, which oblige RUs to communicate and plan loco drivers shifts ahead of time. But how can freight RUs do that, if they do not know the train timetable?

4.5. Standardised compensation - reasoning

In the current world, RUs and their customers are exposed to the risk of low quality or no capacity due to TCRs, despite having no means to manage the risk. Standardised

[33] Regulation (EU) 2021/782 on rail passengers' rights and obligations

compensation is an instrument, how to share the risk with the Infrastructure Managers – who are the only ones who can effectively manage the risk, and balance the costs of different TCR scenarios with the cost impact on the traffic. In economic terms, the standardised compensation will lead to the internalisation of the externalities.

For better understanding, we explain the issue on two passenger and two freight stories from the real world. Furthermore, we list some best practices, where elements of standardised compensation is already introduced.

4.5.1. Unexpected costs – stories damaging the market

Story 1: PSO passenger contract
An RU is submitting a bid for a PSO contract to a PSO authority. In the bid has to put a price for its service for the next 10 years. However, RU cannot predict the future of IMs planning, it can easily happen that in contract years 3,4,9, there will be a major impact TCRs, pushing passengers to replacement bus services, requiring more rolling stock to have trains on both sides of TCR, more loco drivers and cabin crew, due to longer travel times and thus shifts. This is an unexpected significant increase in the costs, but the compensation from the PSO authority is fixed, thus the negative impact remains with the RU, whose margin cannot cover these costs, thus the PSO contract becomes a loss for the RU.

What is now happening? The RU has a choice, it can submit a bid with a higher price for the PSO authority, counting with such risk. However, in a competitive environment, this is not very likely, thus the costs are taken by RU, which either generates loss from the contract or bankrupts and the PSO authority has to search for a new RU with higher compensation.

By establishing a standardised compensation component, the RUs can submit realistic bids and focus on the best price and service for PSO authorities. The new costs due to TCRs are now covered by the IM, instead of another state entity (such as the PSO authority)[34]. The IM is also the manager of TCR, thus receives financial motivation to “minimise TCR impact on customers” by coordinated TCR planning and shorter execution time.

Story 2: Passenger open access
A passenger RU establishes a new open-access international connection. This requires investments such as the purchase of rolling stock, homologation to countries of the operation and also marketing/production expenses to promote and establish the new service. In order to make it profitable (amortise the investment), it is necessary that the RU can operate the service for instance at least 8 years.[35] Nevertheless, shortly after the new service is introduced one IM announces TCRs with significant impact on the traffic. This can be in the form of prolonged travel time, no possibility to serve all stations, bus replacement services, etc. The passenger numbers fall due to these circumstances, thus also revenues of this open-access service, while costs on the other hand raise.

The RU was not aware of these TCRs when they started the service and concluded the Framework Agreement. The IMs announce them in line with the legislation (i.e. 2-3 years ahead). However, the service-investment life-cycle of the RU is longer. The RU business plan is now ruined, a small RUs can go bankrupt, and a larger RU faces significant losses and face the challenge to find new placement for its resources. Note that Europe is still very far from a single

[34] In case the PSO contract transfers the financial risk from the RU to the PSO authority.
[35] This is only an example. In some cases, it might be less, but in some cases when a new dedicated rolling stock for a high-speed line is purchased, it can be even 12-15 years.

European railway area, and barriers mean there are very limited opportunities where the RU can utilise the rolling stock.[36]

What is now happening?
Europe experiences only limited private investments in passenger open-access operations.[37] The TCR/capacity risk is so high, that institutions such as banks consider carefully whether they support such new services with loans.

By establishing a standardised compensation component, the RUs can more easily secure financing for new services, due to a lower risk of having bad/no capacity. The feasibility of new passenger open-access services will increase because the major risk is transferred to the IM, the only entity that is able to manage the risks, and "minimise TCR impact on customers".

Story 3: Freight contract
A freight RU wins a 3-year contract with a customer, the contract fixes the price and service conditions. Nevertheless, afterwards, the IMs announced on the used corridor line several TCRs, some are announced two years ahead, some only one year ahead, and some are TCRs popping up even later.

The freight RU will not be able to run trains on all days and will be re-routed for many contract days. The re-routing is longer, sometimes via another country, and in some cases requires diesel loco, the production costs rise, and this difference usually cannot be charged to the customers.

What is now happening?
The freight RU experiences loss from the originally profitable contract. Small RUs can get to financial problems. Some RUs might rather step back from the contract with the customer, despite losing reputation (both the company and railway as a mean of transport). In the current heavily competitive environment in the freight market, it is not very feasible to incorporate the TCR risk into the bids, and if done so, the customers do not want to pay such prices and where they can opt to shift to other modes of transport.

By establishing a standardised compensation component, the freight RUs and their customers will get a much more predictable environment for costs calculations. The reliability of railways will increase, thus keeping the customers with rail rather than with road, where goods can always be delivered, and costs are very predictable. The risk is shared with the IMs, the only entities that can manage the risk and "minimise TCR impact on customers" by coordinated TCR planning and shorter execution time and better re-routings.

Story 4: Freight supply-driven train
A freight RU introduces regular trains between its terminals with no pre-contracted customers (supply-driven) and the capacity of the train is purchasable by individual customers. The freight RU even invest in its terminals to handle the new services and the RU's sales are persuading various customers to use rail for their transport. A few months after the service gets its customers, an IM announces a new TCR that will almost totally block access to the RU's terminal

[36] It is not easily possible to take for instance train set from Hungary and use it for operation in Sweden. Same as there are only limited opportunities within national markets (in our example Hungary) when you can use such rolling stock.
[37] This is even more notable in cross-border services, due to high costs for homologation of the rolling stock to multiple countries, finding local staff and maintenance depots.

in suitable hours.[38] The RU's sales effort goes in vain, many customers do not accept new unattractive departure/arrival/journey times with the same or higher price and they shift to the road, with a bad experience.

By establishing a standardised compensation component, the freight RUs will be able to compensate for the negative impact caused by TCR to their customers by discounts or at least keeping the stable price level for customers, despite higher RU costs caused by the TCR. This prevents the freight customers from shifting to the road. The capacity risk is shared with the IMs, the only entities that can manage the risk and minimise "TCR impact on customers". The financial incentive motivates the IMs to minimise the duration of service disruption and find the best alternative timetable with minimal negative cost impact (in order to also minimise the standardised compensation).

4.5.2. Best practice in "standardised compensation"

The aspect of standardised compensation is not newly developed but exists already in several countries in a certain form.

- In Switzerland, there is a flat rate compensation (CHF 800/1500)[39] in case the travel time is prolonged by 120 minutes or the arrival at the border is postponed by 30 minutes. These values served as an inspiration for the freight proposal in this vision.
- In the United Kingdom, the so-called Schedule 4 Possession Regime pays the standardised compensation to RUs based on an in advance agreed formula (GBP 336-1749).[40] One of the factors determining the amount is also the fact whether the TCR was announced earlier or later than 12 months in advance. The IM also allows in exchange for the TAC supplement possibility to claim real costs, however, this is not preferred by RUs.[41]
- In the Czech Republic, the IM compensates fully the bus replacement services claimed by the RUs, nonetheless, this amount only covers the bus costs, not the real cost impact on RUs.[42]
- In Hungary, for TCR that are announced during the annual timetable and depending on the time of the TCR announcement, the IM has to offer the re-routing alternative with the original TAC, and in some cases also compensate additional costs for traction.[43]
- In 2023, the Spanish ministry and the main IM prepared a proposal of a flat rate compensation scheme per train-km for freight traffic in case of certain TCRs. This proposal was accepted very positively by the RU community and served as an inspiration for the standardised compensation component in the vision.

[38] This is a very realistic case. More and more TCRs are executed either in periods when they do not affect passenger trains (nights) but they affect freight, or even if the TCR is executed during the day, the priority for the left-over capacity is given to passenger trains, pushing freight to unattractive times for customers, or increasing costs for freight RUs (e.g. staff working at night for (un)loading).

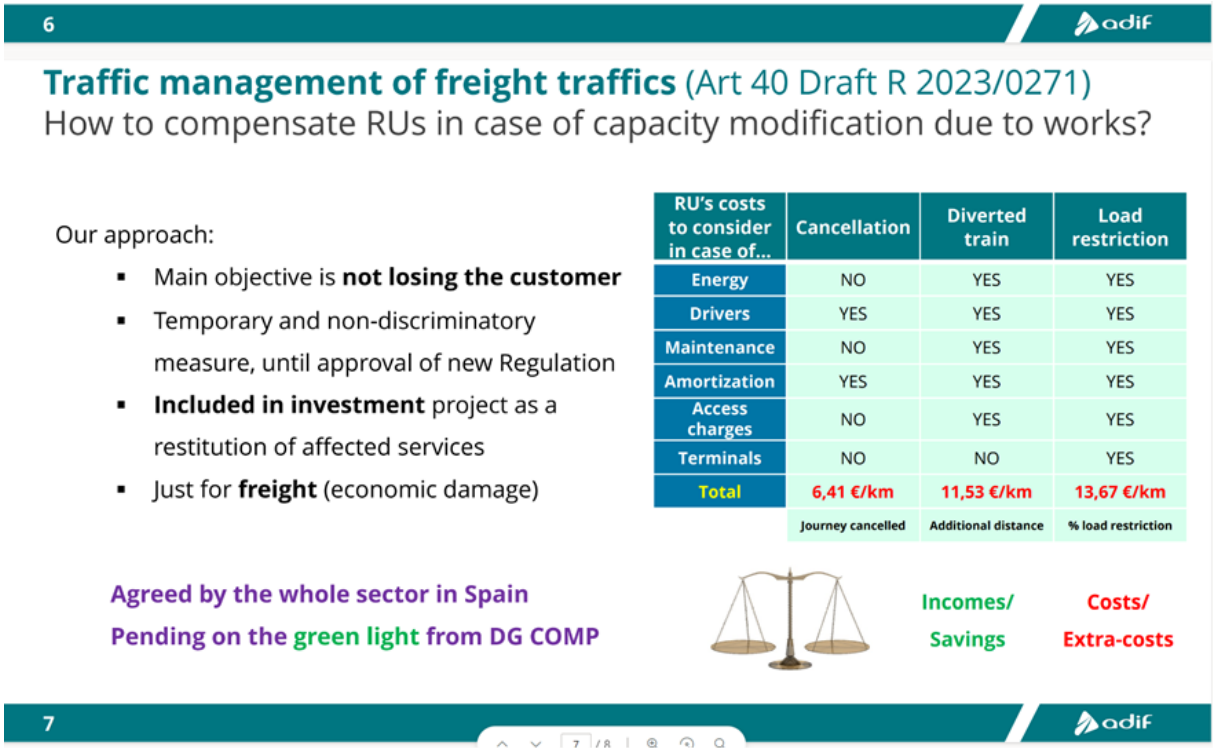
[39] As of 2021. Art. 10c Entschädigung im übrigen Verkehr, accessible at: https://www.fedlex.admin.ch/eli/cc/2012/371/de

[40] As of 2021. More details accessible at: https://www.orr.gov.uk/sites/default/files/2021-09/pr23-review-of-the-schedule-4-possessions-regime-consultation-factsheet.pdf

[41] As of February 2024, no RU has decided to use this option – all stayed with the standardised rate.

[42] Network Statement 2.5.1, accessible at: https://www.spravazeleznic.cz/documents/50007830/124638401/Network+Statement_2024_5+en_web.pdf/0a294078-bfa8-4f1a-9bce-6dd115e36cd6

[43] Network Statement 4.3.2.1, accessible at https://www2.vpe.hu/eng/network-statement/network-statement-2024-2025



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4.6. RU penalty differentiation: traffic type

In chapter 3.2.1, the RU community proposes differentiation of the RU penalties based on the traffic type, this is irrespectively if TAC are used in the calculation or not. Below is the business reasoning:

- Passenger paths should have higher penalties earlier in time, with the intention to avoid speculations. The re-allocation of capacity to other passenger RU on shorter notice is not easily/practically possible, especially in the long-distance traffic with requirement of early ticket sales.
- Freight paths should have lower penalties earlier in time, and the main penalty increase should be in the last weeks/days before the train run, this is due to the fact that the freight capacity is easier re-allocated to another freight train, even in short notice. Note that in operation, the freight trains mostly cannot not follow exactly the allocated path. Earlier or delayed runs have various reasons originating mostly from external parties such as other modes of transport / terminals ((un)loading) or IMs (re-organisation of traffic by the IMs' traffic managers).
- Freight cancellations shall have lower penalties, in case the freight RU at the same time orders another path for the same traffic with a similar operation pattern, this can be for instance a change of the day of operation. The CC system for freight has to consider other modes of transport and business specifics. Two typical examples, freight forwarders order from RUs cargo from a ship, however, the exact day of ship arrival is only known (or given by the port) ca 2-3 weeks prior to

[44] ADIF (IM ES): Capacity Planning: Formalizing Dialogue for Capacity planning and allocation, 23rd Florence Rail Forum, 29 September 2023.

the ship arrival. The freight RU could have not influenced that, this timeframe is also sufficient for IMs to resell the capacity. Another example comes from the wood industry, where the loading first mile depends heavily on the weather conditions, so it is given by the client only 1-2 days prior to the loading. The freight RU has to change the first miles of the path (the main stretch remains the same), where usually capacity is not so utilised. It is questionable, why RU should be financially penalised for weather conditions.

4.7. Traction support - best practice

The traction support component as suggested in 2.2.3, is not newly developed, the traction support by IMs was provided in several EU countries during major TCRs, for instance:

- Czech Republic, 2021-2024: during several TCRs on the main corridor line between Kolín-Ceska Trebova-Brno, the IM made available for freight RUs locomotives when they used the electrified but hilly re-routing via Havlickuv Brod.
- Germany, July-December 2024; during the High Performance Corridor works on the so-called Riedbahn, one of the re-routing options (Alsenztalbahn) was non-electrified, the IM rented diesel locos and offered them to the RUs.
- Hungary, 2024: during the TCR on the key line from Budapest to Vienna, the IM organised diesel locomotives for freight RUs for the re-routing line Székesfehérvár-Komárom

The traction support should have a form of IM-provided locomotives available for any RU on the re-routing line. The discussion within international contingency management demonstrated that the most effective scenario is when the IMs organise the locos for all RUs on the re-routing stretch, instead of each RU organising loco for itself. For individual RUs it is either too expensive or RUs with only few trains per week might even not be in the position to get any commercial locomotive offer.