

Position Paper

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Commercial Conditions

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The European Green Deal and its Sustainable and Smart Mobility Strategy (SSMS) set ambitious targets to combat climate change: decarbonization of transport by 2050, doubling passenger high-speed rail traffic by 2030 and tripling it by 2050, as well as doubling rail freight traffic by 2050. Consequently, a fundamental shift of traffic to rail must happen that will lead to a dramatical increase in required rail capacity.

Unfortunately, rail capacity is already a scarce resource today. Some rail segments are finally recovering from COVID which means higher demand for freight and passenger rail services. At the same time, renewal and maintenance works are due in some member states, and the pressure to keep costs for construction works low can increase the capacity footprint of such works thereby further increasing the level of line closures or speed restrictions on the European rail network. Consequently, the next years will bring further capacity restrictions and might further increase the scarcity of rail capacity. Building new physical infrastructure is essential to increase capacity, but takes time. Hence, optimizing the use of existing rail capacity and infrastructure is an urgent imperative. Changing capacity planning and request processes by implementing TTR are expected to reduce unnecessary capacity blockades. For TTR to become a success, adequate Commercial Conditions that stipulate capacity friendly behaviour by Passenger and Freight Railway Undertakings (RUs)/Applicants and Infrastructure Managers (IMs) must be in place.

Commercial Conditions are financial mechanisms provided for the amendment and cancellation of requested/allocated train paths in order to incentivise a more efficient usage of the available infrastructure. They are provided by the IMs as part of their track access charges and include deadlines as well as fees for the amendment and cancellation of requested/allocated train paths.

Currently there are no clear and Europe wide aligned principles for Commercial Conditions for train path requests. While the European legal basis for Commercial Conditions is Directive 2012/34/EU, Commercial Conditions are treated differently in different Member States. This leads to unbalanced and unsynchronised ordering processes, as well as frequent changes in train path requests, and unnecessary blocking of capacity which ultimately can lead to a waste of capacity. At the same time, IMs offer capacity to RUs that is modified or even withdrawn by the IM later on due to construction works/temporary capacity restrictions (TCRs). This leads to a problematic situation for RUs which are accountable to their end customers, reduced competitiveness of rail compared to other modes of transport including a reverse modal shift from rail to more polluting modes of transport with a risk of losing these traffics for good, as well as lost rail capacity.

1. Design of future Commercial Conditions

To ensure an efficient use of available rail capacity, IMs must be able to rely on RUs using the train paths that they have requested. At the same time, RUs need reliable information on available capacity and stable path allocation over a sufficiently long period. It is key that future Commercial Conditions will be applied reciprocally to RUs and IMs, as both parties shall be motivated for a maximum stability and reliability of their planning.

Commercial Conditions should be designed in a way to incentivize capacity friendly behaviour of all parties such as RUs/applicants and IMs. Capacity friendly behaviour means, for instance:

- A path concluded is a commitment from both sides, RUs/Applicants and IMs, which should be kept, after it has been allocated and accepted. Changes will remain possible but shall be limited as much as possible. Changes shall not be triggered by the planning process itself.
- Ordering the capacity for which there is a market need only when the need is confirmed (RU). This could be supported by optimized ordering timelines in line with different market needs, as well as with a focus on rolling planning capacity, and Commercial Condition rules.
- Giving back the capacity as soon as the market need changes, or other external requirements are known (RU).
- If applicants do not use their recurrently ordered train paths it should be possible for the IM to withdraw the capacity, after a certain threshold of unjustified non-usage is reached (similar to the mechanisms stated in Article 52 of Directive 2012/34/EU).
- Defining the capacity for TCRs in a way that no more capacity than necessary is blocked – in dialogue between RUs/Applicants and IMs.
- Planning the majority of TCRs and their impact on paths before path allocation at least for the first 6 month of a timetable with all TCR impacts in order to make the CER Ticketing roadmap possible (IM), without prejudice to existing provision in the SERA directive that mandate an even earlier publication.
- Reducing TCRs in operational timetable to the minimum and plan their impact to paths/trains as early as possible (IM).
- Having TCR plannings stable - avoiding cancelling TCRs, that would mean double loss of business, as well as massive re-planning of scheduled TCRs, which means high effort in operational planning (IM).

2. Future legal treatment of Commercial Conditions

We stress that Commercial Conditions should remain a contractual agreement between IMs and RUs/Applicants, as they are the parties having the path contract and thus are concerned with Commercial Conditions.

However, Commercial Conditions should be regulated by the EU law to a limited extent that legally ensures that IMs and capacity allocation bodies, in coordination with RNE and in consultation with RUs/Applicants, develop and implement Europe wide aligned harmonized principles for Commercial Conditions, including amendment/cancellation deadlines and TCR management improvement targets, at the latest with the next timetable change after entering into force of the new Regulation on European capacity allocation and management¹.

Such common European harmonized principles for Commercial Conditions must be compatible with the European and aligned national legislations. It is key that Commercial Conditions will be applied reciprocally to IMs and RUs, as both parties shall be motivated for a maximum stability and reliability of their planning.

¹ Commission's initiative "International freight and passenger transport – increasing the share of rail traffic" https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13134-International-freight-and-passenger-transport-increasing-the-share-of-rail-traffic_en.

This way it would be ensured that the legal harmonization is done in a way that respects the contractual nature of Commercial Conditions between individual IMs and RUs and ensures that Commercial Conditions can be quickly adapted if necessary.

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 73% 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 us on Twitter [@CER_railways](https://twitter.com/CER_railways) or [LinkedIn](https://www.linkedin.com/company/cer).

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