



## **CER Position Paper**

Brussels, November 2023

# **Guidelines on Track Access Charges**

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## TAC Guidelines Position Paper

The European Commission is planning to publish guidelines on Track Access Charges (TAC) in 2024. Revised guidelines will be founded on the Commission's action plan to boost long-distance and cross-border passenger rail. In the following, we will lay out the perspective of the Community of European Railways (CER) on those aspects that should be addressed in the guidelines.

### CER Position

In May 2023, the European Commission has asked the sector a set of questions as part of its public consultation in view of the publication of the Guidelines. The following key messages summarise CER's Members' collective views:

- As boosting long-distance and cross border rail traffic is a government/EU objective, extra funding should be allocated to Infrastructure Managers (IMs) and the railway sector. This can come from EU ETS revenues, Eurovignette charges, other highway tolls so that negative externalities from transport are properly priced and used to promote sustainable mobility.
- It is important that the Guidelines propose to include potential ways of ensuring the implementation of state compensation for railway infrastructure managers resulting from the reduction of TACs.
- Track Access Charges can play a role in supporting modal shift towards more sustainable modes of transport, adopting a sustainable TAC reduction throughout Europe with proper compensation to IMs and the railway sector. TACs have proven to ensure, at least under certain conditions, benefits for passengers, forwarders, infrastructure managers and rail operators. The examples currently available demonstrate that reducing TACs allowed a considerable lowering of fares and freight rates and in return an increase in frequency and load factor of open access services.
- The ability to pay of each market segment should remain the main principle on how to define mark-ups. Further economic and socio-environmental factors can enable a more precise compilation of the ability-to-pay especially for international trains.
- It is important that RUs engage in a dialogue with IMs and Regulators to better understand how the "ability to pay" criteria is applied to rail services.
- The TAC system should be simple, transparent and not too differentiated.
- A mandatory "direct cost" only rule should be avoided.
- On long-distance cross-border routes, price elasticity and the ability to bear a certain level of charges should also be looked at from a cross-modal perspective. An effort to limit TAC on these routes could play an important role in keeping fares at a moderate level and attracting new customers to rail.
- Discounts on TAC should be compensated by the Member States in order to cover IMs' total costs. The shift to clean transport is in the public interest, and thus the loss in revenue from TAC should be covered by state funding. In addition, Member States have the possibility to support cross-border services by public service contracts (PSO). The guidelines should specify the methods, principles, and obligations for Member States to work together and agree on a common approach

of applying such compensation to cross-border services in order to ensure that they do not affect the financial balance of IMs.

- Incentives for start-up services are welcomed by the sector but only limited in value and time, to avoid excessive losses for IMs and to avoid burden for the other RUs already operating in the market, as this would have detrimental consequences on the quality level of services. In any case, the rebate should not create undue competitive advantages.
- Incentives to optimise capacity utilization and encourage virtuous behaviours of all railway actors are welcomed by the sector, as they would trigger competitive mechanisms aimed at continuous improvements of the system, avoiding the levelling to the lowest performing standards. Such incentives should be applied in a way so as not to hinder rail competitiveness with other transport modes.

## **TAC for Passenger Night Trains**

In the last years, passenger night trains have experienced an increase in popularity in the EU. This development is expected to continue as night trains depict a climate-friendly alternative to air travel and thus meet the demands of end customers and policy makers alike. Therefore, the Commission aims to promote the development of passenger night trains to cope with the expected increase in demand.

The support from the Commission is most welcome, since night trains have reached their limits as a commercially viable undertaking. Conditions for operating night train connections as of today have made it difficult for rail companies to offer this service in Europe. Night trains would profit from such a TAC differentiation, especially in combination with a waiver of mark-ups. Simultaneously, IMs are discussing whether a separate market segment for night trains and a specific TAC could be a suitable instrument to promote this form of travel. CER is of the opinion that a separate market segment could indeed be a measure to be taken by IMs to amplify night trains. Night trains typically operate across various countries and transport the same customer group for a large part of the train path. Therefore, a common market segment with a specific TAC might allow for a more accurate consideration of the ability to bear of this type of service. This could provide IMs and, consequently, RUs with an opportunity to offer attractive products to end customers.

However, several aspects should be considered when providing guidelines for a night train market segment. Firstly, when defining market segments, IMs must consider the national characteristics of the railway market. Therefore, the announced TAC guidelines should maintain the Member States with freedom, as laid down in the Directive, to incorporate national distinctions, such as differences in end customer travel behavior, when implementing a market segment for night trains in order to achieve a high level of acceptance. Secondly, the necessary information to allocate a specific train to a market segment as well as to determine specific TAC for night trains might not be available in each Member State of CER members. Thus, IMs will have to exchange relevant information to be able to accurately delineate the new market segment. Thirdly, it should not be disregarded that with a relatively low share of TAC of total costs, pricing will only have a limited effect on end customers' demand behavior.<sup>1</sup> At the same time, TAC can only be considered as one of various instruments to boost night trains within Europe.

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<sup>1</sup> Further details to this discussion are included in the PRIME Thematic Deep Dive Study on "Night Trains".

Finally, horizontal competitive effects between night trains and freight trains that operate at night must be taken into account. Situations, where passenger night trains push freight trains aside into daytime hours, where they in turn create new conflicts with other passenger trains, must be avoided.

## **TAC for long-distance cross-border passenger trains**

Whereas in night trains end customer groups are relatively homogeneous throughout the entire journey and thus are likely to display similarities with regard to demand elasticity, the picture is different for services during the day. Cross-border trains which operate during the day might be used for business trips, commuting and leisure time alike. Therefore, a market segment purely based on the criterion “crossing a border” insufficiently reflects the actual ability to bear of the train in question. This was also discussed in the PRIME Deep Dive on cross-border long-distance passenger traffic in 2022. Instead, other aspects which sufficiently reflect the ability to bear must be the basis for a possible market segmentation. For example, some IMs that already have a segment for high-speed travel in place, refer to speed, time of travel and metropolitan/decentral. Especially the latter yields the most influential input to the ability to bear of long-distance passenger traffic. Against the background of the current regulatory framework, which sets the ability to bear as the main criterion for segmentation, there is no evidence that cross-border trains are sufficiently different from national services to define a separate market segment for these services. These backdrops should be considered when starting the discussion on the implementation of a separate market segment for long-distance cross-border trains.

Long-distance cross-border routes are characterized by an addition of domestically determined charges with no or little coordination across borders. This translates into a lack of visibility and can incur sharp and unexpected TAC increases. IMs should be encouraged to coordinate the TAC approaches for these services in order to deliver predictability and to incentivize greater supply by operators. This could take the form of a modest TAC discount proportional to distance (but still have to be compensated to the IM).

## **TAC for freight traffic**

In addition, action needs to be taken in freight traffic. The shift to rail in freight transport, as set in the Green Deal, is vulnerable. Here, special attention needs to be paid to single-wagon load trains, which are very labor intensive and thus less competitive compared to other transport modes. The TAC for single-wagon load traffic, including pre- and post carriage, need to be lowered. Moreover, the possibility to introduce national measures in support of single-wagon load trains and combined transport should be expanded, e.g. by expanding the state aid framework.

The Commission guidelines on Track Access Charges should consider the following:

- a. A cross-modal subsidy mechanism from road to rail, with a specific mark-up on the toll for road transport, may finance TAC reduction.

- b. The TACs reduction on the cross-border segment must not increase the cost of the TAC for other railway services. To avoid this, full compensation by the State is required.
- c. A fair balance between the demands of passenger and freight transport is needed to reach an optimum in cutting CO2 emissions. This is especially true for Member States where the rail network serves both passenger and freight traffic.
- d. Recommendation of adjustable TACs or operational guidelines to accommodate seasonal changes in freight demand.

## **Complementary Pricing Instruments**

Even if end customer groups are too heterogeneous to delineate a separate market segment for cross-border trains, demand could be stimulated applying complementary pricing instruments. Those instruments could improve the affordability of cross-border services and thus making these services more competitive to air travel. Elements such as discounts for new service can potentially lower the hurdles to enter new markets.

However, complementary pricing elements do not have to be constrained to boost demand, but they can be more generally used to offer incentives for a certain behavior such as efficient use of capacity and a better coordination. Concrete examples for behavior that should be incentivized are (1) integrated timetabling and scheduling and (2) daily services, or (3) regular/ hourly intervals.

Complementary pricing instruments have the advantage that they can be designed for a specific purpose and thus might be better suited to pursue a particular goal than a new market segment might. Additionally, whereas Directive 2012/34 and national law provide strict requirements regarding the definition of market segments, additional elements can be defined with less restrictions.

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### **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](http://www.cer.be) or follow [@CER\\_railways](https://twitter.com/CER_railways) on Twitter.

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