

Independent Regulators' Group – Rail

**Response to EC Public consultation on international freight and
passenger transport – increasing the share of rail traffic**

June 2022

I. Introduction

1. To achieve the goals of the European Green Deal, more traffic must be shifted to rail whether domestic or cross-border. The railway system in Europe will therefore need to cope with strong growth in demand for infrastructure capacity. This demand will not only come from increased cross-border freight traffic, but from all kinds of growing traffic – passenger and freight, cross-border and domestic.
2. The framework currently in place to improve cross-border rail freight traffic under the Rail Freight Corridor Regulation (Regulation (EU) 913/2010) has not proven very effective. For example, the use of the Corridor One-Stop-Shop (C-OSS) for capacity requests varies across the different rail freight corridors, with the C-OSS frequently being bypassed in favour of using the domestic capacity allocation systems. On some corridors, pre-arranged paths (PAPs) are not ordered because they often do not meet the specific needs of applicants with short-term requests.
3. Improving the approach to railway capacity and traffic management is therefore necessary. Accordingly, a reform promoting railway services as a sustainable transport mode, ensuring fair and non-discriminatory use of the rail network, as well as establishing a single European railway area is welcomed by the members of IRG-Rail.
4. Operational and technical barriers to market opening also exist. Harmonisation of capacity allocation and traffic management processes alone will not be sufficient to ensure competitive and effective cross-border rail services. Constraints presented by inconsistent and not harmonised national safety rules and lack of interoperability are but some of the obstacles to cross-border rail services that still hamper the operation of the European railway market.

II. Capacity allocation and traffic management

5. European rail networks are largely mixed-use networks. This means they are open to domestic and international freight as well as passenger traffic. Limited capacity on many rail networks indicates that shortage of capacity is one of the main problems of the European rail transport. Any new rules would therefore need to take into account how to analyse and balance legitimate capacity needs for all kinds of traffic. To enable smooth traffic flows across borders, a common view on the distribution of capacity between transport services or jointly binding criteria will need to be found reflecting adequate and balanced capacity apportionment of all different market segments. Socio-economic benefits of transport services could be a useful basis for such criteria.

6. The TTR Project ¹ developed by RailNet Europe and others has been suggested by stakeholders as a way forward. Its main feature is advance planning of capacity for all business and social needs as well as for temporary capacity restrictions. This will reinforce the need to take into account all types of traffic.
7. While advance planning might lead to a more efficient use of capacity, such a system would need to be designed carefully to avoid any negative impact on competition and the ability of railway undertakings to enter the market. Transparency in planning methodology and design parameters will be a key feature to ensure this. Since advance planning is done before applicants express their needs in the form of train path requests, clear procedures for consultation, coordination and dispute resolution at each stage of the TTR process will be necessary to ensure that the planning of capacity will be based on the real needs of applicants. Advance planning moreover raises the question of data-sharing and adequate treatment of confidential information between applicants and infrastructure managers.
8. A necessary feature for the TTR allocation model is to create appropriate incentives through commercial conditions that cover cancellation, non-usage and modification/alteration of train paths, supporting transparent, fair and reliable capacity planning and allocation on the one hand and the efficient use of capacity on the other hand by means of reliable usage of train paths.
9. Harmonized key performance indicators (KPIs) would facilitate European performance monitoring.
10. The current Rail Freight Corridor Regulation only considers the main cross-border PAPs. It fails to integrate the "end to end" journey and the full logistic chain. It does not take into account feeder-outflow-paths or the linking of paths to the service facilities and the endpoints of the journey. The current system, which provides rules for the whole railway network in the Directive 2012/34/EU and a separate set of rules for freight corridors under the Regulation, creates additional complexity with regard to capacity allocation for the same infrastructure. Harmonised processes for cross border traffic compatible with domestic traffic would make the system more transparent.

III. Regulatory Oversight

11. There is a need for coordination and consistency of regulatory approaches for cross-border issues. Regardless of the outcome of the ongoing reform there will be a continued requirement for

¹ Redesign of the International Timetabling Process: "TTR for Smart Capacity Management"

independent oversight of capacity allocation and traffic management. This can be simplified for all parties involved by making the scope of the rules and the roles of all parties, including the regulatory bodies, very clear. Regulatory competences for monitoring, ensuring transparency and non-discriminatory access as well as decision making need to mirror any future rules on the allocation process. Competences would need to apply to all stages of decision-making on planning and allocation of capacity.

12. In a capacity management model inspired by TTR, this would include recognition of the fact that shifting large parts of the decision-making process on capacity allocation from the request phase to the planning phase would also shift the focal point of independent oversight to this phase. Any changes to the regulations should take into account the consideration of new entrants and non-discriminatory access to railway infrastructure in the long-term.
13. Depending on which policy option is presented by the European Commission, different interfaces between regulation of cross-border and domestic traffic will occur. These will need to be defined clearly in order to avoid disputes over competencies and jurisdiction. This includes the necessity to enforce decisions in individual member states.
14. As there is likely to be an increased use of automated systems in the capacity allocation and traffic management processes, effective regulatory oversight will be required to ensure that these systems will be designed in a way that their reasoning is explained, enabling regulatory bodies to review their decisions.
15. Appropriate powers for regulatory bodies to regularly gather data on relevant key performance indicators to monitor the effects of the rules and enforce those rules will also be required.