

Position Paper

Implementation of Directive 2012/34/EU

Amendments of Annex VII on the “Schedule for the allocation process”

6 February 2017

Implementation of the Recast: Schedule for Capacity Allocation – Annex VII

1. Introduction

Article 43 (2) of Directive 2012/34/EU (the “Recast Directive”) empowers the Commission to adopt delegated acts concerning some amendments of Annex VII regarding the “Schedule for the allocation process”. In April 2016, the European Commission announced its intention to modify Annex VII of Directive 2012/34/EU on the schedule for capacity allocation.

According to Article 43 (2), amendments should be “based on what is necessary in the light of the experience in order to ensure an efficient allocation process and to reflect the operational concerns of the infrastructure managers”. Therefore, an expert subgroup on timetabling was set-up by DG MOVE for the purpose of assisting the European Commission in preparing the future possible delegated act. EIM and CER, as well as several of its members who participated in the subgroup, have been consulted on the draft Delegated Act.

CER and EIM welcome the efforts made to accommodate the concerns raised by our members during the last meeting of the expert subgroup, and in particular the fact that the European Commission agreed to take into account the sector’s operational experience as reflected in the results the - RNE/FTE – TTR Project (Redesign of the International Timetable Process).

This Position Paper, which refers to the third discussion paper circulated by the Commission on 16 December 2016, builds on the Technical Opinion provided by the TTR project (attached) and calls on the European Commission to base its amendments on what is necessary in the light of the experience gathered, in order to ensure an efficient allocation process and to reflect the operational concerns of all stakeholders.

2. CER/EIM Position

A. Recitals

Recital (1)

- (1) Applicants should have the opportunity to submit ~~late~~ requests for capacity to be incorporated in the annual working timetable ~~in a second application period after the deadline for annual requests and~~ before the beginning of

the timetable period. ~~In each round, the infrastructure manager shall coordinate conflicting requests.~~

Justification:

Based on the market requirements of the TTR project, after the deadline for annual requests, applicants are given the opportunity to submit requests for capacity, at any time. CER and EIM urge the Commission to avoid the creation of a rigid and unnecessary two-round application procedure.

Recital (3a)

(3a)The procedures for capacity allocation should be made more transparent, whilst taking into account the efficiency of the allocation process as well as the operational concerns of all stakeholders;

Justification

CER and EIM believe that these fundamental concerns of all stakeholders should be explicitly reflected in the Delegated Act.

B. Article 1

**Article 1
Point 3**

- (3) The ~~final date~~deadline for receipt of requests for capacity to be incorporated into the working timetable ~~in a first round~~ shall be no more than 12 months ~~and the second final date for receipt of such requests shall be no more than 6 months~~ in advance of the entry into force of the working timetable. Any requests submitted after the deadline shall be considered by the infrastructure manager.

Justification:

CER and EIM believe that the introduction of a second deadline for the submission of capacity requests is too rigid and unnecessary. Based on the market requirements of the TTR project, CER and EIM propose that capacity requests made at any time after the annual deadline should be taken into account by the infrastructure manager. CER and EIM suggest changing the wording from 'final date' to 'deadline' in order to clarify that requests can still be considered after this deadline. This is in line with the wording of the first sentence in Article 1 Point 5.

**Article 1
Point 5**

- (5) Four months at the latest after the ~~first~~ deadline for submission of ~~bids~~ requests by applicants, the infrastructure manager shall prepare a ~~first-draft~~ working timetable. The infrastructure manager shall decide on requests for train paths it receives after that deadline and before the beginning of the

timetable period ~~as soon as possible~~ according to a published process. Alternatively, it may decide on the allocation of requests for train paths that it received before the second final date referred to in point (1) pursuant to a coordination as referred to in Article 46 as fast as possible. Two months at the latest after the second deadline for submission of bids, the infrastructure manager shall prepare an updated draft working timetable. The rescheduling of an allocated train path in order to ensure the best possible matching with a path request shall be subject to approval by the applicant. ~~The infrastructure manager shall indicate in the network statement the lines for the allocation of the capacity of which it applies the procedure in accordance with the third sentence.~~

Justification:

In line with our reasoning in the previous section, CER and EIM believe that the introduction of a second deadline for the submission of capacity requests is unnecessary. CER and EIM believe that, after the deadline for annual requests, applicants should always be given the possibility to submit requests for capacity.

Article 1
Point 6 (NEW)

- (6) 'Capacity restriction' means temporary restrictions of the capacity of railway lines, including for reasons such as infrastructure works, reduced speed, ~~if the railway undertaking considers the speed reduction as significant for certain services,~~ axle weight, train length or traction.

Justification:

CER and EIM believe that the definition of "capacity restriction" may warrant some further clarification notably regarding the wording "if the railway undertaking considers the speed reduction as significant...".

Article 1
Point 7 (NEW)

- (7) As regards capacity restrictions of a duration of more than ~~one week~~ 30 days and ~~affecting for which~~ more than ~~40~~ 50% of the estimated traffic volume on a railway line ~~is cancelled, rerouted, or replaced by other modes of transport,~~ the infrastructure manager shall consult the applicants and the ~~main~~ operators of service facilities concerned at least 18 months before the beginning of the timetable period ~~and publish the remaining available capacity 12 months before the beginning of the timetable period.~~ As regards capacity restrictions of a duration of more than ~~three six~~ six days and ~~for which affecting more than 20~~ 30% ~~to 50%~~ of the estimated traffic volume on a railway line ~~is cancelled, rerouted, or replaced by other modes of transport,~~ the infrastructure manager shall consult the applicants and the ~~main~~ operators of service facilities concerned at least ~~9-12~~ 12 months before the beginning of the timetable period ~~to ensure the publication of the conclusions~~

~~as described in point (9). As regards all other capacity restrictions ~~of a duration of more than one day and affecting more than 10% of the estimated traffic volume on a railway line~~, the infrastructure manager shall consult the applicants concerned at least 6 months before the beginning of the timetable period~~first day of the restriction~~. ~~On a case by case basis, infrastructure managers and applicants may jointly define the applicable consultation deadlines, taking into consideration other criteria than the duration of the capacity restriction and the percentage of estimated traffic volume affected by the capacity restriction.~~~~

Justification:

This proposal builds on the Technical Paper (attached) developed by the TTR project and most notably the work on Temporary Capacity Restrictions (TCRs). CER and EIM therefore urge the Commission to take into account this new wording which reflects the experience made by the sector.

CER and EIM further propose that the wording 'Main operators' is replaced by 'operators' as the definition is ambiguous and may lead to discrimination between market players. CER and EIM would also welcome a clarification on whether it would be up to the IM or to the operators themselves to define whether a facility operator is "concerned" or not. For clarification and consistency purposes, CER and EIM propose to insert 'at least 12 months before the beginning of the timetable period' for capacity restrictions of a duration of more than six days and for which 30% to 50% of the estimated traffic volume on a railway line is cancelled, rerouted, or replaced by other modes of transport,

**Article 1
Point 8 (NEW)**

- (8) In case of capacity restrictions (1) necessary to re-establish safe train operations, (2) the timing of which is beyond the control of the infrastructure manager or (3) where asset life or condition can be ensured in a more cost effective or responsible manner, the infrastructure manager may decide not to apply the lead times laid down under points (7) and (9), and consult the applicants concerned without undue delay.

Justification:

CER and EIM propose improving the wording for (3) for clarification reasons. Furthermore, CER and EIM believe that the provision should also cover the lead times laid down under point (9). Infrastructure managers should nevertheless consult applicants without undue delay. CER and EIM suggest that the wording "3) where asset life or condition can be ensured in a more cost effective or responsible manner" should be further clarified.

Article 1
Point 9 (NEW)

- (9) The information to be provided by the infrastructure manager when acting in accordance with point 7 or point 8 shall include planned day and time of day, and as soon as it can reasonably well be predicted, the hour of the planned beginning and of the planned end of the capacity restriction, the section(s) of line affected by the restriction and, if applicable, the capacity of diversionary lines. The infrastructure manager shall publish this information, or a link where this information can be found, in its network statement as referred to under point 3 of Annex IV in accordance with the lead times provided under point 7 but in case of the major and medium impact clusters¹ of point (7) no later than 12 months before the beginning of the timetable period. The infrastructure manager shall keep this information updated as soon as it can reasonably well be predicted.

Justification:

CER and EIM propose improving the wording so as to ensure consistency and flexibility.

Article 1
Point 10 (NEW)

- (10) As regards the capacity restrictions and the timeline of a duration of at least 30 days affecting more than 50% of the estimated traffic volume referred to in the first sentence of point (7), the infrastructure manager, if requested, shall provide the interested applicants with a comparison of the conditions to be encountered under at least two alternatives related to the use of the restricted capacity ~~restrictions~~. The infrastructure manager shall design those alternatives jointly with the interested applicants. The comparison should, for each alternative, include at least the duration of the capacity restriction, the expected indicative infrastructure charges due, the capacity available on diversionary lines, the available alternative routes and the indicative travel times. Before making a choice between the two options, the infrastructure manager shall consult the interested applicants and take into account the impacts of the different alternatives on the applicants and users of the services.

Justification:

Wording suggestion to improve clarity and consistency of the text. Regarding the restricted capacity, the intention is not to provide different construction programs or maintenance measures, but alternatives on how to best handle the traffic concerned.

Article 1
Point 11 (NEW)

- (11) Regarding the capacity restrictions on a railway line referred to in the first sentence of point (7), the infrastructure manager shall establish criteria for

¹ Redesign of International Timetabling Process (TTR) (Technical Input for the Recast of Annex VII)

which trains for each type of service should be divertibility diverted-of trains for each type of service- taking into account the applicant's commercial ~~and operational~~ constraints without prejudice to aim of reducing costs of the infrastructure manager in accordance with Article 30(1). The infrastructure manager shall publish those criteria together with a preliminary allocation of the remaining capacity to the different types of train services when it acts in accordance with point 7. After the end of the consultation and without prejudice the obligations of the infrastructure manager as referred to in point 3 of Annex IV, the infrastructure manager, based on the feed-back it received from the applicants and the-its own operational constraints, shall provide the railway undertakings concerned with an indicative break-down by types of services to the remaining capacity.

Justification:

In order to avoid discrimination, the infrastructure manager should not have to take the operational constraints of rail operators into account when establishing criteria for diverting trains. If applied, the proposed provision might lead to a situation in which RU (A), which owns rolling stock diverse enough to adapt to a rerouting line with, for example, higher slopes than the line subject to TCRs, is rerouted, while RU (B), which owns only one type of rolling stock, can only run on the line subject to TCRs. RU (B) would then be favoured and RU (A) discriminated against.

**Article 1
Point 12 (NEW)**

- (12) In case of the capacity restrictions referred to in the first sentence of point (7) on one railway line and concerning train services crossing more than one network in the Union, the infrastructure managers shall take into account the commercial ~~and operational~~ constraints of the applicants concerned ~~and the main operators of service facilities concerned~~ in accordance with Article 53(2). To that end, if the impact of the capacity restrictions is not limited to one network, the infrastructure managers ~~mainly~~ concerned shall set up a task force and arrange a first meeting at least 18 months before the beginning of the timetable period. The task force shall help prepare timetables, including the provision of diversionary routes. The infrastructure manager shall, when necessary, invite the ~~main~~ applicants active on the lines concerned, the associations of infrastructure managers referred to in Article 40(1) and the operators of service facilities concerned to attend the meetings of the task force. This provision shall only apply to cases where capacity management functions on the concerned networks are performed by different bodies.

Justification:

Regarding the first sentence, same justification as under points 11. With respect to 'main', same justification as under point 7.

The wording "and the main operators of service facilities" should be deleted. This amendment to Annex VII is out of scope as it deals with the access to service facilities, and not the schedule for capacity allocation. Article 43 of Directive 2012/34 foresees that "Annex VII may be amended to take into account operational considerations of the allocation process. Those amendments shall be based on what is necessary in the light of experience in order to ensure an efficient allocation process and to reflect the operational concerns of the infrastructure managers."

The additional last sentence aims at avoiding cases where, within a member state, several infrastructure managers coexist, but the capacity management function is being carried out by only one of them.

**Article 1
Point 13 (NEW)**

- (13) In a case where trains crossing from one network to another arrive with a presumed delay of not more than 18 hours, the infrastructure manager of the other network shall not consider the train path cancelled unless the railway undertaking informs the infrastructure manager that it will not cross to the other network. ~~Infrastructure managers that applied delays of six hours or more at the time of the publication of this Regulation in the Official Journal may decide to continue to apply that delay for not more than three years after the date referred to in Article 3.~~

Justification:

The last sentence is obsolete considering the transitional period requested by CER and EIM under Article 2.

**Article 1
Point 14 (NEW)**

- (14) ~~Operators of service facilities shall respond to ad hoc requests for access to and/or capacity in the facility as quickly as possible within the time limit defined by the regulatory body in accordance with Article 13(4), which shall not exceed 24 hours of opening time of the facility. As regards capacity requested for a time of more than seven days after the request is submitted, the regulatory body may set a time limit for the operators of the service facility to respond which may be more than 24 hours."~~

Justification:

This amendment to Annex VII is out of scope as it deals with the access to service facilities, and not the schedule for capacity allocation. Article 43 of Directive 2012/34 foresees that "Annex VII may be amended to take into account operational considerations of the allocation process. Those amendments shall be based on what is necessary in the light of experience in order to ensure an efficient allocation process and to reflect the operational concerns of the infrastructure managers."

C. Article 2

Transitional Arrangements

Points (7) to (11) of Article 1 shall apply from 1 July ~~2017-2020~~ in time for the working timetable starting on 8 December ~~2018-2021-2022~~. ~~The provisions laid out in Annex VII shall apply as of 1 July 2020 in time for the working timetable 2021.~~

Justification:

CER and EIM understand the Commission's goal to have the new provisions adopted just on time for the Timetable 2019. We believe however that the proposal contains several provisions which warrant a derogation from the rule proposed by the Commission i.e. that the Regulation enters into force on the twentieth day following its publication.

Such a transition period is all the more necessary because the Commission intends to adopt a delegated act taking the form of a Delegated Regulation, which would be binding on its entirety and directly applicable. CER and EIM therefore call on the Commission to foresee a transition period for the application of the Delegated Act which would allow IMs to adapt to the new rules.

About CER

The Community of European Railway and Infrastructure Companies (CER) brings together more than 70 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, 80% of the rail freight business and about 96% 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 via Twitter at @CER_railways.

About EIM

EIM, the association of European Rail Infrastructure Managers, was established in 2002 to promote the interests and views of infrastructure managers in Europe, following the liberalisation of the EU railway market. It also provides technical expertise to the appropriate European bodies such as the European Railway Agency. EIM's primary goal is promoting growth of rail traffic and the development of an open sustainable, efficient, customer orientated rail network in Europe. For more information, visit www.eimrail.org.

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Redesign of International Timetabling Process (TTR)

Technical Input for the Recast of Annex VII

Version	Date	Description
0.1	12 January 2017	Document creation by taskforce "Annex VII"
0.2	20 January 2017	Corrections by Philipp Koiser
1.0	26 January 2017	Additional explanations in point 1, agreement by TTR Steering Committee

1. TCR Impact Cluster

Minimum criteria for TCR impact (the type of impact is determined if both criteria are met):

Type of impact on applicant	Major impact	Medium impact	Minor impact
Period of capacity restriction	More than 30 consecutive days	7 consecutive days to 30 consecutive days	Less than 7 consecutive days
Capacity reduction per affected line section	More than 50% of the estimated amount of trains per day cancelled, rerouted or replaced by other mode of transport	30%-50% of the estimated amount of trains per day cancelled, rerouted or replaced by other mode of transport	Less than 30% of trains rerouted or replaced by other mode of transport, no cancellation

Other influencing attributes, such as line classification (e.g. high speed lines), train parameters, changed border stations, changed handover times, changed traveling times have to be taken into consideration and be published by the IMs.

Upgrades of impacts can be done by the IMs in consultation with the applicants.

2. TCR Timeline and Obligations

Time	Major impact	Medium impact	Minor impact
X-60 - X-24	International coordination of known TCRs; First consultation of Applicants	International coordination of known TCRs; First consultation of Applicants	-
X-24	Publication of all known TCRs; Information regarding possible alternatives from IMs to applicants	Publication of all known TCRs; Information regarding possible alternatives from IMs to applicants	-
X-18	International agreement on TCRs between IMs	-	-
X-18 – X-12	Consultation of applicants	International agreement on TCRs between IMs; Consultation of Applicants	-
X-12	Publication of all TCRs including results from the consultation with Applicants; Minimum detail level: quarter of the day, impact on traffic, measures for traffic	Publication of all TCRs including results from the consultation with Applicants; Minimum detail level: quarter of the day, impact on traffic, measures for traffic	-
Between path request for annual request of the first round and final offer	No inclusion of new TCRs	No inclusion of new TCRs	Inclusion of TCRs in the TT production; Consultation of Applicants