



# **Guidelines on harmonised Commercial Conditions for TTR first wave implementers**

**Version 1.0**

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## Version history

VERSION	RESPONSIBLE	DATE	CHANGES
0.1	Daniele Imbriani	11 October 2023	First version as agreed by the TTR Commercial Conditions Task Force
1.0	RNE General Assembly	5 December 2023	Document approved by RNE GA on 5 December 2023

## Section One – General Overview of Commercial Conditions

### 1 INTRODUCTION

#### 1.1 Goal of Commercial Conditions

The Commercial Conditions are financial mechanism provided for the cancellation and modification/alteration of allocated train paths in order to incentivise a more efficient usage of the available infrastructure. They are included in the Network Statements in connection with the track access charges and consist of deadlines as well as fees for the cancellation and modification/alteration of allocated train paths.

According to the current European legal framework, the Commercial Conditions mechanism is mainly based on art. 36 of Directive 2012/34/EU.

On the 11th of July 2023 the European Commission published a proposal of a Regulation *on the use of railway infrastructure capacity in the single European railway area, amending Directive 2012/34/EU and repealing Regulation (EU) no 913/2010*. In the EC proposal of Regulation, the art. 40 defines the „Compensation for changes to the capacity rights” that set, also in accordance with Art. 39 of same document „Changes to capacity rights after allocation”, the basic principles for a harmonised scheme of Commercial Conditions.

Further adaptations of the processes and of the regulatory references in the present will be complemented having regard the full application of the new Capacity Management Regulation.

In the light of the TTR project, the goal of a harmonised Commercial Conditions scheme is to become an enabler of the successful implementation of new capacity allocation procedures set in the TTR by motivating both IMs/ABs and applicants to manage and use capacity as efficiently as possible in order to reduce waste of capacity. The introduction of harmonized Commercial Conditions, most importantly for modifying or cancelling paths, should motivate Applicants to order only the capacity they ultimately need and should incentivise IMs to plan TCRs in such a way that the number of subsequent alteration and cancellation of already allocated paths is minimized.

The TTR Commercial Conditions apply the following scope and principles:

- Commercial Conditions have to be non-discriminatory and reciprocal between IMs/ABs and Applicants.
- Commercial Conditions are applicable:
  - both to national and international traffic,
  - both to passenger and freight traffic,
  - to the whole TTR process phases, including Annual timetable, and Ad-hoc requests, ending with the multi-annual requests (Rolling Planning).

In June 2022, RNE and FTE elaborated a Common Understanding paper that declares and describes the main principles and items for the definition of Commercial Conditions on which the sector can largely agree. The listed items and general principles are considered as fundamental layout of the present document.

## 1.2 Geographical scope

The harmonised Commercial Conditions shall be applied, as soon as the legal or regulatory constraints at European or national level are removed, at least on the entire networks of the following first wave implementers of TTR:

- Banenor;
- DB Netz AG;
- Infrabel;
- ÖBB – Infrastruktur;
- ProRail;
- RFI;
- SBB / BLS Netz AG<sup>1</sup> ;
- SNCF Réseau;
- Trafikverket.

According to the above-mentioned EC proposal of Regulation, a harmonised set of Commercial Conditions should be adopted by all the European Infrastructure Managers as part of the European framework for capacity allocation (ref. Art. 6).

## 1.3 Exclusions

The TTR Commercial Conditions Project will not work on the following aspects:

- Compensation requests of extra costs (e.g. passenger tickets, penalties related to agreements with RU's clients, etc.) from RUs or third parties due to IM path cancellation (e.g. for TCRs), which follows the complaints' process defined by each IM.
- Harmonization of the monetary value of financial penalties.
- Administration fees and reservation fees (particularly at the requesting stage), applicable according to national rules/law, because they are unilateral (i.e. only applicable to applicants).
- Invoicing issues.
- Performance schemes/incentives related to RUs/IM performance during the train run.

The TTR Commercial Conditions will not apply in cases of cancellation due to Force majeure. Mutual acceptance of Force Majeure causes recognised by other IMs should be discussed in the proper European forum (e.g. in the PRIME Group).

## 1.4 CURRENT STATUS OF COMMERCIAL CONDITIONS

### 1.4.1 General information

Several Infrastructure Managers in Europe have already in force a national Commercial Conditions system as described in the Network Statements.

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<sup>1</sup> as in Switzerland the Commercial Conditions are set by the MoT, the Commercial Conditions will apply to the whole country

In some cases, the Incentives Schemes are provided by national law, which defines the specific amount of penalties that the IM/AB can apply to the Applicant in case of cancellation and other requests that may lead to the same effect. In most of the cases, Commercial Conditions schemes applies on cancellations due to RUs reasons, and less frequently due to IMs reasons. The modification of the path is often considered as a cancellation and only in that case often have any economic (or something) consequence. Not frequently, the incentives are applied on path modification both on the Applicant and on the IM side.

These mechanisms are based on the thresholds and fees –defined at national level and taking into account the following chapters- connected to:

- a percentage of the Track Access Charges
- a fixed price per train-km
- a fixed price for request (cancellation, modification/alteration)
- (other administrative or reservation fees)

A specific analysis carried out in spring 2023 on data availability for first wave implementers IMs related to path cancellation and modification/alteration shows that, in general, IMs have available only the data related to paths cancellation or modification/alteration according to their national commercial conditions systems. For this reason and taking into account the current procedural and legal framework any study or simulation of the economic effects following the introduction of new incentives would require a specific cross-business project. Each IM should elaborate at national level simulation or test on the effect of the changes in the commercial conditions system both for the IM and for the Applicants, taking into account the scheme provided in the present document.

Furthermore, any change of the current thresholds for each IM may need updates of the national procedures and available IT tools.

#### **1.4.2 Rules and incentives for the Applicants**

Incentives to prevent recurring cancellation of the paths requested and allocated to the Applicants are one of the most adopted in the Network Statements.

On the other side, penalties related to path modification request are not often applied in the current CCs systems across the European Countries.

In the case of a RU may not cancel the path after the planned departure time, Commercial Conditions often consider also the case of non-usage of capacity for the paths allocated and not effectively used by the RUs.

#### **1.4.3 Rules and incentives for the IMs**

According to the Annex VII to the Directive 2012/34/EU, the Infrastructure Managers shall plan and communicate in due advance infrastructure works for maintenance, renewal and development of the infrastructure.

In most of the cases, many IMs do not adopt an incentive system for the cancellation and alteration due to IM reason.

Based on a 2022 survey conducted among TTR first wave implementers, only two IMs adopted a full reciprocal system that involves both path cancellation and path modification/alteration incentives. Only a few other IMs adopted reciprocal incentive measures but only for path cancellation. Generally, if the IM provides an alternative to the Applicant to the originally requested and allocated path, the request is considered as granted and, for the majority of the IMs, no further consequences for the IM should apply. In addition, IMs are often willing to apply a reduction of the charge in case of extra costs for the RU due to the alternative route.

#### **1.4.4 Other incentive measures**

In addition to the previous listed measures, some further incentives are provided as effect of misbehaviour of the parties involved or to deal with specific aspects.

In case of total line closure due to renewal works on the railway infrastructure, some IM provides to the payment of the substitute bus services as a compensation measure for passenger traffic. This can be applied also independently from the time of the communication to the market and it is generally supported/funded by the relevant national Ministry.

Very rarely IMs provides full (or partial) compensation to Applicant of other extra costs related to the service interruption due to planned line unavailability or late cancellation

Other deterrents are applied in case of non-usage of the infrastructure by the Applicant/RU. As an example, in case of recurrent cancellation of a path for more than one month, some IMs decide to provide a lower priority to the involved Applicant in case of conflicts between different path requests during the construction of the timetable for the following year(s).

In most of the countries, Commercial Conditions take account of the timing when the path cancellation/modification is requested and the level of congestion of the line impacted by the change.

## Section Two – Proposal of Harmonised Commercial Conditions

### 2 INTRODUCTION

RNE aims to describe, in the present document, a harmonised scheme of Commercial Conditions that will provide a useful Guideline for the Infrastructure Managers that are participating as first wave implementers in the TTR Commercial Conditions task force and also for those who want to implement their national scheme according to a common set of rules that will be widely applied among European Infrastructure Managers to fulfil and support the full implementation of the TTR project.

The following contents will be subject to updates according to the evolution of the legal European framework and the further definition of procedures and processes in the TTR.

#### 2.1 Incentives for Applicants

##### 2.1.1 Path cancellation (requested by Applicant)

###### 2.1.1.1 Definition

This process applies to allocated paths in the annual timetable, Rolling Planning (once introduced) and ad-hoc requests. An applicant may always cancel an allocated path. A path cancellation may refer to one single day, several days or all remaining operation days in the Timetable. It is also possible to cancel the entire train run (all path sections) or just one or more sections of the train run (one path section). For international train paths, incentives should apply in the network(s) where the change occurs.

###### 2.1.1.2 Application of Commercial Conditions

Commercial Conditions are applied when Applicants cancel an originally requested, allocated and accepted path, due to the responsibility of the Applicant, for reasons that are not force majeure and not caused by an IM.

###### 2.1.1.3 Path cancellations

The following thresholds, as well as the fees to be defined at national level, for path cancellations due to responsibility of the Applicant will be included in their Network Statements by the IMs according to the timeline described in the par. 3.2 of the present document regarding the implementation of the harmonised Commercial Conditions. The following scheme provides a harmonised approach to elaborate the national scheme of compensation/incentives to be approved in the consultation with the Regulatory Bodies.



Path cancellation threshold before train run*	Cancellation fee scheme
more than 60 days before the train run	A
60 to 31 days before the train run	$B \geq A$
30 to 5 days before the train run	$C \geq B$
4 days to 24 hours before train run	$D \geq C$
less than 24 hours before the timetabled departure time of the train up to the timetabled departure time of the train*	$E \geq D$
After timetabled departure time*	$F \geq E$

\*The train's timetabled departure is the time when the train enters the train-path pricing system of the respective IM

IMs are free to merge or not apply certain threshold levels according to the cancellation patterns in coordination with national Authorities (Regulatory Body, Ministry of Transport). If technical or legal constraints are present at national level, IMs may decide temporarily to keep some threshold in addition to the thresholds listed above.

The level of fees (or other incentive measures) is defined by each Infrastructure Manager – up to any level the respective IM deems necessary to reach the steering effect and ensure an optimal use of capacity while keeping the competitiveness of the rail mode. In general, a progressive structure of the fees should be kept in the sense of “the nearer the cancellation the higher the fee” logic. Each IM should be able to determine its own monetary approach based on its level of saturation without binding ranges

In order to facilitate the harmonisation and comparability of the CC, a common mechanism should be based on the track access charge. If there are reasonable grounds that forbid the adoption of incentives based on track access charges, IMs may decide to apply incentives based on monetary values per trkm (e.g. X,x€/trkm) in accordance with the criteria described in the present document.

### 2.1.2 Path modification requested by Railway Undertakings

Applicants may request a modification of allocated paths from Infrastructure Managers and Allocation Bodies (hereafter only IMs).

A path modification request may refer to one single running day, several days or all remaining days in the annual timetable, and it may concern the entire allocated path or just a part of it. It applies to international and national paths allocated in the yearly annual timetable and to those booked allocated using the short-term planning process as well, including pre-arranged paths on the RFCs

The modification process is applicable from the moment when the path is allocated to the end of annual Timetable.

More details are available in the RNE Handbook concerning Path Modification ([link](#)) procedures, as part of the to the *RNE Process Handbook for International Path Allocation for Infrastructure Managers*, as well as in the Network Statements of each IM.

### 2.1.2.1 Definitions of major and minor path modifications by Railway Undertakings

Minor modifications are those that do not have a substantial impact on its own and/or another path (e.g. decrease in train length with no impact on the timetable). For this reason, these modification requests may be incorporated into the yearly TT at any time. In all other cases, the request is considered a major modification.

The table below shows the modification requests considered as “minor modification”<sup>2</sup>.

Minor Modification Request	
<b>Number of stops</b>	
Fewer	Only if stopping time may be used as buffer time
<b>Train parameters</b>	
Length	Only if shorter than originally allocated
Weight	Only if lighter than originally allocated
Load profile (combined traffic)	Only if smaller or if it is bigger than originally allocated but still complies with the path parameters
Traction type	Only if it is a performance improvement or unchanged
Number of traction units	Only if fewer units and the performance is unchanged or improved
Change of operating partner RU <sup>13</sup>	Only if the parameters are complied with
Replace scheduled rolling stock	Only if it complies with the originally scheduled rolling stock

### 2.1.2.2 Measures in case of major path modifications by Railway Undertakings

Major path modifications are considered in the Commercial Conditions as equal as cancellation request of the paths.

If that is the case and the path modification has no impact on other paths, the request should be treated with lower fee than the ones provided for path cancellation requests from the RUs.

The level of the fees (or other incentive measures) is determined at national level.

Major path modification threshold before train run*	Modification fee
more than 60 days before the train run	A
60 to 31 days before the train run	$B \geq A$
30 to 5 days before the train run	$C \geq B$
4 days to 24 hours before train run	$D \geq C$
less than 24 hours before the timetabled departure time of the train up to the timetabled departure time of the train*	$E \geq D$

<sup>2</sup>After a request of some RNE members and the publication CM Regulation, the present list of Minor Modification Requests is currently under review and, therefore, should be considered as indicative in the present document.

After timetabled departure time*	$F \geq E$
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\* The train's timetabled departure is the time when the train enters the train-path pricing system of the respective IM

The request concerning non-congested or low traffic lines can be excluded from the above – described economic effects.

### 2.1.2.3 Measures in case of Minor path modifications

Minor path modifications as defined in the table in chapter 2.1.2.1 do lead to an increased workload on the side of the Infrastructure Manager and are, therefore, entitled to be charged with a modification fee by the Infrastructure Manager.

IMs may decide to not apply any fee for minor path modification or apply a fee only with regards to minor path modification requests concerning congested or high traffic lines.

Regarding the time of announcement of these modifications, IMs may use the thresholds of the path cancellations as a reference.

## 2.1.3 Non-usage of paths (without cancellation) by Railway Undertakings

### 2.1.3.1 Definition of non-usage

A non-used path is a path whose train is not departed and the RU misses to notify the cancellation up to an 18 hours time limit (or a different time limit defined at national level) after the planned departure time.

In consequence of the missed cancellation, a re-selling by the Infrastructure Manager is made impossible, so the infrastructure capacity remains unused and is totally wasted.

### 2.1.3.2 Measures for non-usage

Non-usage of paths should be continuously monitored by the IM within a pre-defined period during the timetable. In case of failure to provide communication of the non-usage of the path by the RU, the IM should apply a fee at least equal or close to the cost of the path.

The fee is meant to be additional to the track access charges (TAC) paid by the Applicant/RU or, if no TAC can be applied to the path, the IM should in any case consider the cost of the path in the definition of the amount of the fee. The level of the fee (or other incentive measures) is determined at national level.

In addition to the above-mentioned fee, IMs may decide to apply further measure to discourage capacity waste. Some possible measures are listed below:

- In the case of reiteration of non-usage of a certain percentage of the same allocated path by the RU for a period of at least one month and the path interests congested lines, the IM will proceed to withdraw the allocated path (ref. art.52 (2) 2012/34/EC) and additional fees may apply;
- the IM assign lower priority during capacity allocation phase in case of conflicting requests to Applicants who have not sufficiently used their allocated paths;

- Variable fees applicable according to the time extent (e.g. 30 day, 60 days etc.) and the congestion level of the infrastructure.

## 2.2 Incentives for IMs

### 2.2.1 Path cancellation (requested by the IM) and applicable thresholds

The IMs may decide to cancel an already allocated path due to reasons mainly connected to late planning of TCRs, delays during the execution of a planned TCR, severe congestion of the infrastructure or any other reason that exclude the possibility for the IM to guarantee the safe and/or standard operation of a rail transport service.

Every cancellation of a path by the IM due to external reasons, according to Annex VI of 2012/34/UE Directive and UIC Leaflet 450-2, including Force Majeure (ref. also to art. 40(2) of the Capacity Management Regulation proposal), shall not be considered as responsibility of the IM and are therefore excluded from the application of any economic consequence.

Please consider that in the RNE “Procedures for Alteration of Allocated International Paths triggered by IMs”, path cancellation due to IM reason may also be described as path withdrawal where no alternative solution is provided.

#### 2.2.1.1 Definition of path cancellation requested by the IM

Subject to the fair and non-discriminatory access to the infrastructure, IMs have the right to withdraw paths already allocated, without any alternative solution, for only as long as necessary in specific situations such as:

- In an emergency and, where absolutely necessary, on account of a breakdown making the infrastructure temporarily unusable;
- in case the remaining capacity of the route and the alternatives are not sufficient to provide all applicants holding the rights to the originally allocated paths with economically usable alternatives. Allocation rules in a fair and non-discriminatory manner shall be applied. The applicable allocation rules are defined in RNE Handbook for International Contingency Management and Network Statements of each IM;
- Usage of a path below a threshold quota to be established in the Network Statement, for a period of at least one month (only applicable to RUs);

#### 2.2.1.2 Measures for IMs path cancellation

In case of cancellation of an allocated path due to IM reasons, the following criteria for the definition of fees should be used by the IMs for the elaboration of the incentive scheme. The following thresholds refer to the time of the cancellation provided by the IMs. The announcement of the TCR should be provided in accordance with Annex VII timeline.

The level of the fee (or other incentive measure) is determined at national level.

<b>Path cancellation thresholds before train run*</b>	<b>Cancellation fee</b>
more than 60 days before the train run	A
60 to 31 days before the train run	$B \geq A$
30 to 5 days before the train run	$C \geq B$
4 days to 24 hours before train run	$D \geq C$
less than 24 hours before the timetabled departure time of the train up to the timetabled departure time of the train*	$E \geq D$

\* The train's timetabled departure is the time when the train enters the train-path pricing system of the respective IM

## 2.2.2 Path Alteration (requested by the IM)

During the planning of TCRs, it may be necessary for IMs to adjust an already allocated path due to reasons connected to the planning of works, impacts on operations, safety etc.

The process involves both IMs and RUs and it is described in the RNE Handbook concerning Path Alteration ([link](#)) procedure, as part of the to the *RNE Process Handbook for International Path Allocation for Infrastructure Managers*, as well as in the Network Statements of each IM.

In any case, IMs should not pay for path alteration carried out in due time according to Annex VII, also when the path modification proposal leads to a path cancellation due to non-acceptance of the RUs.

### 2.2.2.1 Definitions of path alteration by Infrastructure Managers

In several cases, it may be necessary for infrastructure managers and allocation bodies to alternate, adjust, replace or withdraw already allocated paths. This activity is the so-called "Path Alteration". The need for path alteration shall be reduced to a minimum. A path alteration may refer to one single running day, several days or all remaining days in a yearly timetable; It is also possible to alter the whole path section or just a part of it. It applies to paths in a yearly timetable and to those booked using the short-term planning process as well.

Minor alterations are those that do not have a substantial impact on its own and/or another path;. for this reason, these alteration requests may be incorporated into the yearly TT at any time. In all other cases the request is considered a major alteration.

Further details on differentiation between major and minor alteration are still under evaluation.

### 2.2.2.2 Measures for IMs path alterations

In case of path alteration with major impacts on the originally allocated path, according to the table/description in previous par. 2.2.2.1, the following criteria should be used by the IMs for the elaboration of the incentive scheme:

The level of the fee (or other incentive measure) is determined at national level. In order to promote alternative solutions and maintain the capacity already allocated to the Applicant, the level of the incentives for path cancellation should be higher than the one provided for path alteration.

### **Passenger Trains**

<b>Path alteration threshold before train run*</b>	<b>Alteration fee</b>
more than 120 days before the train run	A
120 to 60 days before the train run	$B \geq A$
60 to 31 days before the train run	$C \geq B$
30 days to 5 days before train run	$D \geq C$
less than 5 days before train run	$E \geq D$

### **Freight trains**

<b>Path alteration threshold before train run*</b>	<b>Alteration fee</b>
more than 30 days before the train run	A
30 to 15 days before the train run	$B \geq A$
15 to 5 days before the train run	$C \geq B$
less than 5 days before train run	$D \geq C$

## **2.3 Other components for Applicants and IMs incentives**

Further specific aspects that are not included into the previous harmonised measure may be considered by the IM in the national implementation of the Commercial Conditions.

### **2.3.1 Congested or highly used lines**

IMs may include specific incentives for congested or highly used lines and/or for specific line typologies (e.g. high-speed or high capacity lines) which capacity is dedicated to high quality service transports.

### **2.3.2 Framework Agreements**

During the annual timetable, path may be requested and allocated according to capacity assigned through a Framework Agreement already signed between the Applicant and the Infrastructure Manager.

As Framework Agreements aims to provide more certainty and safeguards to the Applicant, IMs may include specific incentives for paths cancelled which were requested in the annual process according to the capacity already assigned by the FA.

### **2.3.3 Timing of first request of the path**

IMs may decide to differentiate path cancellation and modification requests impacted by the change request according to the timing of the allocation in the capacity allocation process. In general, the incentive system may consider, as additional component in the system, if the path is requested for the Annual Timetable, Rolling Planning or for ad-hoc path requests. Further details will be included in a later stage of the TTR process.

### **2.3.4 Other components**

According to national laws and/or decisions from the Regulatory Bodies, as well as any specific national need that could not be included in the harmonised scheme, IMs may include further specific component in addition to the present Commercial Conditions system.

## Section Three – Timelines and Implementation phases

### 3 INTRODUCTION

The present chapter describes a rough timeline and list activities to be carried out for the implementation of the RNE harmonised Commercial Conditions.

As the harmonised Commercial Condition are intended to be part of the TTR project and are strongly connected to several legislative, IT and procedural changes expected in the next years, the following content should be adapted and integrated accordingly.

Implementation activities for 2024-2030 are currently under definition.

#### 3.1 PROJECT TIMELINE

##### 3.1.1 General overview of the CC Task Force Project Plan

The Commercial Conditions Guidelines and Implementation plan have been elaborated by the RNE Commercial Conditions TF according to the following timeline.



Further details on the Implementation phase and next activities are provided in the following chapters or will be integrated at a later stage.

##### 3.1.2 Implementation of the Commercial Conditions in the Network Statements

As mentioned above, the implementation activities for 2024-2030 are currently under definition. The implementation in the Network Statement will take into account the entry into force of the new Capacity Management Regulation, which involves two main steps:

- The publication of the European Framework for Capacity Management (expected by January 2026);
- The first relevant Timetable when the new rules will apply (starting in December 2029).

The IMs, according to the national rules and procedures, may also start implement the Commercial Conditions system (fully or partially) earlier before the mandatory enter into force of the Regulation. In this regard, any initiative started for testing the effect of the system will provide data and feedback of field information useful for further adjustments of the present Guidelines.



### **3.1.2.1 TT 2025: Introduction process of cancellation thresholds into Network Statements of TTR first wave implementers**

TTR first wave implementer Infrastructure Managers as listed in chapter 1.2 agree to apply the thresholds for path cancellation listed in chapter 2.1.1.3 of this document in their Network Statements starting in Timetable 2025 onwards. The publication of the thresholds shall take place in chapter 4.8 of the Network Statement and a reference to harmonised Commercial Conditions for RUs path cancellation thresholds has been included in the Network Statement Common Structure 2025.

NS actions for TT 2026 will be part of the Implementation plan.

## **3.2 Monitoring, IT tools and simulation phase**

The implementation plan related to IT aspects and pilot/simulation will be firstly defined by the end of 2023 and further detailed at a later stage, according to the status of the IT developments both at national and international level.

### **3.2.1 Monitoring of steering effects per threshold**

IMs will establish a monitoring system of cancellations volumes per each threshold defined in chapters 2.1.1.3 and 2.2.1.2, at least:

- number of paths and
- path-km

in order to continuously evaluate the steering effect and – if needed – to undertake necessary adjustments in coordination with national Authorities (RB, MoT). IT developments at RNE level and/or national level may be required for this task.

The monitoring and/or simulation should already start during TT 2023/24 aside from the implementation of all the TTR components (e.g. Rolling Planning). According to the analysis made during spring 2023 by the RNE Commercial Conditions Task Force, several IMs would be able to follow up to the simulation phase as soon as the proper IT tools will be available.

The results of this first monitoring phase will provide useful information for the development of the simulation/piloting phase in order to proceed implementing the Commercial Conditions.

### **3.2.2 Tools for preparatory phase before implementing the harmonised Commercial Conditions**

Under definition

Tools and other actions related to IT developments and simulation starting from 2024 will be part of the Implementation plan.