

TIMETABLING AND CAPACITY REDESIGN (TTR)

RNE-FTE COMMON UNDERSTANDING ON COMPENSATION MEASURES

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This report summarises key direction discussed in the joint expert meetings of the FTE and RNE Task Forces on the Commercial Conditions, with the focus on the topic of compensations.

1 Introduction

RNE and FTE started an exchange on Commercial Conditions in 2018, under the umbrella of the TTR project. After several meetings and joint IMs-RUs work, the discussion continued in the dedicated RNE and FTE experts' groups, which respectively adopted the “Guidelines for harmonised Commercial Conditions” (2023) and the “RUs Vision on Commercial Conditions” (2024).

As of the first semester of 2025, the draft Capacity Regulation published on 11 July 2023 by the European Commission is still under discussion in the trilogue phase of the European legislative process. Commercial conditions have been addressed in the Regulation proposal in art. 40, as well as other references to such measures, could be found in the text.

Compensation is a specific aspect of commercial conditions which has been considered in IMs and RUs discussions. Moreover, FTE already considers compensation measures as an additional component of the incentive mechanism proposed, while RNE put this issue out of the scope in their harmonised approach.

On the other hand, the rules and wording used by European institutions bring to light the lack of clear definitions and harmonised process on these aspects, which has always been regulated at the national level by IMs and/or Member States. RNE and FTE's dialogue on the topic of compensations starts from the systematic business perspective, independently from the future trilogue agreement on the scope of Article 40.

The content of this document is without prejudice to the terminology used and processes designed by the European Commission, European Parliament and Council of the European Union in the proposed Capacity regulation.

2 Definitions

The Task Forces distinguishes between the penalties and compensations, using the following definitions.

- **Penalty:** a pre-defined measure set to avoid a misbehaviour of one part for the non-compliance of its commitments, in order to improve the efficiency and reliability of the system.
- **Compensation:** a measure set to repair, reimburse or counterbalance the damage arising by a disruption of a service, limitation or restriction of a service for the non-compliance of its commitments by one part

3 List of cases

IMs and Applicants are striving to efficiently use infrastructure capacity, avoid capacity waste and ensure transport services towards end customers according to the contracted capacity rights. In case the IM-Applicant contract is not fulfilled, the Applicant may be exposed to originally not envisaged costs, a drop in revenues, potential loss of customers and penalties/compensations to be paid towards their customers.¹, where applicable. Most general cases concern:

- Path withdrawal: cancellation of the allocated path by IMs
- Path non-allocation: non-conversion of contracted capacity specifications to paths (for instance, contracted via Rolling Planning / Framework Agreement processes)
- Path alteration: change of the allocated path by IMs

Moreover, the allocated timetable by the IMs as a result of above-listed processes has to be harmonised from origin to destination and ensure timetable quality for the train operation to avoid shift of the impact to the IM/RU staff in the traffic management/operation.

Below are identified the potential compensation cases:

- Passenger: Interrupted path and bus replacement service
- Passenger/Freight: Path withdrawal- total or partial²
- Passenger/Freight: Re-routing in the path alteration
- Passenger/Freight: Degradation of train parameters on the original or re-routing
- Passenger/Freight: Major timetable changes

4 Current practices and methodologies

Compensations are applied in some European rail networks, based on national rules and schemes. These schemes are, in most of the cases, connected to Temporary Capacity Restrictions (hereafter TCRs), mainly when not planned according to the Annex VII to the Directive 2012\34\EU (Annex I, Section 3 of the draft Capacity Regulation). The level of compensation may be different according to the impact and the market segment. Most of the existing mechanisms are based on national law or regulatory decisions, but there are also cases of compensation schemes set autonomously by the IMs. The following list considers the most common methods applied in some European networks to issue the compensations:

¹ For instance originating from the PSO (public service obligation) contract, contract with freight customer and compensations to passenger coming from the Passenger Rights Regulation.

² In case of partial withdrawal it should be up to the applicant to identify, whether the remaining stretch is production/economically viable.

- **Standardised rates:** the mechanisms identify parameters to be used to calculate the compensation amount, which is defined according to a measurable impact on the traffic for instance:
 - Per extra train-km
 - Per extra minute running time
- **Lump sum per case:** depending on the specific case (e.g. rerouted train, restriction of train parameters), a fixed amount is given to the Applicant in order to cover, partly or totally, the borne extra costs.
- **Cost-proof reimbursement:** the Applicant shall provide proof of the emerging costs to the entity from which they claim the compensation, the entity assesses the eligibility of the costs and/or lost revenues.

Standardised rates and lump sums are the simplest approaches to minimise administrative burden to IMs and Applicants, and these are supported practices ensuring transparency. This approach could be preferable to a “upon-proof” system, whereas Applicants consider problematic due to business confidentiality issues and the administrative burden on the Applicants to prove the damage. Also, for the IMs, the possible administrative burdens on the IMs to evaluate and confirm the submitted “proofs”, as well as the lower predictability of the damage calculation, which could compromise the economic balance of the IMs, makes this approach less desirable. Nevertheless, the definition of the standard values (rates or lump sums) requires sectoral agreement on the transparent methodology and definition of average reasonable values.

Another compensation measure for Applicants to mitigate the impacts of line closure for major infrastructure works is support RUs on traction extra-costs on the alternative routes. This might be needed where the alternative line parameters are notably degraded in comparison with the (usual) line under infrastructure works (e.g. not electrified line or steeper gradients). In such case, some IMs directly provide or cover the costs of diesel locomotive(s), or additional electric locomotive required to perform the service and/or other related costs.

Ultimately, compensation measures related to financial losses between infrastructure managers and applicants/railway undertakings could be issued through different further procedures. Even if a compensation scheme is applied, Applicants may claim further financial losses specifically, especially when the Applicant does not consider such scheme financially sufficient to cover the emerging costs.

5 Concluding remarks

Compensation measures already exist in some European networks, mostly using national and, therefore, non-harmonised schemes. An elaboration of European harmonised solutions with fully comparable measures could be challenging, considering that financial commitment is generally relevant for the entity issuing the compensation measure.

Due to such financial efforts for the compensation measures, especially when these have a considerable magnitude, involvement of Ministries of Transport and Regulatory Bodies is required to set -at least- the regulatory framework of such measures.

IMs are continuously working to mitigate the impact of such events and are already committed to enhance TCRs planning efficiency—for example, by limiting, where feasible, the duration of service interruptions and improving the stability and predictability of works through better definition and use of maintenance windows.

In addition to those measures and initiatives, in case of significantly worse parameters on alternative/re-routing lines due to high-impact TCRs, traction support measures can help to mitigate economic impacts for the Applicants and the resilience of railway modal transport services.

Compensations can already be requested through conventional judicial proceedings, regardless of the rules applied in each network by the IMs or Member States. This should always be possible, independently of the agreements between Applicants and IMs.

Standardised rates and lump sums are the simplest approaches to minimise the administrative burden to IMs and Applicants. The definition of the rates and lump sums would require sectoral agreement on the transparent methodology, which may consider changes on train-km and/or running time and/or train parameters. The IMs stress that, in order to define the average reasonable values, cooperation from the Applicant side is necessary.

Applicants highlight the need for inclusion or increase of compensation measures, since events such as, for instance, long-lasting or recurring service disruptions due to TCRs, have a significant impact on their business models, their customers and railway competitiveness towards other modes of transport. The risk originating from these events are generally born by the Applicants and their customers, who might be themselves not in the position to manage, predict and mitigate the risk. The compensation element can be one of the potential supportive measures for stabilisation of the rail modal transport share, besides the continuous improvement actions in respect of earlier, stable and coordinated planning of TCRs.