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From: General Secretariat of the Council  
To: Delegations

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Subject: Proposal for a Regulation of the European Parliament and of the Council 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

– Presidency non-paper

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In view of the Land Transport working party on Thursday 20 March, delegations will find a non-paper by the Presidency on the file mentioned above.

## Presidency non-paper – March 2025

After 2 months of intense negotiations the Presidency would like to present an overall concept on where it believes a compromise could materialise on the proposal for a Regulation on Railway Infrastructure Capacity.

### Summary:

With the set-up of the strategic capacity management and the introduction of a uniform capacity allocation system the available capacity will be easier to manage and will allow for more rail services to be provided on the existing infrastructure.

Member States issue strategic guidance to the infrastructure manager, accompanied with a 5-year (rolling) investment plan to ensure maintenance needs and new infrastructure. Member States will coordinate their strategic guidance to avoid conflicting priorities and ensure the functioning of seamless cross-border and multi-network services, on top of national services and public service obligations. The functioning of the infrastructure manager and the rail services will be monitored with performance targets, indicators and annual reports. The European aspects will be coordinated by ENIM and the network coordinator. ERP will ensure the voice of the users of the infrastructure to be heard by the infrastructure managers, for the multi-network and EU-wide services. By having all the users coming together in this single platform, a constructive dialogue between the providers and the users of the infrastructure is envisaged. Any regulatory concerns are managed by the national regulators; if there is a European dimension, ENRRB will step in to coordinate.

Looking at the architecture of the Regulation, the Presidency would propose a relatively simple, efficient, and inclusive approach. There would be a general structure where the stakeholders (ERP, ENRRB, ENIM) are at first empowered to do their work. And to introduce what one could call ‘safety clauses’ that when it is demonstrated that the work of the stakeholders does not deliver on the expectations of the Regulation, that the Commission could step in. To that end the Commission would be empowered to adopt implementing acts. This should help to deal with the remark of the Parliament that the Regulation is not binding.

## **Looking at the different pillars of the proposal:**

As regards the **scope of the Regulation**, it would apply to the use of railway infrastructure for domestic and international rail services as referred to in Article 1(2) of Directive 2012/34/EU, including service facilities as defined in Article 3(11) of that Directive and the other specifications and clarifications as detailed in the general approach. As regards the **general responsibilities and principles** the Presidency suggests having a closer look, in particular to the recitals, to see and accommodate some requests of the Parliament. The Presidency would explain to the Parliament that this Regulation is not a set of Council conclusions or a political declaration and that it is better to stick to what is important to justify what is written in the Articles. As the Parliament would like to see a level of ambition mentioned, the Presidency intends to stress that ‘reviewing and improving the performance of rail infrastructure services’ (line 59) covers the ambition of what is intended with this Regulation, especially if this is combined with the performance review in Chapter IV. The Presidency might need to include some wording along the lines of what the Parliament proposed: ‘with the aim of increasing the share of rail transport for both passenger and freight services’ or ‘progressing on the Union’s objectives for rail, including forecasted rail traffic growth foreseen for 2030 and 2050’.

As regards capacity management, there is agreement that we would move to a planning and allocation process comprising three phases:

- (a) Strategic capacity planning (Articles 11-25);
- (b) Scheduling and allocation of infrastructure capacity and (Articles 26-38);
- (c) Adaptation and rescheduling of allocated capacity (Article 39-41).

How this works in detail turns out more difficult to agree. Parliament raises the need for a more European approach, as it believes this would avoid applicants having to consider 25 allocation systems. The Presidency argues that we cannot ignore that while we need to accommodate for cross-border and multi-network services, we cannot ignore that a large part of train services are organised on national territories and that each of the national networks have specific characteristics. As some are isolated and some are less developed, we cannot go for a one-for-all approach and allow for adaptations to the specific circumstances. This is true for every aspect of the regulation, such as penalties for example.

## *The European Frameworks*

The Parliament is concerned that there is too little commitment for the infrastructure manager to apply the guidance that is provided in the frameworks. The Parliament seems reluctant to agree that ENIM will be able to produce meaningful European frameworks. It proposes a system where once the frameworks are adopted by ENIM, the Commission would make them binding by adopting them as delegated acts. However, a closer look at the EP amendments (line 98a, 509, 557) does not fully confirm this approach. As these frameworks are an essential part of the proposal, the Presidency cannot agree with delegated acts.

The final structure could look as follows, based on the general approach:

- ENIM would develop and adopt each of the frameworks.
- In preparing the frameworks, it will consult operational stakeholders. For consulting the operational stakeholders, ENIM shall make use of ERP, once ERP has been established. The Presidency will need to work out the precise drafting to make sure ERP can be used, but also make sure a consultation can happen in the event ERP takes longer as expected to be set up.
- A draft of the frameworks shall be submitted to ENRRB, ENRRB shall submit its recommendations and ENIM shall take the utmost account of this recommendations.
- a safeguard clause that would empower the Commission to adopt an implementing act under specific conditions:
  - If ENIM does not manage to develop and adopt the relevant framework within the timeline set out in the Regulation.
  - If ENRRB concludes that the relevant framework is not sufficiently taken into account in the network statements of the infrastructure managers, at least not sufficiently justified.
  - The Commission takes into account the work done by ENIM and – where relevant – existing strategic guidance of Member States in view of ensuring a coherent European approach.

## Strategic guidance

This is one of the most important elements of the proposal and was the first one addressed by the EP in the negotiations. Finding a solution on it will be the key to a successful outcome of the negotiations.

The Parliament (and the Commission) have concerns with the fact that elements of the guidance could be made binding. The EP assumes that the binding aspect might be contradictory to the concept of the guidance. The challenge is to avoid the notion of “binding nature of the guidance” while ensuring Member States’ influence on strategic aspects of railway policy.

One of the options would be to combine this with provisions on adequate, stable, long-term funding through contractual agreements between the state and the infrastructure manager, based on the provisions of Articles 8 and 30 of Directive 2012/34/EU. The Commission would assess the compatibility of such agreements with the Directive, and its Annex V in particular.

If the Commission does not raise a problem with the lack of such compatibility and as long as the state fulfils its financial obligations, the infrastructure manager could be obliged by a Member State to follow the guidance, including the elements under Article 11(3)(c) in the Council GA.

Further, we would need to take into account cooperation between Member States, in particular with regard to international services. For that purpose, one could consider strengthening the wording of Article 53a in the Council GA, especially in reference to the countries neighbouring each other. The other idea could be to include in strategic guidance the already bilaterally agreed paths of international trains.

On top of that, there is a need to reflect on the relationship between the European framework for capacity management (Article 6) and strategic guidance. Some data included in national strategic guidance such as paths for international trains could be included into European framework, this could satisfy Parliament worrying about the fragmentation of the market.

The guidance shall be provided in a timely manner and made publicly available.

### **Socio-economic, operational and environmental criteria**

The Presidency proposes to stipulate that national conflict resolution criteria referred to in art. 37 (1a) first subparagraph shall be prepared on the basis of socioeconomic, operational and environmental criteria stipulated in art. 37 (1c).

### **Commission oversight in ENIM, network coordinator and ENRRB**

To balance the governance structure, the Presidency would suggest the following scheme.

- Before adopting the rules of procedure, ENIM will send them to the Commission for its approval. If later, ENIM wants to change the rules of procedure it will need to do that with a 2/3 majority of the votes.
- The network coordinator will be under the control of ENIM. ENIM will consult the Commission on the terms for appointment, withdrawal and monitoring of the work of the coordinator and any additional duties and tasks. The coordinator will submit its work programme for approval to ENIM. The coordinator will submit its annual report for approval to ENIM.
- ENRRB needs to be independent. It will consult the Commission on its rules of procedures.
- The Commission will chair the meetings of the ENRRB. This will ensure continuity, consistency and impartiality. This will avoid periodical elections of a new chair. Chairing is not to be considered as an oversight. The Commission will have no voting rights. The Commission is there to organise the meetings and not to influence the outcome of the decisions.

### **ENIM delegation**

The Presidency proposes to delete the reference to ENIM not being able to delegate its functions. The Regulation clearly states that ENIM will adopt the frameworks, the common structure. The fact is that this leads to endless discussions with the Parliament. It would be different if we would like ENIM to delegate specific functions as we could clearly state how and to who. In this case, there is no need to clarify that it will not delegate. It is also clear that the preparation of the adoption by ENIM will be done by the network coordinator. To avoid any doubt, the Presidency proposes to delete the reference to the fact that the network coordinator ‘*shall act on behalf of ENIM*’. The task of the network coordinator is clearly defined this way.

**Consultation mechanism (54) and consultation on strategic capacity planning (13) and ERP (55a)**

There are different phases of consultation.

- Infrastructure managers are expected to consult at their level when performing the strategic capacity planning (Article 13). The general approach already clarified that an infrastructure manager shall also include operators of multi-network services.
- ENIM is tasked in Article 54 to prepare, adopt and implement guidelines regarding European and cross-border matters. ENIM should not only prepare guidelines but consult applicants when preparing an opinion or recommendation likely to have a substantial impact.
- The Parliament would like to give a specific role to ERP, arguing this is a request from the sector. In the new set-up of ERP, ERP will be independent from ENIM. It can be seen as a permanent forum where the infrastructure manager can consult its clients.

The Presidency finds it important that a consultation should be done in a targeted and effective way. So, it makes sense to keep the structure of consultations at national or regional level, as described in Article 13 and to have a higher level of consultation on issues of EU importance.

Looking closer at ERP, ERP could help to facilitate consultation on EU level, as it would bring the sector together and will allow ENIM to have a single point of contact to run its consultations. It is suggested to agree with the setting up of ERP and to keep ERP focused on everything that has EU importance. So, the Presidency will look close at keeping it focused and not simply to have ERP to be consulted on every step in the Regulation, but only on those steps that are at a multi-service level.

As regards consultation, it was already discussed with the Parliament. The general idea is that it would be good to have for every consultation step a deadline defined. These deadlines would define a minimum period, but also a maximum period. A minimum period is important to allow the stakeholders to get organised. A maximum period would be important to ensure that the consultation can also be closed and the work can continue in a timely manner.

## **Coordination between IM on strategic capacity (14 - 53) of cross-border traffic management (45)**

After having consulted the stakeholders at the relevant level, infrastructure managers shall also coordinate the strategic capacity between them. So, there will be a coordination at the highest level between Member States on the strategic guidance, this coordination should be done also with regard to establishment of international pre-planned train paths. At the next level, infrastructure managers shall coordinate the strategic capacity plans. This structure should be maintained.

### **Penalties**

The Presidency has explained why compensations have been replaced with penalties and is confident that the Parliament will understand that logic. The President proposes to increase the modulation from 2 times the level of the charge to a maximum of 3 times; the Parliament finds that 2 times would not be enough incentive to avoid too many cancellations, either from the side of the infrastructure manager of the applicant. On the other hand, the EP finds the number of derogations from penalties as going too far (lines 467, 467a, 467b, 475a) . The Presidency invites the delegations to reflect on where some flexibility could be demonstrated and where – on the other hand – the derogations are justified.

### **Performance**

The Presidency proposes to link the financial contractual agreement with the performance review and ask the Member States to stipulate high-level performance targets in those agreements, as already reflected in Annex V of Directive 2012/34/EU.

The idea of a Performance Review Body is not retained in the general approach. The Commission was inspired by a similar body (Performance Review Board) from SES2+. The difference is that in the Railway Infrastructure Capacity Regulation, specific tasks in the field of performance review will be allocated to ENIM and ENRRB. ENIM will adopt a framework for performance review, after having consulted the sector and asked for recommendation by ENRBB. ENIM will publish every year a European Performance Report. ENRBB will also contribute to this report with a self-standing section. Based on targets that will be set and indicators that will be developed to monitor the targets, this will allow for a follow-up and reporting on the performance. This is what the Presidency understands was the objective of the proposal.

It will introduce a system where infrastructure managers will need to demonstrate that they manage the resources they are allocated in an efficient and effective way. It will set performance objectives and in the annual report recommendations can be made, still ensuring the independence of the infrastructure managers.

The EP went a step further, by proposing to develop EU-wide performance targets. This goes beyond the original Commission proposal.

Presidency considers that while the Union targets should not be accepted, one might consider an added value of the PRB. The latter under the conditions that its tasks would not go beyond what was originally proposed by the Commission.

### **ERA**

There should be no role for ERA in this Regulation. Commission already explained that if they need any assistance from the Agency, they have a mandate to ask the Agency. It is clear that we have enough stakeholders involved: infrastructure managers, railway undertakings, service providers,... It will be better that the Agency focuses its work on the task allocated to the Agency in the field of safety.

### **Conclusion**

The Presidency suggests using this document as the basis for further guidance and discussion in the Council. It invites Member States to comment on the above outlined aspects in view of clarifying the scope of a potential compromise with the EP on the main elements of the proposal.