



International Rail Transport Committee  
Comité international des transports ferroviaires  
Internationales Eisenbahntransportkomitee

# 30 CUI Committee Meeting

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15 October 2020



# Welcome

## Some organizational information

- 9.00 to 12.30
- Short break for 30 minutes after introduction of the topic E-SCU-I (around 10.30)
- Keep the web-conference “etiquette”
- We also virtually respect the CIT Competition Law Guideline as received via the invitation
- Tour de table of participants – experience during last months



# Welcome

## Agenda of today's meeting (9.00 to 12.30)

- **Item 2:** Information on the RNE/FTE project, “Redesign of the International Timetabling Process” (TTR)
- **Item 3:** Follow up regarding the “Questions from CIT members”
- **Item 4:** European Standard Contract of Use for Railway Infrastructure (E-SCU-I)
- **Item 5:** European GTC for the use of railway infrastructure (in connection with the new RNE project)
- **Item 7:** Any other business: 7.1 (Update: Issues connected with the RNE Train Information System), 7.2 (Organisation of a Workshop “use of infrastructure” in 2021) and 7.4 (election of the Vice-chairman)
- **AOB**

## **Topic 2**

**Information on the RNE/FTE project,  
“Redesign of the International  
Timetabling Process” (TTR)**



# TTR – SHORT INTRODUCTION

- <https://www.forumtraineurope.eu/services/ttr/>



# CURRENT TIMETABLING PROCESS (BEFORE TTR)

- One request method for all traffic with hard deadlines
- Directive 2012/34/EU is based on the current process: annual timetabling request method (on time request according to the deadlines, including late requests)
- Capacity what was not requested on time (annual timetable request) can be requested as ad hoc requests afterwards
  - Problem: The quality of capacity for ad hoc requests is low
- No harmonised deadlines for path offers in Europe
- Non harmonised approach to changes and modifications



# IDEA OF THE INTERNATIONAL PROCESS AFTER TTR

Long term capacity planning taking into account Capacity restrictions and capacity needs of applicants

- Flexible request methods:

## *Rolling planning*

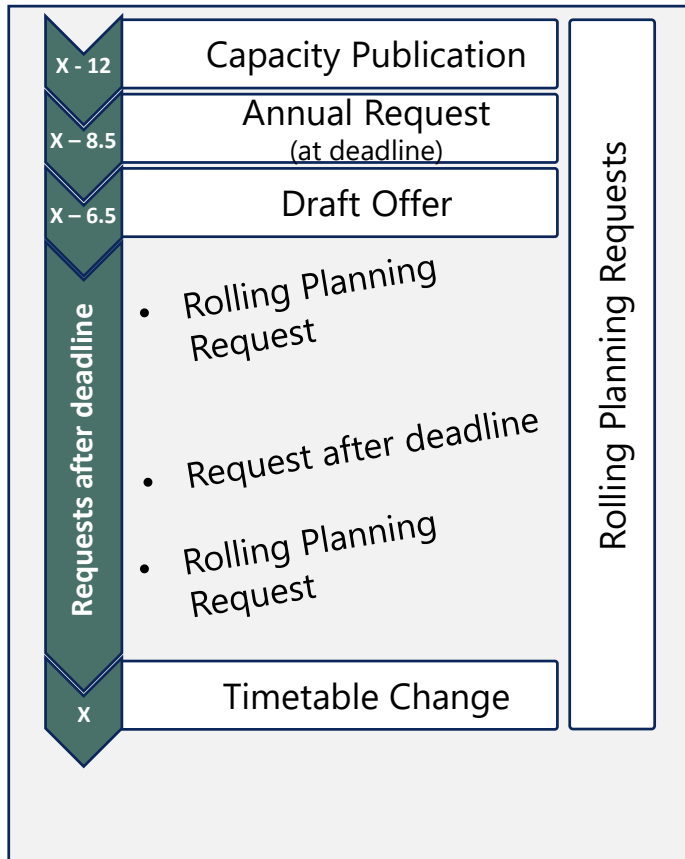
- 365 request possibilities in the year
- No annual TT request deadlines
- Quick request process execution: Maximal 4 months ahead at train run
- Safeguarded capacity with good quality
- Possibly: Multi year allocation of capacity (multi-annual rolling planning)

## *Annual time table (on time request)*

- Shorter path construction time
- Stable path offer earlier available:  
→ consequence for passengers traffic: tickets sales can start 6 months before the timetable change
- Earlier path allocation

## *Annual timetable requests after deadline*

# ROLLING PLANNING & ANNUAL REQUEST



**Request methods should allow high quality answers in the long and short term.**

## Annual Requests

- For train runs with path details known at early stage
- Early offers ensure early commercial use (e.g. ticket sales)

## Rolling Planning Requests

- Request at any time for train runs with path details known at a later point
- Safeguarded capacity ensures high path quality



# CAPACITY MODEL WITH CAPACITY PARTITIONING



Capacity available  
for annual requests

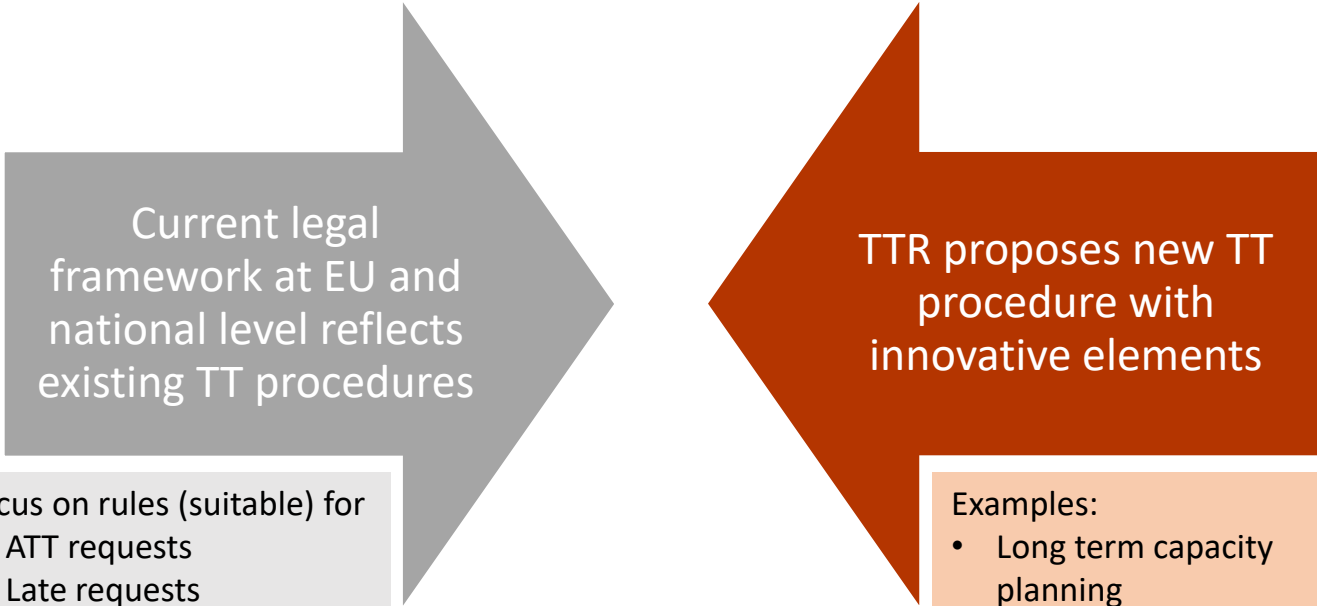
Capacity required  
for TCR

Capacity  
safeguarded for  
Rolling Planning  
requests

**There is only one capacity, which has to be shaped for each timetable year.**

## **TTR – The legal challenge (main principles)**

# INTRODUCTION – THE CHALLENGE



Current legal framework at EU and national level reflects existing TT procedures

Focus on rules (suitable) for

- ATT requests
- Late requests
- Ad hoc requests
- planned TCRs

TTR proposes new TT procedure with innovative elements

Examples:

- Long term capacity planning
- Rolling planning product
- Safeguarding of capacity for rolling planning requests



# SPECIFIC CHALLENGE 1 OF THE PROJECT: SAFEGUARDING OF CAPACITY FOR ROLLING PLANNING REQUESTS

The challenge:

- Such a process of partitioning and safeguarding of capacity is currently not foreseen as a general rule in the Directive
- The Directive, the RFC Regulation and the FA Regulation contain (only) some specific provisions allowing infrastructure managers to set aside/reserve capacity ahead of the annual scheduling phase.



# SPECIFIC CHALLENGE 1: SAFEGUARDING OF CAPACITY FOR ROLLING PLANNING REQUESTS

## Possible solution?

### Article 48(2) of Directive 2012/34/EU

“Infrastructure managers shall, where necessary, undertake an evaluation of the need for reserve capacity to be kept available within the final scheduled working timetable to enable them to respond rapidly to foreseeable ad hoc requests for capacity. This shall also apply in cases of congested infrastructure.”

Understand Article 48 in a broader sense?

This would allow infrastructure managers to set aside capacity for foreseeable rolling planning requests that could be requested and allocated by applicants (RUs) at any time during the year.

**Problem: room for interpretation!**



## SPECIFIC CHALLENGE 2: MULTI-ANNUAL DIMENSION OF ROLLING PLANNING REQUESTS

The challenge:

- Train paths can only be allocated for one timetable period, Art 38(2)
- Capacity can (only?) be reserved for longer through framework agreements; using other methods might be a “circumvention” of the respective rules.

# LEGAL “RISK ASSESSMENT” OF THE CHALLENGES



Regulatory bodies or courts might not following an „open minded“ interpretation of Directive 2012/34/EU and have the same understanding and pragmatic approach to support the TTR challenges (“grey zone” of law)!



Preferable solution: finding a potential enabler!

# POTENTIAL ENABLERS PROS AND CONS

## National law

### **NOT PROMISING:**

- National laws are largely predetermined by EU law
- in remaining areas national laws often lack alignment

## Directive 2012/34

- requires “ordinary legislative procedure” (agreement between Council and Parliament)
- amendment procedures are very time-consuming (several years from impact assessment to adoption)
- has a broad scope of application (basically covering the entire railway network of the EU)
- But decision of CEOs “no 5th Railway package”

## Annex VII

- amendments require involvement of experts
- can be amended rather swiftly
- covers the entire railway network of the EU
- scope is limited to the allocation process



# POTENTIAL LEGAL ENABLERS PROS AND CONS

## Framework agreements Implementing Act

- can be amended rather swiftly
- has a broad scope of application (basically covering the entire railway network of the EU)
- could only cover specific aspect of TTR (multi-annual RP requests); still IMs would not be obliged to offer framework agreements

## RFC Regulation 913/2010

- has a limited scope of application, which only covers parts of the railway network of EU Member States
- requires “ordinary legislative procedure” (agreement between Council and European Parliament)
- amendment procedures are very time-consuming (several years from impact assessment to adoption)



# OUTLOOK

## Common legal basis

- DG Move will be part of the Legal Task Force discussions
- The goal is to find a common solution supported by DG Move

## National law

- National law is diverse and some elements of TTR that could be implemented in one country are currently not possible in another one

## Multi annual RP requests longer than one TT period

- It seems that national regulatory bodies already announced that this would be not feasible according to the current legal framework



# **Discussion**

## **Tour de table of opinions**

# **Topic 3**

## **Questions from CIT members**

# Cancellation costs paid by the RU also if a path was cancelled by an IM due to force majeure reasons

- Based on a question of SBB International, the CUI Committee in the past examined practices across Europe as regards whether and how IMs compensate RUs for the cancellation costs of train paths in the event of "force majeure".
- Cancellation costs are the sum of the reservation cost plus the cancellation charge payable for a path.

## Example:

On the Rhine-Alpine Corridor, should PRORAIL cancel the Dutch section of an international path from Rotterdam to Genoa (due to a force majeure event affecting the PRORAIL network), this would typically be the reservation/cancellation fees charged to the RU by DB Netz, SBB Infrastruktur and FSI for unused national sections of the international path running over their networks

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## Cancellation costs paid by the RU also if a path was cancelled by an IM due to force majeure reasons

- the CIT GS drew up a **document comparing the different legal definitions of force majeure**/exceptional circumstances in transport law as defined by various international sources (including the E-GTC-I), as well as a **list of events** that, based on these international statutes, count as force majeure.
- Documents were forwarded by the RU Dialogue to DG Move.
- The solution most recently discussed in the PRIME Charging Subgroup was not to aim for a uniform definition of force majeure, but rather for **IMs to conclude an agreement whereby for international traffic they would accept the other IMs' decisions that an event was considered force majeure.**



## **Cancellation costs paid by the RU also if a path was cancelled by an IM due to force majeure reasons**

- European Commission launched a pilot on Rhine-Alpine Rail Freight Corridor to examine the scale of the problem for RUs (January until March 2020)
- CIT GS was informed that DG Move works on a analysis paper to describe the problem of “force majeure” based on the pilot.



# Discussion

## What could be our position and support to the problem?

- One definition of force majeure across Europe that is valid for the whole international or crossing border path + all IMs accept the decision of another IM similar to an event on their section if they are aware that this was an international/- cross boarder path.

The following information seem to be useful for further discussions:

- How do systems ensure that it is clear to both IM and RU that the train crosses multiple borders?
- How are RUs informed that cancellation costs have been waived (or not) due to a case of force majeure?
- Could performance schemes offer a way of identifying whether a train has been unable to continue its journey due to these external causes and to what extent fees/charges have been waived (or not)?





# “Framework Contracts FAQ” document

- During the last CUI Committee various questions regarding Framework Agreements were discussed:
  - **SNCF:** the level of penalties for path days unused by the RU that an IM can levy from an RU via a framework contract
  - **Trenitalia:** Italian regulator had asked Italian infrastructure manager RFI to consult with RUs before defining an "appropriate penalty system" for inclusion in its network statement, to apply in cases where the IM failed to supply capacity agreed in advance via a framework contract.
  - In addition: question on the legal nature, bindingness of the capacity allocated under a framework agreement...
- A FAQ document was drafted and circulated between the CUI Committee. Can we publish this paper on the CIT Homepage? [Top 3 Questions\APP 4 \\_FAQ Framework Agreements\\_EN\\_draft V03\\_2020-08-17 with comments AH 31.08.20..pdf](#)



# **Topic 4**

## **European Standard Contract of Use for railway Infrastructure (E-SCU-I)**



# Status of the discussion with RNE in general

- The scope of the CUI Committee`s drafted E-SCU-I contained the minimum access package as well as all service facilities operated by the IM. But RNE General Assembly set RNE some limits for further discussions: they should only focus on the minimum access package.
  - Therefore, we decided to focus on the minimum access package only, in a first step, but we would define a timeframe after that service facilities should be included in the E-SCU-I (but no obligation from RNE side).
- The initial idea of the CUI Committee in 2018 was to use the E-SCU-I together with the E-GTC-I. But we acknowledged that most of the IMs do not use the E-GTC-I (in whole).
  - Therefore we decided that the E-SCU-I should be used in flexible ways:
    - 1.) for parties using the E-GTC-I
    - 2.) for parties using national GTC (if they are in line with the content of the E-GTC-I)
    - 3.) for parties having no GTC at all because they are not existing as seperate document



# Status of the discussion with RNE in general

- For those IMs not having a separate GTC document we drafted concrete text proposals that should be used in the E-SCU-I instead of references to the E-GTC-I.
  - The basis of these text proposals are the E-GTC-I and text proposals are amended if necessary, (e.g. developments in law) and the wording was adapted accordingly.
- It was decided that we should draft some Guidelines explaining the use of the E-SCU-I and giving some background information (e.g. the legal background...). Some hints are already included in footnotes of the current draft E-SCU-I.
- Our feedback regarding the open points would be appreciated by RNE until their next LM WG meeting on 21 October.



# The E-SCU-I in detail

- [Top 4 E-SCU-I\E-SCU-I proposal after 13.10\\_V02.docx](#)
- [Top 4 E-SCU-I\APP 5\\_E\\_SCU\\_I-Proposal after meetings September 2020\\_EN.pdf](#)

## **Topic 5**

**The E-GTC-I and a new RNE project on  
“harmonising the contractual framework” that  
could have an impact on them**



# RNE project : Harmonising the contractual framework for international rail transport

- Was presented by RNE in our joint February meeting this year
  - Purpose: establishing a coherent structure amongst IMs' various contract documents avoiding duplication:
    - The contract of use
    - GTC
    - The Network Statement
- } significant divergence between the rules contained in all these documents



# RNE project : Harmonising the contractual framework for international rail transport

Legal perspective of the three document types:

**Contract of use:** must comply with the provisions of CUI and Directive 2012/34/EU (esp. Article 28), as well as with certain national rules. It can be a private or public contract and is concluded between the parties (RU and IM).

**Network statement:** contain the requirements of Directive 2012/34/EU (primarily Article 27 and Appendix IV). The conditions are determined (mostly) by the IM; the applicant/RU has to be consulted.

**The General terms & conditions:** must meet a number of requirements (e.g. CUI if they concern liability rules, mainly EU law if they concern network access conditions and so on). They are also mostly determined unilaterally, by the IM.

→ Concept of the GTC diverges a lot

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# RNE project : Harmonising the contractual framework for international rail transport

Concept of GTC in Europe:

1. Separate Document (the contract makes then a reference to it)
2. Some IMs include them in their network statement and/or contract of use

## Status quo: different models

*(based on results of a survey with RNE LM WG Members)*

**Type A** Contract of use (incl. GTC) + NS

**Type B** Contract of use + NS (incl. GTC)

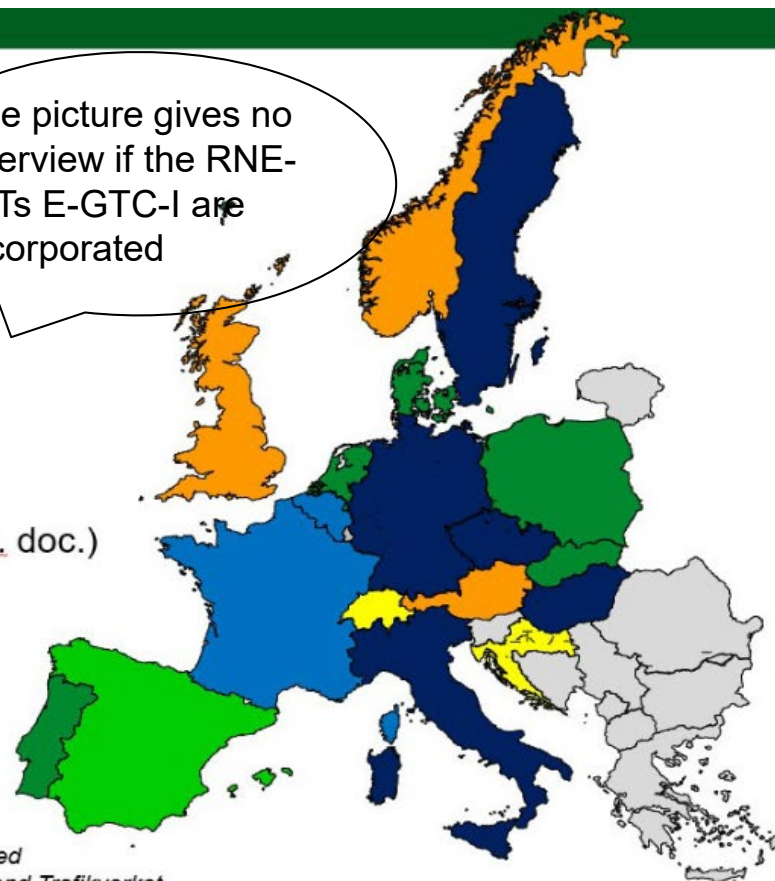
**Type C** Contract of use (incl. GTC) + NS (incl. GTC)

**Type D** Contract of use (incl. GTC) + NS + GTC (sep. doc.)

**Type E** Contract of use + NS + GTC (sep. doc.)

**Type F** NS only

The picture gives no overview if the RNE-CITs E-GTC-I are incorporated



Please note: this map does not include information about application of EGTC-I; based on feedback from LM WG Members it appears that EGTC-I are currently applied fully by ProRail and CH IMs and partly by Infrabel, HZ Infrastruktura, SNCF Réseau and Trafikverket.

# RNE project : Harmonising the contractual framework for international rail transport

CUI Committees opinion in May 2020:

1. The **Network Statement** should (mainly) contain only what is outlined in Directive 2012/34/EU (especially Article 27 and Annex IV) → *Has to be mirrored with the RNE Network Statement Common Structure*
- 2 We are working on a solution with RNE on the **E-SCU-I** (the contract of use) → *We suggest this to be agreed structure regarding the contract of use*
- 3 The **GTC**: should be in general a separated document (IMs can be flexible to reference it in the Network Statement, there can be a reference contained in the contract of use...) → *Keep the E-GTC-I as a basis and see where are some overlaps with the other documents*



# RNE project : Harmonising the contractual framework for international rail transport

Next steps regarding the RNE project:

- In the RNE paper in which they present this project, RNE pointed out that the project can be spread in the sector and that they would like to find ideally an agreement within the sector
  - **Should we be proactive and suggest a solution?**
- [..\F3503 APP to WD\App 6\\_Overview documents regarding the use of infrastrucutre.docx.pdf](#)

# **Topic 7.1**

## **Update: Issues related to the RNE Train Information System (TIS)**



## **Topic 7.2**

**Discussion on holding a workshop on  
"Infrastructure use" during 2021**



# Discussion on timeframe and topics

Timeframe:

In November/ December 2021 (in Bern, if COVID-19 circumstances permit)

Possible suggestions:

- Developments in international and European law in the field of infrastructure use (OTIF and EU level)
  - Recent rulings in the field of infrastructure use (possibly presented by a legal specialist)
  - Discussions of how to classify contracts of infrastructure use from a legal perspective (public law, private law, sui generis?)
  - CIT workstreams in the field of infrastructure use
  - Work with/of RNE on standardised documents in the sector
  - Service facilities and rail-related services
  - The TTR project and the associated legal challenges
  - Operational topics (???)
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# **Topic 7.4**

## **Election of the Vice-Chair**



# AOB

- European Commission proposal establishing measures for a sustainable rail market in view of the COVID-19 pandemic (**“track access charges regulation”**):
  - Proposal by the EC in June 2020 to take measures in order to reduce, waive or defer railway infrastructure charges and the path reservation fees for RUs (period: 1 March 2020 to 31 December 2020 with an option to be prolonged).
  - Measures: Member States can allow IMs to amen from the provisions governing track access charges laid down in Directive 2012/34/EU (e.g. charges for the minimum access package can be reduced...)
  - The EC’s proposal was formally adopted by EU Ministers responsible for Competition end of September and published on 12<sup>th</sup> of October.
- Revision of Regulation (EC) 1371/2007 on **rail passengers' rights and obligations (PRR)**





# AOB

- New case law tool for use of infrastructure

[AOB\Case law overview\\_2020 - Kopie -V3.xlsx](#)

- Next meeting