European Rail Freight Association

POSITION PAPER – 01 September 2023

Proposal for a Regulation on the use of Railway Infrastructure Capacity in the Single European Railway Area

Summary

The proposal for a Regulation on the use of Railway Infrastructure Capacity in the Single European Railway Area requires significant improvement if it is to deliver real benefits for rail freight in a timely manner. The Regulation, in its current form, will not have the desired impact on increasing rail freight volumes by 2030. The Regulation provides a good framework however, and it is feasible to arrive at a text that delivers for rail freight within the scope of the Commission proposal.

The areas within the Regulation which require specific attention are:

- **Rights of Infrastructure Managers to Refuse Capacity Requests**
- **Governance Structure**
- **Railway Undertaking Representation**
- **Implementation Date**

With significant improvements on the above-mentioned points, the Regulation will be able to play a crucial and timely role in delivering a railway capacity management system that meets the needs of rail freight.

The intention of this position paper is to highlight the key points within the Regulation and will be followed by specific amendment proposals.

Positive Aspects

Whilst the draft Regulation needs improvements to meet the needs of rail freight, there are numerous aspects within the Commission proposal which should be supported. It is necessary that the European Parliament and European Council ensure these points are maintained. These are:

Rolling planning, including the multiannual safeguarding of capacity (Article 33) and rights for multiannual framework agreements (Article 31).

Multi-network Capacity Rights which will allow railway undertakings to request multi-network capacity in a single place and in a single operation (Article 27.2) and clarification of the role of Infrastructure Managers in managing said capacity (Article 28)

Reciprocal Commercial Conditions which will incentivise efficient capacity usage by Railway Undertakings and Infrastructure Managers (Article 40).

Regular updating of Infrastructure Managers' **Strategic Planning** taking into consideration developments in market demand (Article 12.8).

Introduction of an **Independent Performance Review** body and mechanism (Articles 49-52).

Improvements Required

Although positives can be taken from the Commission's draft text, many Articles within the draft Regulation fall short of meeting the needs of rail freight. Without significant improvements, or the introduction of new elements, the Regulation will have a limited impact achieving the goals set out in the European Sustainable and Smart Mobility Strategy of growing rail freight volumes by 50% by 2030 and doubling volumes by 2050.

Right of Infrastructure Manager to Refuse Capacity Requests

Under the draft text, Infrastructure Managers can decide to simply reject annual timetable path requests which are not compliant with their capacity supply plan (Article 15.2). Within the current text, upon rejection, the Infrastructure Manager should inform the applicant of its intention to refuse the request for capacity. Similar provisions also apply to rolling planning (Article 33.4).

Such a system does not reflect the reality of rail freight traffic. Many rail freight undertakings will require tailor made capacity offers taking into consideration customer needs. On top of this, the system prescribed is overly rigid and does reflect the possibility of evolving market-demand changes.

For this reason, the requirement on Infrastructure Managers should be to accept the capacity request where it is in line with their capacity supply plan, offer alternative solutions where the railway undertaking

request does not align with the capacity supply plan and, in cases where there is no appropriate capacity available, refuse the capacity request.

A truly flexible system to managing capacity requests is essential if rail freight is to achieve the adaptability required to meet customer needs.

Governance Structure

The governance structure proposed within the Regulation is unclear and does not have a clear separation of powers. Although a decentralized approach to capacity management is the most appropriate mechanism by which to achieve improvements to international capacity management, particularly in the short-term, a neutral supervisory body is essential. For this reason, the general function of ENIM (European Network of Rail Infrastructure Managers) can be supported but the role and function of the Network Coordinator must be questioned.

Serious concerns exist regarding the impartiality of the Network Coordinator given that it is appointed directly by ENIM and is mandated to act on behalf of ENIM (Article 58). The role of the Network Coordinator under the proposal therefore offers limited added value other than acting as a secretariat to ENIM.

Instead of a Network Coordinator, the Regulation should introduce a neutral oversight body which will be responsible for monitoring the performance of ENIM, mediate conflict resolution and act as a neutral party in the event of complaints.

The European Railway Agency could be tasked to play this role. This will, on the one hand ensure that capacity management remains decentralised, and that individual Infrastructure Managers remain responsible for development network capacity, whilst also ensuring there is a strong and independent supervisory body which can monitor the performance of ENIM.

Railway Undertaking Representation

The Regulation does not include any formal means by which ENIM can carry out meaningful consultation with users, namely Railway Undertakings. RAGs (Railway Advisory Groups), introduced under the Rail Freight Corridors Regulation, will be discontinued once said Regulation is revoked in 2029. Although the RAGs have had a limited impact regarding the development of rail freight corridors, this should be

interpreted as a requirement to rethink how railway undertakings are involved rather than removing them entirely from the process.

The Regulation should introduce a formal body for railway undertakings whose powers go beyond purely consultation. This body should be mandated to provide active input at the starting point for strategic planning development and shall have the right to ask ENIM for process changes and make independent evaluations known to ENIM, ENRRB and Commission on new processes and the functioning of existing processes.

Implementation Date

Under the current proposal, the implementation date for most elements within the Regulation is 2030. This is extremely late and will ensure the Regulation has no impact on the European Sustainable and Smart Mobility Strategies 2030 objective of growing rail freight volumes by 50% by 2030. Whilst it is understanding that elements related to capacity planning will require sufficient time to develop, there are many elements which can be introduced in the next timetable after adoption of the Regulation.

For this reason, the implementation date for the below mentioned points should be adapted to allow these points to come into force for the timetable following adoption of the Regulation:

- Capacity Rights and Methods of Capacity Allocation (Art 26 and 27)
- Coordination of the allocation of multi-network capacity rights (Art 28)
- Capacity allocation through framework agreements (Art 31)
- Consensual conflict resolution mechanism and coordination of requests (Art 36)
- Changes to capacity rights after allocation (Art 39)
- Compensation for changes to capacity rights (Art 40)
- Chapter IV (Performance Review)
- Chapter VI (Regulatory oversight of Capacity and Traffic Management)

Bringing the implementation of the above-mentioned points forward will ensure the benefits of the Regulation can also have an impact in the short term.