

Commission Implementing Regulation (EU) 2016/545 of 7 April 2016
on procedures and criteria concerning framework agreements for the
allocation of rail infrastructure capacity (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/545

of 7 April 2016

on procedures and criteria concerning framework
agreements for the allocation of rail infrastructure capacity

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area⁽¹⁾, and in particular Article 42(8) thereof,

Whereas:

- (1) When concluding framework agreements, infrastructure managers should make optimum effective use of the available infrastructure capacity. At the same time, in order to invest in services, applicants for framework capacity may need greater legal certainty as regards available infrastructure capacity for more than one timetable period.
- (2) Infrastructure managers have to reserve capacity for the annual timetabling procedure to organise prearranged train paths in accordance with Article 14(3) and (5) of Regulation (EU) No 913/2010 of the European Parliament and of the Council⁽²⁾. Moreover, they might have to provide for reserve capacity for ad hoc requests in accordance with Article 48(2) of Directive 2012/34/EU. In addition, framework agreements should not preclude annual timetabling in accordance with Article 42 of Directive 2012/34/EU. Therefore, infrastructure managers should at least plan these capacity reserves and consider these limitations before allocating part of the remaining capacity through framework agreements.
- (3) Potential applicants need transparency concerning the allocated framework capacity and the remaining indicative capacity on a line. With a view to avoiding administrative burden related to framework agreements, potential applicants should get a first impression of how likely it is that their applications will be approved. Therefore infrastructure managers should publish the framework capacity statements in their network statements. The framework capacity statement should specify, where relevant, whether framework agreements are valid for freight or passengers or for both.
- (4) Infrastructure managers and applicants should enjoy a certain flexibility as regards the time to lodge applications for framework capacity. At the same time, criteria to ensure optimum use of available infrastructure capacity are most effective when

Changes to legislation: Commission Implementing Regulation (EU) 2016/545 is up to date with all changes known to be in force on or before 15 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

they are applied to as many applications as possible simultaneously. Therefore, before concluding a framework agreement, infrastructure managers that do not apply a fixed annual or multiannual deadline should consult applicants who could be interested in framework agreements.

- (5) Applicants should be aware that infrastructure managers are under obligation to make an optimum and effective use of the available infrastructure capacity, both on their individual networks and jointly throughout the single European railway area. This obligation should apply throughout the duration of a framework agreement and also to train paths allocated under framework agreements. As a result, when they decide to conclude a new framework agreement, both parties to that agreement should already have considered the criteria set out in this Regulation to ensure optimum use of the available infrastructure capacity.
- (6) Framework agreements should not specify a particular train path, but should provide a time frame giving sufficient flexibility until the annual scheduling of train paths. At the same time, train services may have different needs for precision in terms of when their service would run which should be reflected in different widths of the time frames.
- (7) The introduction of new railway services requires prior technical and safety authorisations or procurement of rolling stock or both which may take a number of years. Investors need certainty on available capacity before deciding on such investments. This justifies a certain time for applicants between the conclusion of the framework agreement and the start of services under the agreement, during which they can, inter alia, gather the necessary authorisations and certificates and procure the rolling stock. Applicants that demonstrably need this time before they can start operations should not be penalised by having the duration of their framework agreements shortened.
- (8) The setting of criteria for the concluding framework agreements should allow the infrastructure manager to market and make optimum effective use of the available infrastructure capacity in accordance with Article 26 of Directive 2012/34/EU.
- (9) Framework agreements should enable a successful coordination of conflicting applications and therefore meet certain criteria as regards allocation of available capacity to other applicants, the modification and the surrender of framework capacity.
- (10) Coordination and consultations with applicants who are already party to a framework agreement may create a burden for infrastructure managers and applicants. This burden could be disproportionate on lines and at times of the day where capacity usage by framework agreements is anyway significantly below the maximum. Consequently infrastructure managers should, in such cases, be given the option of derogating from the procedures or criteria set out in this Regulation. At the same time, where the calculation of such a maximum or the implementation of thresholds is found to be difficult or arbitrary, Member States might wish the infrastructure managers not to make use of this derogation. In the latter case, the regulatory body should approve all framework agreements before they are concluded in an attempt to reduce administrative burden.

Changes to legislation: Commission Implementing Regulation (EU) 2016/545 is up to date with all changes known to be in force on or before 15 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (11) Conflicts can arise between applications for new framework agreements and existing framework agreements or between train paths requested pursuant to a framework agreement and train paths requested outside a framework agreement under the annual scheduling. In such cases, the infrastructure manager should coordinate between the parties inviting them to modify their requirements with a view to reconciling them. Reconciliation may include a modification of the allocation of time frames or re-routing. Article 46 of Directive 2012/34/EU sets out a procedure to resolve conflicting applications for train paths and should also serve as a model for framework agreements.
- (12) Where priority criteria under the timetabling set and published in accordance with Article 47(3) to (6) of Directive 2012/34/EU prevail over whether or not an application under the annual timetabling procedure is submitted under a framework agreement, the infrastructure manager should not have to apply criteria established for framework agreements, but should rather apply the priority criteria established for the annual timetabling procedure.
- (13) It is important to maximise the flexibility available to the infrastructure manager with regard to the allocation of infrastructure capacity, but this should be consistent with satisfying the applicant's reasonable requirements. Infrastructure managers should take into account transparent criteria before concluding new framework agreements.
- (14) Applicants should only request framework capacity that they really need. If all or part of the requested framework capacity is not used over a certain period of time, the framework agreement should be reviewed with a view to the applicant surrendering the unused capacity ('use-it-or-lose-it'), unless he is able to justify that not using the capacity resulted from reasons beyond his control.
- (15) Infrastructure managers should develop their cooperation in such a way that framework agreements for services using more than one network are coherent and lead to train services of quality that applicants can reasonably expect. Such coherence is needed when concluding framework agreements up to the moment when the train paths are allocated.
- (16) Penalties that are set at a reasonable level could create an incentive for applicants to make realistic applications for framework agreements and to communicate any changes in capacity needed under a framework agreement as soon as the applicant is aware of it.
- (17) Penalties for modification or termination of framework agreements, if agreed between the parties, should be non-discriminatory. Their level should be appropriate to reach the intended objectives, they should actually be paid and, if necessary, the payment be enforced. To maintain the incentive effect and avoid discrimination, the framework agreement should not allow the infrastructure manager to waive a penalty payment when the applicant concludes another framework agreement.
- (18) In addition, Member States should have a possibility not to apply, for a limited period of time, certain provisions of this Regulation to framework agreements concluded on or after 15 March 2003, that is to say the date set for the transposition of Directive 2001/14/EC of the European Parliament and of the Council⁽³⁾ or in the case of Member States that acceded to the European Union after this date, the date of their accession

Changes to legislation: Commission Implementing Regulation (EU) 2016/545 is up to date with all changes known to be in force on or before 15 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

to the European Union. However, as Article 17(3) of Directive 2001/14/EC provided that it should be possible to amend framework agreements or limit their terms to enable better use of railway infrastructure, those provisions of this Regulation should apply to amendments to such framework agreements, where those amendments are substantial and agreed after the date of entry into force of this Regulation.

- (19) The Commission might review the present Regulation in the light of the experience gained through its application or through the application of Regulation (EU) No 913/2010 on European Rail Freight Corridors.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 62(1) of Directive 2012/34/EU,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out the procedure and criteria to be followed for the conclusion of framework agreements.

Article 2

Definitions

For the purpose of this Regulation and in addition to the definitions in Article 3 of Directive 2012/34/EU, the following definitions apply:

- (1) ‘framework capacity’ means infrastructure capacity allocated under a framework agreement;
- (2) ‘framework capacity statement’ means an overview of both the framework capacity allocated on the lines of a given network and an indication of the volume and nature of the available capacity on such lines, and may include a graphical view, with the purpose of informing potential applicants for framework agreements;
- (3) ‘time frame’ means the period of time specified in a framework agreement within which one or several train paths are intended to be allocated under the timetable procedure;
- (4) ‘control period’ means a period of time of two hours maximum as defined by the infrastructure manager for comparing the allocated framework capacity and the remaining free capacity with the purpose of informing potential applicants for framework agreements of the indicative framework capacity allocated and the capacity available.

Changes to legislation: Commission Implementing Regulation (EU) 2016/545 is up to date with all changes known to be in force on or before 15 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 3

Framework capacity statement

1 The infrastructure manager shall draw up a framework capacity statement indicating for every section of line per control period and, if applicable by type of service, the following information:

- a the framework capacity already allocated and the number of train paths;
- b the indicative capacity still available for concluding framework agreements on infrastructure for which framework agreements are already concluded;
- c the maximum capacity available for framework agreements for every section of line, where applicable.

2 The framework capacity statement shall respect commercial confidentiality.

3 In accordance with Article 42(7) of Directive 2012/34/EU, the infrastructure manager shall include a framework capacity statement in the network statement or provide a link in the network statement to a public website where that framework capacity statement, or as a minimum the general nature of each concluded framework agreement, is made available. Article 27(1) of Directive 2012/34/EU regarding fees and languages of the network statement shall also apply to the framework capacity statement.

4 The infrastructure manager shall update the framework capacity statement no later than three months after the conclusion of a framework agreement, a substantial amendment to it or its cancellation. It shall make that information available in a way which respects commercial confidentiality.

Article 4

Alignment of network statements

Infrastructure managers shall align their network statements with the requirements of this Regulation and publish the framework capacity statement at the date of the first timetable change following the publication of the Regulation in the *Official Journal of the European Union*.

Article 5

Allocation of framework capacity

1 The infrastructure manager may invite potential applicants to submit requests for framework agreements by an annual or multiannual deadline. Once the relevant deadline has expired, it shall process the requests submitted without delay. If the infrastructure manager invites for framework agreements by a multiannual deadline, it shall publish annual deadlines by which it shall process the requests received after the multiannual deadline without undue delay.

2 Where the infrastructure manager does not impose an annual or multiannual deadline and receives a request to conclude or modify a framework agreement, it shall take reasonable steps to inform other potential applicants about its intention to conclude a framework agreement and give them one to four months to reply. The infrastructure manager may decide not to inform