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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 – General approach

I. BACKGROUND

1. On 11 July 2023, the Commission submitted to the Council and the European Parliament a proposal[1] 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, which aims to increase the availability of infrastructure through better planning and allocation processes, and improved cross-border coordination.

2. The draft Regulation is based on Article 91 of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).

[1] ST 11718/23 + ADD 1 to 4

3. The European Economic and Social Committee[2] delivered its opinion on 6 February 2024. The Committee of the Regions[3] delivered its opinion on 18 March 2024.

4. The Working Party on Land Transport discussed the proposal 20 times at its meetings on 4 September, 27 September, 20 October, 6 November, 20 November, 27 November and 12 December 2023, as well as on 9 February, 13 February, 27 February, 7 March, 14 March, 19 March, 11 April, 16 April, 23 April, 30 April, 14 May, 21 May and 28 May 2024.

5. At its meeting on 5 June, the Permanent Representatives Committee examined the compromise resulting from the discussions in the Working Party on Land Transport and broadly approved it, with the view to general approach. Two further comments raised by Member States during that meeting of the Permanent Representatives Committee have been reflected into the text set out in the Annex to this note. The text is presented in comparison to the Commission proposal (**bold underlined** and ~~strikethrough~~).

6. In the European Parliament, the Committee on Transport and Tourism (TRAN) has the lead responsibility. Ms Tilly Metz (Green, LU) was appointed rapporteur. The report was tabled on 5 March 2024; the European Parliament adopted its negotiating mandate at the plenary session on 12 March 2024.

II. STATE OF PLAY

A. Alternative solutions to the initial proposal

7. Member States have been supportive of the objectives of the proposal. However, delegations have proposed to improve certain processes for the planning and the allocation of infrastructure capacity, reinforce the role of Member States and simplify the performance review and the regulatory oversight. The Presidency has thus developed the following alternative solutions to the initial proposal, which were supported by delegations.

[2] OJ C, C/2024/891, 6.2.2024
[3] OJ C, C/2024/1982, 18.3.2024

a. Scope of the Regulation

8. The Presidency replicated certain possibilities of exemptions or exclusions from the scope which already applied to rail capacity management under Directive 2012/34/EU but were not included in, or not entirely covered by, the Commission proposal, such as rail services carried out in transit through the Union or shuttle services for road vehicles through the Channel tunnel (*Article 1*). For international train paths involving infrastructure managers of third countries, the Presidency introduced the possibility to differ from the periods and deadlines for capacity allocation set out in the Regulation where this has no impact on other infrastructure managers of the Union that are not involved in those international train paths (*Article 38*).

9. The Presidency introduced in the preamble considerations for the portion of the Union rail network where capacity is continuously available, with no real risk of congestion, and for the portion of the Union rail network that is geographically isolated from the rest of that network by the sea, for which Member States and infrastructure managers should be able to follow a pragmatic and proportionate approach when implementing the Regulation, while fully abiding by the obligations laid down in this Regulation (*Recital 6b*). This will contribute to prevent any excessive administrative workload in those specific situations.

b. Security and defence

10. The Presidency reflected in the text all concerns raised by delegations on security and defence. First, the Presidency emphasised that the Regulation does not prevent Member States from adopting measures to safeguard essential security or defence interests and to ensure access to railway infrastructure to military (*Article 1*). These measures are no longer limited to crisis situations but are subject to the same conditions as measures taken in crisis situations.

11. Then, the Presidency introduced the possibility for Member States to refuse to grant, or to withdraw, infrastructure capacity rights to an applicant if they establish that it would entail a serious and grave risk for public order or public security, including national security and defence. Such a measure, which would have consequences in particular for neighbouring Member States, will have to be duly justified, strictly necessary and proportionate to the objective pursued, and be reviewed regularly (*Article 10a*).

c. Development of the three European Frameworks by the European Network of infrastructure managers (ENIM)

12. The Presidency further specified the rules and prolonged the timeline for ENIM to produce the three European frameworks for capacity management, for the cross-border coordination of traffic management, disruption management and crisis management, and for performance review. The Presidency also added a consultation of the operational stakeholders as well as a recommendation by the European Network of Rail Regulatory Bodies (ENRRB) before adoption of the frameworks (*Articles 6, 44 and 50*).

13. In addition, the Presidency explicitly indicated in the preamble that the content of the European frameworks is non-binding (*Recital 15*). This clarification is required, first, for reasons of legal certainty so that infrastructure managers know the extent of their obligations under this Regulation and, second, to ensure that there is no conflict with the *Meroni* case-law[4] as ENIM is a third entity. However, to ensure a sufficiently harmonised approach of rail capacity management, the text provides that infrastructure managers shall strive to follow the content of those frameworks and motivate any deviation from it.

d. Strategic guidance

14. The Presidency reinforced the scope and importance of the strategic guidance provided by Member States to their infrastructure managers. In particular, Member States may oblige infrastructure managers to pre-plan infrastructure capacity, guide capacity partitioning of highly utilised or congested infrastructure, guide the implementation of the formal conflict resolution mechanism or frame the reservation of capacity through framework agreements or rolling planning. However, the adoption by Member States of such guidance remains optional, as does the possibility for Member States of making it binding. The Presidency also accompanied that reinforcement with the appropriate safeguards to avoid a fragmented approach of rail capacity management, by requiring Member States to coordinate among themselves their respective strategic guidance and to respect operational independence of infrastructure managers (*Articles 11, 18 and 37*).

[4] Judgment of the Court of justice of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7

e. Capacity planning

15. The Presidency reorganised the content of planning documents, which is now entirely listed in *Annex I*. With a view to reduce the administrative workload of infrastructure managers related to those planning documents, the Presidency limited the cases when such documents have to be updated. For instance, capacity strategies are updated only in case of unforeseen and significant events and capacity models are updated only if capacity supply plans, which are more detailed, are not already published (*Articles 16 to 18*).

f. Socioeconomic, operational and environmental criteria

16. Delegations recognised the importance of using socioeconomic, operational and environmental criteria when managing scarce capacity, to achieve the highest possible benefit for society. Such criteria will be used, on the one hand, to assess alternative partitioning options on highly utilised and congested elements of infrastructure –the infrastructure manager having also the possibility to take into account local or national circumstances– and, on the other hand, to resolve conflicts which could not be solved through coordination of the requests for capacity (*Articles 25 and 37*). The Commission will have to review the functioning of such criteria in its report on the implementation of the Regulation by 10 years after its entry into force (*Article 73*).

g. Penalties

17. The Presidency replaced the proposed "*compensation*" for changing capacity rights, where a party does not comply with its commitments, by a "*penalty*", that term being more appropriate to describe such a financial incentive for all parties to respect those commitments. The Presidency gathered all provisions related to penalties in *Article 40*. The Presidency brought further details on levels and modulations of the penalty and on the criteria to be taken into account when defining those levels and modulations. Capacity restrictions resulting from infrastructure works declared by infrastructure managers under certain conditions are not subject to such a penalty. Finally, the Presidency introduced the principle that, without prejudice to the Convention concerning International Carriage by Rail ('COTIF') and the right to appeal under national and EU law, the payment of a penalty exhausts for the other party other financial claims related to the same change.

h. Crisis situations

18. Reflecting the fact that crisis management is mostly under the competence of Member States, the Presidency deleted the possibility for the Commission to require a Member State to repeal the temporary measures adopted in response to a crisis situation. However, Member States will have to inform the Commission and ENIM of such temporary measures, limit their content to what is strictly necessary to address the crisis situation and coordinate them with other Member States when they have impact on cross-border traffic (*Article 47*).

i. Coordination of Member States

19. The Presidency created a formal obligation of coordination between Member States for several aspects of the text, to ensure that practices are sufficiently harmonised where necessary (*Article 53a*). This was considered as particularly important by certain delegations, given the repeal of the Rail Freight Corridors Regulation[5] which contained coordination mechanisms, however limited to rail freight services. The Presidency believes that the combined provisions of this Regulation and of the revised TEN-T Regulation, which creates new European Transport Corridors, will create a suitable governance framework for all rail services.

j. Performance Review

20. The Presidency deleted the proposed "*Performance Review Body"*, as this entity would have been entrusted with tasks close to the area of expertise of already existing entities. The Presidency proposed instead to entrust ENIM and ENRRB with the performance review of the services provided by infrastructure managers. In particular, the European framework for performance review and, on that basis, the European performance review report are maintained, with the contribution and recommendations of ENRRB (*Articles 49 to 51*).

[5] Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight

k. Digitalisation

21. The Presidency explicitly referred to the possibility for Member States to continue using existing capacity management tools as long as they allow to meet the requirements of the Regulation, to prevent any unnecessary investments for digitalisation (*Article 62*).

l. Delegated acts and implementing acts

22. The Presidency limited the powers of the Commission to adopt delegated acts to aspects strictly necessary and, circumscribed further the delegation of powers granted (*Articles 10, 11, 21, 38, 39 and 48*). The Presidency considers that, given the particular complexity of this Regulation and the fact that this is an entirely new way of managing the capacity for the sector, it was important to allow for the revision of certain aspects of the Regulation to ensure that the rules set out therein remain appropriate over time. The Presidency clearly delineated the elements that could be amended in the Annexes and added conditions for the Commission to act, such as major difficulties of implementation. The Presidency also introduced the standard clauses relating to delegated acts on the possibility to revoke the delegation of powers, on the consultation of experts and on the adoption procedure (*Article 71*).

23. The Presidency included the "*no-opinion clause*" for all implementing acts to be adopted on the basis this Regulation, which means that the Commission shall not adopt the implementing act if the SERA committee does not deliver an opinion (*Article 72*).

m. Voting rule of ENIM

24. The Commission proposed to maintain the current voting rule of ENIM, with all infrastructure managers of one Member State having together one vote and ENIM adopting its decisions by a simple majority. Given the broadly revised role of ENIM, with many new tasks which will shape the new capacity management process, the Presidency considered that a larger majority of two-third should be required to take any decision, while keeping the principle of one vote per Member State (*Article 55*). This voting rule, supported by several delegations, will ensure that all votes are taken into account, representing different operational situations, while ensuring that ENIM is functional and can take decisions.

B. Financing

25. The Commission, in its impact assessment[6], evaluated the new costs entailed by the Regulation for national public authorities to be EUR 0.9 million per year over the period 2025-2050[7] and new costs for operational stakeholders to be EUR 79,3 million per year. In comparison, the total benefits, including reduction in external costs, are expected to be EUR 519,3 million per year.

26. The Commission, in the legislative financial statement accompanying its proposal[8], identified the possibility of EU co-financing in the form of Connecting Europe Facility (CEF) Technical Assistance for the period 2025 – 2027 for the operation of ENIM, including the Network Coordinator, and the secretariat of the ENRRB. The Commission envisaged a co-financing of EUR 5,5 million each year for 2025 – 2027[9] and indicated that this co-financing could be extended, depending on the next Multi-annual Financial Framework discussions.

III. FURTHER COMMENTS RAISED AT THE PERMANENT REPRESENTATIVES COMMITTEE

27. The compromise presented in the Annex to this note reflects two further comments raised by Member States during the meeting of the Permanent Representatives Committee of 5 June:

- Operators of intermodal transport are now explicitly mentioned among the operational stakeholders that will take part in the coordination and consultation process under the working groups of ENIM (*Article 56*);

[6] ST 11718/23 ADD3, in particular tables 7 and 11.
[7] Of which: EUR 0,3 million for the functioning of the secretariat of the ENRRB, EUR 1,1 million as enforcement costs, minus EUR 0,5 million of costs savings.
[8] ST 11718/23
[9] Possibly subject to adaptation, as this estimation included the creation of a Performance Review Body, which was deleted by the Presidency.

- Infrastructure managers responsible for lines that form part of the core and extended core TEN-T network of EFTA States and of South East European Parties to the Treaty establishing the Transport Community[10] should have the right to be members of ENIM without voting rights, under the condition that those States or parties apply the Regulation on the basis of an international agreement concluded with the EU (*Recital 21a and Article 55*).

IV. CONCLUSIONS

28. In light of the above, the Council is invited to reach a general approach on the proposal for a Regulation on the use of railway infrastructure capacity in the single European railway area.

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[10] Council Decision (EU) 2017/1937on the signing, on behalf of the European Union, and provisional application of the Treaty establishing the Transport Community

ANNEX

2023/0271 (COD)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[11],

Having regard to the opinion of the Committee of the Regions[12],

Acting in accordance with the ordinary legislative procedure,

[11] **OJ C, C/2024/891, 6.2.2024**~~OJ C , , p. .~~

[12] **OJ C, C/2024/1982, 18.3.2024**~~OJ C , , p. .~~

Whereas:

(1) The Commission Communication 'The European Green Deal'[13] sets a climate neutrality objective to be achieved by the Union by 2050 as well as a clear objective to reduce net greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels**. Both objectives are enshrined in Regulation (EU) 2021/1119 of the European Parliament and of the Council**. **The European Green Deal**~~It~~ calls for a 90% reduction in greenhouse gas emissions from transport, while working towards the zero-pollution ambition[14] to reduce the health impacts of air pollutant emissions by more than 55% and the share of people chronically disturbed by transport noise by 30% by 2030. Transport represents around 25% of the Union's total greenhouse gas emissions, and these have increased over recent years. The European Green Deal prioritises the shift onto rail and inland waterways of a substantial part of the 75% of inland freight carried today by road. Rail being a largely electrified and energy efficient mode of transport, greater use of rail services should contribute to reducing transport's emissions and energy consumption.

(2) The Communication on Sustainable and Smart Mobility Strategy[15] sets out milestones to show the Union transport system's path towards achieving the objectives of a sustainable, smart and resilient mobility. It envisages that rail freight traffic should increase by 50% by 2030 and double by 2050; traffic on high-speed rail should double by 2030 and triple by 2050 and scheduled collective travel under 500 km should be carbon-neutral by 2030 within the Union. To achieve these goals, rail transport ~~must~~ **should** become more attractive in terms of affordability, reliability, and services better adapted to the needs of travellers and freight shippers.

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13 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions 'The European Green Deal', COM(2019)640 final of 11 December 2019.

14 Commission Communication 'Pathway to a Healthy Planet for All EU Action Plan: "Towards Zero Pollution for Air, Water and Soil"', COM(2021) 400 final of 12 May 2021.

15 Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of the Regions 'Sustainable and Smart Mobility Strategy – putting European transport on track for the future', COM(2020) 789 final of 9 December 2020.

(3) Directive 2012/34/EU of the European Parliament and of the Council[16] lays down the rules applicable to the management and operation of railway infrastructure and the principles and procedures applicable to the allocation of railway infrastructure capacity for domestic and international rail services.

(4) Regulation (EU) No 913/2010 of the European Parliament and of the Council[17] provides for the establishment of rail freight corridors and one-stop shops to facilitate requests for infrastructure capacities for international rail freight services.

(5) Rail infrastructure capacity **management** and **rail** traffic management are crucial to the well-functioning of the rail sector. The operation of rail transport services**, in particular cross-border rail services,** needs to be carefully planned and coordinated to allow trains with very different characteristics, such as speed and braking distance, to share safely the same tracks. Optimal **and harmonised** management of capacity creates more opportunities for, and increases reliability **and continuity** of, rail services. **This** Regulation should provide infrastructure managers with sufficient flexibility for effective management of capacity while making sure that all ~~railway undertakings~~**applicants** are treated **in a transparent and non-discriminatory manner**~~without discrimination~~**, ensuring fair competition,** in their access to the network.

(6) Directive 2012/34/EU recognises the right of Member States not to apply the rules on rail infrastructure capacity allocation to certain parts of the rail network or to certain rail services, where such an exclusion from the scope of Union law would not affect the functioning of the single European railway area. These exclusions should continue to apply and Member States should retain the right to request such exclusions in the future also in relation to this Regulation.

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16 Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area ~~the rules applicable to the management of railway infrastructure~~ (OJ L 343 14.12.2012, p. 32).

17 Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight (OJ L 276, 20.10.2010, p. 22).

(6a) The operation of the Channel Fixed Link is regulated in particular by the Treaty concerning the construction and operation by private concessionaires of a channel fixed link, between France and the United Kingdom of Great Britain and Northern Ireland, signed at Canterbury on 12 February 1986 ('Canterbury Treaty'), and the Concession Agreement between the Secretary of State for Transport, Le Ministre de I'Urbanisme du Logement et des Transports, The Channel Tunnel Group Limited and France-Manche S.A. Under that Treaty and that Concession ('Concession Agreement'), the concessionaires are to manage the infrastructure and to operate a shuttle service for road vehicles. Directive 2012/34/EU, with the exception of certain Articles, does not apply to undertakings the business of which is limited to providing solely shuttle services for road vehicles through the Channel tunnel or to transport operations in the form of shuttle services for road vehicles through that tunnel. Similarly, it is not appropriate to apply this Regulation to the management of infrastructure capacity for the operation of such services. Unless otherwise provided, this Regulation should apply to the management of infrastructure capacity for the operation of other services, such as passenger and freight trains.

Moreover, under the Canterbury Treaty and the Concession Agreement, the concessionaires have the obligation to comply with the provisions of that agreement, with the laws and regulations in force in France and in the United-Kingdom and with EU rules applicable to the construction and operation of the Channel Fixed Link. The French and the British Governments have the obligation to endeavour to coordinate between them and take such steps, including approaches to international organisations, as are necessary in particular for the operation of the Channel Fixed Link in accordance with the Concession Agreement. Therefore, the application of certain provisions of this Regulation to the infrastructure of the Channel Fixed Link should be excluded where such application presents a risk of conflict with the application of the law in force in the United Kingdom. This is the case of the provision defining threshold values for highly utilised or congested infrastructure.

(6b) When implementing this Regulation with respect to a portion of the Union rail network where capacity is continuously available and no relevant change is expected to arise in the short or mid-term or with respect to a portion of the Union rail network that is geographically isolated by the sea from the rest of the Union rail network, for which there is no concrete need to coordinate with other Member States or infrastructure managers managing infrastructure located in other Member States, Member States and infrastructure managers should be able to follow a pragmatic and proportionate approach in order to avoid disproportionate costs and administrative burden, while abiding with the obligations laid down in this Regulation.

(6c) This Regulation should not prevent Member States from adopting measures necessary to safeguard essential security or defence interests and to ensure that military have sufficient access to railway infrastructure.

(6d) Transport infrastructure is the backbone of the economy and society as a whole. Some rail infrastructure is critical to ensure the good functioning of vital societal functions and has a strategic significance for national security. In certain cases, granting capacity rights to an applicant could compromise public security or public order in the Union, including at Member State level, for example where a railway undertaking intends to transport on the railway infrastructure of a Member States dangerous goods or weapons having illegally entered the Union. In order to guarantee smooth, safe and secure rail transport traffic and to ensure the protection of their rail transport infrastructure, Member States should be allowed to require infrastructure managers to refuse to grant, or to withdraw, capacity rights to an applicant where the access to their infrastructure presents a risk for public order or public security, including to national security and defence. Any such decision should be duly justified and strictly necessary and proportionate to the objective pursued, taking also into account the impacts of that decision on competition and on the continuity of the supply chains, in particular for the supply of critical inputs, and where the requested capacity right constitutes a multi-network capacity right. When assessing the risk for public security or public order, the Member State concerned may take into account, among others, the fact that the applicant is subject to restrictive measures adopted by the Union and the reasons for adopting such measures, that it is owned or effectively controlled by, or acts on behalf or at the direction of, a person or an entity subject to restrictive

measures adopted by the Union, or that the applicant or that person or entity is engaged in illegal activities or in activities facilitating the development of a third country's military capabilities presenting a threat to the Member State's national security. Such decision should be regularly reviewed by the Member State, in particular by assessing regularly, and whether it continues to be justified and proportionate. The Member State should inform the Commission, the regulatory body and, for multi-network capacity rights, the other Member States concerned of the decision adopted and the reasons thereof and should coordinate with those other Member States in case those latter raise concerns with the decision adopted.

(7) The rules and procedures on the management of rail infrastructure capacity should reflect better the needs of all rail market segments. They should in particular take into account the necessity of long-term stability of available capacity for passenger services**, including for services operated under public service obligations,** and of short-term flexibility for freight traffic to respond to market demand. Therefore, the process of managing capacity should no longer have a predominantly annual focus, but be arranged in three subsequent phases of strategic capacity planning; rail service scheduling and capacity allocation; and adaptation and rescheduling of capacity. The introduction of better defined and structured phases that provide for the possibility of long-term planning and short-term adaptation in capacity management, would particularly benefit services that are less easy to plan in advance or are more complex to arrange, such as freight trains and cross-border passenger trains.

(8) An increasing portion of the Union rail network is either congested or close to congested and cannot accommodate the needs for rail infrastructure capacity of all applicants and support further growth in the volume of rail transport. Infrastructure development and digitalisation, in compliance with the technical specification for interoperability developed under Directive (EU) 2016/797 of the European Parliament and of the Council, in particular the European Rail Traffic Management System ('ERTMS'), is expected to result in an increase of available capacity in the medium to long term. Nevertheless, infrastructure managers ~~will~~ **should** ~~be required to~~ assign priorities for the use of **highly utilised or** congested sections. **Member States should have the right to provide the infrastructure manager with strategic guidance, to ensure that the planning and use of rail capacity, in particular on highly utilised or congested sections, is consistent with their general objectives and policy orientations, while respecting the operational responsibilities of the infrastructure manager. Infrastructure managers should assess the utilisation of rail**

infrastructure capacity on the basis of objective, transparent and appropriate procedures and methods, taking utmost account of the common method to be developed by ENIM. The Commission should be empowered to define, by means of an implementing act, the general key principles of the method to be developed by ENIM. When adopting this act, the Commission should refrain from defining the detailed elements to be included in that method.

(8a) In order to ensure optimum use of rail infrastructure capacity, socioeconomic, operational and environmental criteria should be taken into account during the planning and allocation process, in particular when assessing alternative partitioning options where an element of infrastructure has been declared as being highly utilised or congested and for conflict resolution purposes. In particular, the European Network of Infrastructure Managers (ENIM), established under Directive 2012/34/EU, should base itself on such criteria for the purposes of defining procedures for the assessment of the alternative partitioning options and for conflict resolution. Those procedures should, to the extent possible, be simple and defined in a general manner, allowing their application in most circumstances.~~Without prejudice to general principles on priority set out by Member States in the framework for the allocation of infrastructure capacity, infrastructure managers should take decisions on priorities using transparent and harmonised methodologies which clarify how social, economic and environmental factors have been taken into account and affect their decision.~~

(9) The strategic planning of capacity **by infrastructure managers** should improve the utilisation of rail infrastructure by anticipating demand for rail services**, including by analysing expected transport market developments,** and taking into account planned infrastructure development, renewal and maintenance. It should ensure that rail infrastructure capacity is allocated in a way that maximises the value of rail services for society. Infrastructure managers should ensure that strategic planning provides progressively increasing level of details about available capacity and that it is the basis for the capacity allocation.

(10) To ensure that capacity is available for allocation for different rail market segments and in particular for freight and cross-border rail services, infrastructure managers should be allowed to pre-plan the use of capacity on congested or highly utilised sections of the rail network and to extend such planning to other sections of the network if deemed necessary. This pre-planning of capacity should take into account the different methods for capacity allocation and the characteristics of different rail market segments. It should allow for better utilisation of rail infrastructure by grouping trains with similar performance characteristics in the capacity allocation phase.

(11) When allocating capacity, infrastructure managers should adhere to the**ir** strategic ~~plans~~**planning** for the supply of capacity ~~and~~ **while** at the same time ~~ensure~~ **ensuring** that capacity is allocated in accordance with market demand in a fair and non-discriminatory way. For that purpose, some capacity requests may be refused**, including when applying the conflict resolution mechanisms,** and the plan for the supply of capacity ~~must~~ **should** be ~~regularly~~**continuously** updated to reflect the ~~actual demand~~**available capacity**. **Conflict resolution mechanisms should take into account the different methods for capacity allocation and the characteristics of different rail market segments.**

(12) Different rail market segments have different abilities to anticipate their rail infrastructure capacity needs. Some freight service providers, in particular, may not be able to identify their capacity needs in time to be included in the working timetable, that is in the annual plan for train and rolling-stock movement, and may not fit in its annual schedule. Therefore, infrastructure managers should be able to offer capacity of sufficient quality and quantity also for rail services that have unstable demand, are organised on relatively short notice, include more than a single train run, and may run repeatedly for a period of time that may not coincide with the duration of the working timetable period.

(13) Applicants for rail infrastructure capacity should be able to plan and request rail infrastructure capacity on an annual basis through the working timetable. Applicants should also be able to request rail infrastructure capacity with greater advance for stable, multi-annual rail services through framework agreements. Finally, applicants should be able to request capacity close to the time of operation for individual trains through ad hoc capacity requests or for repeated train services through rolling planning requests. **Since rolling planning is particularly convenient for rail freight services, given their caracteristics, allocation of capacity through the rolling planning process should concern at least rail freight services.**

(14) A significant share of rail freight transport is long-distance and requires cross-border coordination of infrastructure managers. The policy goal of increasing rail traffic also relies on growing cross-border passenger services. To facilitate and promote an increasing cross-border traffic in the single European railway area, it is necessary to ensure greater consistency ~~and harmonisation~~ of the rules and procedures on the management of rail infrastructure capacity **and a harmonised approach**. Accordingly, the role of ~~the European Network of Infrastructure Manager~~**ENIM** should be strengthened ~~with a view to~~**by** entrusting it with the development of guidelines ~~for the~~**with a view of enhancing a** ~~harmonised~~ **consistent** implementation of this Regulation on procedures and methodologies for the management of rail infrastructure capacity and with the active coordination of cross-border capacity and traffic. In particular, ~~the European Network of Infrastructure Managers~~**ENIM** should develop European frameworks for capacity management, for the coordination of cross-border traffic management, disruption management and crisis management, and for performance review.

(15) The European frameworks developed by ~~the European Network of Infrastructure Manager~~**ENIM** should provide guidelines**, including common principles and procedures,** that infrastructure manager should make the utmost efforts to follow**.**~~,~~ **W**~~w~~hile **those frameworks and elements contained therein should be non-binding and infrastructure managers should** retain~~ing~~ responsibility for their operational decisions**.**~~,~~ **i**~~I~~nfrastructure managers should ~~motivate~~**explain** any deviation from th**ose**~~e~~ frameworks**, as provided in this Regulation** ~~developed by European Network of Infrastructure Manager~~. This approach ~~is considered~~**allows** to strike the balance between the needs of coordination and application of harmonised approaches in the single European railway area, and the need for adapting

procedures and methodologies to the specific circumstances of given geographical areas. After ~~five~~ **ten** years of application of this Regulation, the Commission should**, when evaluating the implementation of this Regulation,** assess whether the state of convergence of procedures and methodologies and the effectiveness of the coordination process between infrastructure managers, as well as the general progress towards the establishment of the single European railway area, warrant the **modification of this Regulation** ~~introduction of secondary legislation~~ to **provide for binding rules to** replace elements **of** the European frameworks developed by ~~the European Network of Infrastructure Manager~~**ENIM**.

(15a) ENIM should designate a Network Coordinator to carry out support and operational tasks. Given the experience and contribution of RailNetEurope (RNE) to improve the management of rail infrastructure capacity, this non-profit association should be considered by ENIM for the designation of the Network Coordinator.

(16) The rules on management of cross-border rail traffic under normal conditions and in the case of disturbances should promote smooth, resilient and seamless operation of rail transport services. They should provide for a system of structured coordination between infrastructure managers and other stakeholders.

(17) The operation of railway infrastructure not only requires close cooperation between infrastructure managers, but also a strong interaction with railway undertakings and other stakeholders directly involved in rail and multimodal transport and logistic operations. Therefore, it is necessary to provide for structured coordination between infrastructure managers and other stakeholders.

(18) Reliability of rail services is one of the aspects most valued by railway customers. Reliability of schedules is also a critical aspect for the smooth functioning of the rail system, where there are strong interactions between services and network externalities. For that reason, deviations from the schedule should be kept to the minimum. Additionally, a system of adequate incentives should be introduced to promote the fulfilment of commitments by infrastructure managers, railway undertakings and other relevant stakeholders. Those incentives should be both of economic and non-economic nature.

(18a) This Regulation should set up a system of penalty to be paid where a party, either the infrastructure manager or the applicant, does not fulfil its commitments with respect to an allocated capacity right. The levels of the penalty to be paid by the party initiating the change to capacity rights to the other party should be such that they provide effective incentives for the infrastructure manager and for applicants to respect the planned use of capacity and minimise disturbances. Those levels should be proportionate and non-discriminatory and should take into account several factors, including the impact of the change, the timing of the notification of the change provided by the party initiating the change to the other party, the quality of the alternative capacity provided where the change is caused by the infrastructure manager, or whether the capacity can be re-allocated and used by another applicant where the change is caused by the applicant. Without prejudice to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 ('COTIF'), in particular to Article 8(1), point I, of Appendix E to that Convention, where applicable, and to the right to appeal decisions regarding the penalty paid, the payment of that penalty by the party initiating the change pursuant to this Regulation should exhaust for the other party other financial claims related to the same change, with a view to avoid double compensation, the multiplication of legal proceedings and lengthy, cumbersome and heavy procedure which an action for damages seeking for the full compensation of the damage suffered by that other party would entail.

(19) Continuous monitoring of the quality of rail infrastructure **services** and **of rail** transport services is a precondition for improving the performance of these services. It is therefore necessary to establish a transparent and objective system of indicators that provides feedback on aspects of performance that are relevant for the different operational stakeholders and for the end customers of rail transport services. The main function of that ~~a~~ system should focus on monitoring the fulfilment of commitments made by the operational stakeholders and progress in performance over time while taking into account different circumstances and characteristics within the rail sector. ~~For the establishment of such a system and the analysis of its output, the Commission should be able to rely on independent experts in the form of a Performance Review Body. This body should be able to provide independent advice to the Commission in all areas that influence the performance of rail services and infrastructure management.~~

(20) To improve the performance of rail infrastructure services in the single European railway area, ~~the infrastructure managers, in close cooperation with the Commission, the Performance Review Body and relevant stakeholders~~**ENIM**~~,~~ should ~~set up and implement a common~~**develop a European** framework for ~~the review of~~ performance **review**. This framework should **aim at** ensur**ing**~~e~~ that all EU infrastructure managers use common principles and methodologies for measuring performance through agreed indicators. The framework should allow for identifying performance deficiencies on the EU railway network. It should **aim at** ensur**ing**~~e~~ that infrastructure managers set performance objectives in a way that takes into account the specificities of the network they manage, but at the same time ensures coherency in identifying the most relevant performance deficiencies. The framework should allow infrastructure managers to cooperate at EU level in identifying measures to address performance deficiencies and to keep track of their impact. ~~Infrastructure managers, working together in the European Network for Infrastructure Managers~~**ENIM** ~~and taking into account the opinion of the Performance Review Body and the Commission,~~ should review this framework regularly to ensure that it is fit for purpose.

(20a) ENIM should establish a European performance review report covering at least the lines included in the European Transport Corridors established in [new TEN-T Regulation]. The European Network of Rail Regulatory Bodies (ENRRB) should contribute to that review, providing its assessment of and recommendations on the performance of rail infrastructure services and rail transport services.

(21) To ensure an effective ~~EU framework for the~~ coordination of rail infrastructure managers **at EU level**, ~~the European Network of Infrastructure Managers~~**ENIM**~~, established by Directive 2012/34/EU,~~ should become more operational. It should include decision-making mechanisms, which allow ~~EU~~ rail infrastructure managers to effectively coordinate on the strategic planning of rail infrastructure capacity.

(21a) All Member States infrastructure managers, which are responsible for lines that form part of the core and extended core TEN-T network, should be members of ENIM. Other infrastructure managers of Member States should also be able to participate in the deliberations of ENIM without voting rights. Moreover, it is in the interest of the Union to allow for the participation in ENIM, without voting rights, of infrastructure managers responsible for lines on the core or extended core TEN-T network of States members of the European Free Trade Association (EFTA) and of South East European

Parties to the Treaty establishing the Transport Community signed by the Union in accordance with Council Decision (EU) 2017/1937, provided that those States or parties apply this Regulation pursuant to an international agreement concluded with the Union. Those States and parties are closely associated to the Union in the transport sector. Moreover, due to their geographical location, most of them have important rail connections with the Member States or have transit traffic between two or several Member States. Therefore, their contribution to ENIM work is important.

(21b) Measures and policy orientations of Member states, having an impact on cross-boder rail services, should be subject to coordination between Member States, to the extent possible in the context of existing fora.

(22) The rail regulatory bodies should cooperate at Union level to ensure coherent application of the regulatory framework and consistent treatment of applicants across the single European railway area. They should do so through the ~~European Network of Rail Regulatory Bodies~~**ENRRB**, with a view to develop common practices for making the decisions for which they are empowered under this Regulation. For that purpose, the ~~European Network of Rail Regulatory Bodies~~**ENRRB** should perform coordination tasks and **may** adopt non-binding recommendations**,** ~~and~~ opinions **or reports in relation to cross-border rail services and performance of rail infrastructure services and rail transport services**~~, which~~**. The recommendations and opinions adopted by the ENRRB** should not affect the competences of the rail regulatory bodies or those of the infrastructure managers.

(23) Efficient management of rail capacity and traffic requires exchange of data and information between infrastructure managers, applicants and other operational stakeholders. This exchange can be considerably more effective and efficient with the support of interoperable digital tools and, where possible, automation. Specifications for interoperability should therefore be implemented as a matter of priority and further developed to keep up with technological developments and the new processes put forward in this Regulation.

(24) Infrastructure managers should ensure alignment, in particular regarding digitalisation, with the work of the Europe's Rail Joint Undertaking established in Title IV of Council Regulation (EU) 2021/2085, ~~with respect to the Master Plan referred to in Article 86(5) and~~**through** the System Pillar **Steering Group** ~~referred to in Article 85(2)(c),~~ and ~~through~~

the ~~deployment~~ **Deployment** ~~group~~ **Group** referred to **respectively** in Article**s 96 and** 97 of Regulation (EU) 2021/2085.

~~(25) It is necessary to provide the mechanism to set criteria, principles and procedures related to capacity management, to cooperation between rail stakeholders and to coordination at EU level, for infrastructure managers and in the area of regulatory supervision. This mechanism requires that infrastructure managers and rail regulatory bodies, in cooperation with relevant stakeholders develop and implement European frameworks and guidelines. Following an evaluation of the development and implementation of the European frameworks and where the voluntary application of sector guidelines fails to achieve the necessary level of regulatory coherence, the Commission should have the means to address such regulatory inadequacies through implementing or delegated acts, where appropriate~~.

(26) In order to ensure a smooth process of capacity and traffic management for international rail services, minimise cancellations of allocated capacity and interruptions in rail operations due to disruptions on the rail network and in order to take into account developments in the practices of infrastructure managers and the use of new methods of capacity allocation and information and communication technologies, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission. These powers should concern **certain elements of** the deliverables resulting from the strategic planning of infrastructure capacity; the schedule for the strategic capacity planning and the capacity allocation process; the ~~deadlines~~ **durations** for changes to allocated capacity and the construction of alternative solutions for applicants; ~~the~~ **certain elements related to** schedule for coordination, consultation and publication of capacity restrictions resulting from infrastructure works; the ~~definition~~ **thresholds for capacity utilisation** of highly utilised and congested infrastructure and ~~the procedures and methods to calculate the degree of capacity utilisation~~; ~~the criteria to identify and declare a network disruptions;~~ the information to be provided to operational stakeholders~~; and the areas infrastructure managers should coordinate on and the specific arrangements for such coordination~~. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[18]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(27) To ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to introduce technical and operational requirements to facilitate the smooth functioning of the single European railway area concerning uniform criteria for the requirements set by infrastructure managers with regard to applicants;~~ common procedures, criteria and methodologies for the management of scarce capacity, for contingency planning, and for the allocation of capacity beyond the period covered by the working timetable~~**; detailed rules regarding the procedure for concluding framework agreements, the form and the content of such agreements**; **the key**

[18] OJ L 123, 12.5.2016, p. 1.

principles of the method to calculate the utilisation of rail infrastructure capacity; the categorisation of changes to capacity rights and the conditions giving rise to the payment of penalties~~common approach to compensations paid for changes to allocated capacity;~~ common criteria and procedures for rescheduling **for the purpose of managing network disruptions**; ~~the definition of the technical~~ **and certain** elements of ~~a system for monitoring the performance of rail and rail-related services~~**the European framework for performance review**~~, including methodologies and data requirements and their review~~. Those powers should be *exercised* in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[19]. **Where the committee delivers no opinion in the framework of the examination procedure, the Commission should not adopt the draft implementing act.**

(28) The rules on capacity allocation set out in Directive 2012/34/EU are replaced by those set out in this Regulation. Therefore, the rules on cooperation between infrastructure managers, the rules on cooperation between rail regulatory bodies, the requirements for the elements of the network statement describing the nature of the rail infrastructure that is available to railway undertakings, the conditions of access to it and the principles and criteria for capacity allocation, should be defined in this Regulation. The rules on cooperation and coordination, as well as the elements of the network statement, which are not related to capacity management, should remain in Directive 2012/34/EU.

(29) The *ex-post* evaluation of Regulation (EU) No 913/2010[20] concluded that the Regulation's impact was too limited to contribute to a modal shift from road to rail. Moreover, the cooperation between Member States and infrastructure managers in the management of the rail infrastructure was still ineffective from a cross-border perspective. The evaluation has also shown that managing separately the capacity on the rail freight corridors and on the rest of the network is not efficient. A single regulatory framework should apply to the operation of rail network capacity, consolidating the related provisions in Directive 2012/34/EU and of Regulation (EU) No 913/2010. Therefore, Regulation (EU) No 913/2010 **should be repealed** and the provisions in Directive 2012/34/EU on capacity allocation should be

[19] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

[20] SWD(2021) 134 final of 2 June 2021

deleted~~repealed~~ and replaced by this Regulation**, while ensuring a sufficient transition period**.

(30) The preparation of the working timetable requires preparatory activities to be carried out in the years preceding the entry into force of the said working timetable. Therefore, the transition from the regulatory framework established by Directive 201**2**~~3~~/34/EU and Regulation (EU) No 913/2010 to the one established by this Regulation implies that preparations for working timetables under the new framework should begin in parallel to the application of rules under the current framework. Accordingly, a dual regime ~~must~~ **should** apply in a transition phase whereby necessary preparatory steps for a given timetable should comply with the legal framework applicable to that specific working timetable. Framework agreements concluded under the current framework should have the possibility to continue applying for a transition period under the new regime.

(31) Under the new framework, the preparatory steps for a working timetable should begin with the **start of the**~~publication of a~~ capacity strategy **phase** five years before the entry into force of a given working timetable. **This timeframe is coherent with the one of the contractual agreements concluded between the Member State and the infrastructure manager, which include the structure of the payments agreed to provide funding to the infrastructure manager and which covers a period of not less than five years, as provided by Directive 2012/34/EU.** In the interest of an early application of the new regulatory framework and taking into account the preparatory work already undertaken by the sector, the schedule of activities leading to the establishment of the first two working timetables could be shortened to 38 months by abbreviating the phase of the capacity strategy. Accordingly, the first working timetable falling under the new regulatory framework should be the working timetable starting on [~~9~~ **13** December 20**31**~~29~~]. All stakeholders should start the necessary preparations without delay with a view to comply with the new framework.

(32) Since the objective of this Regulation, namely managing rail infrastructure capacity and traffic more efficiently, thereby improving the quality of services and accommodating more traffic on the railway network, cannot be sufficiently achieved by the Member States but can rather, by reason of the transnational scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

HAVE ADOPTED THIS REGULATION:

CHAPTER I
GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down the principles, rules, and procedures applicable to management of rail infrastructure capacity and coordination with **operators of** service facilities, traffic management, crisis management and performance management for domestic and international rail services. It also lays down rules on a European Network for Coordination between infrastructure managers and with other relevant stakeholders and on the oversight of capacity and traffic management.

2. This Regulation applies to the use of railway infrastructure for domestic and international rail services referred to in Article 1(2) of Directive 2012/34/EU, including service facilities as defined in Article 3(11) of that Directive.

3. **Articles 2 and 3 of Chapter I and** Chapters II to V of this Regulation shall not apply to rail infrastructure or railway services that ~~are~~**a Member State has** excluded from the application of Chapter IV of Directive 2012/34/EU in accordance with Article 2(3), (3a), (4), (8)~~,~~ **and** (8a) ~~and (10)~~ of that Directive during the period of validity of the relevant exclusions.

   This Regulation shall not apply to railway services that a Member State has excluded from the application of Chapter IV of Directive 2012/34/EU in accordance with Article 2(10) of that Directive.

   This Regulation shall not apply with respect to undertakings or to transport operations referred to in Article 2(9) of Directive 2012/34/EU.

4. This Regulation shall not apply to Cyprus and Malta for as long as no railway system is established within their territory.

5. This Regulation shall not prevent Member States from adopting measures necessary to safeguard essential security or defence interests and measures to ensure that military have sufficient access to railway infrastructure, in particular for military operations and training, including the types of measures described in points (a) to (e) of Article 47(1). Article 47(1), second and third subparagraphs, and (2) to (7), shall apply mutatis mutandis to the adoption of such measures.

6. This Regulation is without prejudice to the responsibilities of the Member States regarding the financing of infrastructure development and maintenance. It does not lay down any financial obligation in this regard.

Article 2

General responsibilities and principles

1. Without prejudice to Article 7c of Directive 2012/34/EU, infrastructure managers shall be responsible for the management of rail infrastructure capacity and rail traffic management.

   References to an infrastructure manager in all provisions related to rail infrastructure capacity allocation in this Regulation shall be construed as references to the allocation body referred in Article 7a(3) of Directive 2012/34/EU.

2. With the view to facilitating the provision of efficient and effective rail infrastructure capacity and traffic management within the Union, infrastructure managers **referred to in Article 55(2)** shall cooperate within the European Network of Infrastructure Managers ('ENIM') referred to in Article 7f of Directive 2012/34/EU and in accordance with the provisions of this Regulation on cooperation.

3. In fulfilling their **tasks and** responsibilities in accordance with ~~paragraph 1 and 2~~**this Regulation**, infrastructure managers shall:

   (a) make optimum effective use of the available infrastructure capacity~~ as required in Article 26 of Directive 2012/34/EU~~;

(b) maximize the value to society of rail transport services enabled by rail infrastructure in social, economic and environmental terms;

(c) ensure non-discriminatory management of and transparent**, equitable** access to infrastructure capacity, including during **infrastructure** works, with a view to ~~supporting~~**enable** fair competition **and with the aim to guarantee the optimal competitiveness of rail services**;

(d) enable seamless rail traffic across more than one network**, in particular by enabling freight and passenger trains to run under good conditions and easily pass from one network to another**;

(e) ensure transparency about the state and availability of rail infrastructure capacity;

(f) review and improve the performance of rail infrastructure ~~and transport services~~ in close cooperation with ~~rail sector operators~~**operational stakeholders**;

(g) contribute to the implementation and development of the single European railway area.

Article 3

Impartiality of the infrastructure manager in respect of traffic and capacity management, including maintenance planning

1. Infrastructure managers shall carry out the functions of traffic and capacity management, including maintenance planning in a transparent and non-discriminatory manner and the persons in charge of taking decisions in respect of those functions shall not be affected by any conflict of interest.

1a. Infrastructure managers shall respect the commercial confidentiality of information provided to them, in accordance with national and EU law, including, where appropriate, by anonymising the information shared with other parties.

2. As regards traffic management, infrastructure managers shall ensure that railway undertakings **and operators of service facilities**, in cases of disruption concerning them, have full and timely access to relevant information. Where the infrastructure manager grants further access to the traffic management process, it shall do so for the railway undertakings **and operators of service facilities** concerned in a transparent and non-discriminatory way.

3. As regards capacity management and the long-term planning of major maintenance, renewal and upgrade of the railway infrastructure, the infrastructure manager shall consult applicants, as defined in Article 3, point 19 of Directive 2012/34/EU, in accordance with this Regulation and~~, to the best possible extent,~~ take ~~into~~**the utmost** account **of** the concerns expressed.

Article 4

Definitions

For the purposes of this Regulation, the definitions in Article 3 of Directive 2012/34/EU shall apply.

The following definitions shall also apply:

(1) '*force majeure*' means any unforeseeable~~ or unusual~~ event or situation beyond the control of the infrastructure manager or the railway undertaking, which cannot be avoided or overcome with reasonable foresight and diligence, be solved by measures which are from a technical, financial or economic point of view reasonably possible for them, which has actually happened and is objectively verifiable, and which makes it impossible for the infrastructure manager to fulfil, temporarily or permanently, its obligations in accordance with this Regulation or Directive 2012/34/EU or for the railway undertaking to ~~meets~~**meet** its contractual obligations towards an infrastructure manager or managers;

(2) ‘interoperability’ means interoperability as defined in Article 2(2) of Directive (EU) 2016/797 of the European Parliament and of the Council[21];

(3) ‘operational ~~stakeholder’~~**stakeholders’** means ~~an applicant~~**applicants**, railway ~~undertaking~~**undertakings**, infrastructure ~~manager, rail~~ **managers, competent authorities referred to in Regulation (EU) 1370/2007, operators of** service ~~facility operator, provider of rail-related services~~**facilities** and any other entity directly involved in operating a rail transport service;

(4) ‘European Coordinator’ means the Coordinator ~~referred to in~~**designated under** Article ~~51~~**52** of Regulation [... new TEN-T Regulation];

(4a) ‘European Transport Corridors’ means the corridors referred to in Article 11 of [new TEN-T Regulation];

(4b) ‘urban nodes’ means the urban nodes as defined in Article 3, point (6), of [new TEN-T Regulation];

(4c) ‘core network’ means the core network as identified in Annex I of [new TEN-T Regulation]. For the purpose of Article 55(3a), reference to the ‘core network’ means the core network as identified in Annex IV of [new TEN-T Regulation];

(4d) ‘extended core network’ means the extended core network as identified in Annex I of [new TEN-T Regulation]. For the purpose of Article 55(3a), reference to the ‘extended core network’ means the extended core network as identified in Annex IV of [new TEN-T Regulation];

(5) ‘framework agreement’ means a legally binding general agreement under public or private law, setting out the rights and obligations of an applicant and the infrastructure manager in relation to the infrastructure capacity to be allocated and the charges to be levied over a period longer than one working timetable period;

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21 Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (*OJ L 138, 26.5.2016, p. 44).*

(6) ‘simultaneous capacity allocation’ means a process whereby infrastructure managers allocate rail infrastructure capacity in response to a set of requests for capacity received by a given cut-off date and through coordination of these requests to ensure the best possible utilisation of the infrastructure and the closest possible match with the requests;

(7) ‘first come, first served’ means a principle for the allocation of rail infrastructure capacity where the priority for the allocation process is given according to the chronological order of the capacity requests;

(8) ‘train path’ means the infrastructure capacity needed to run a train between two places over a given period, which is described as an exact route with timing for that train, including the origin and destination, an entry time and day and an exit time and day, including any stopping point and related departure times;

(9) ‘capacity specification’ means a capacity right, which specifies the commercial and operational characteristics of the infrastructure capacity ~~relevant for the applicant concerned and which provides~~**to be provided by** the infrastructure manager **to the relevant applicant,** with enough information to prepare specific train paths that respect those characteristics;

(10) ‘multi-network rail service’ means a freight or passenger rail transport service, domestic or international, which is operated on two or more networks managed by different infrastructure managers. The train may be joined and/or split and the different sections may have different origins and destinations~~, provided that all wagons or carriages cross over into at least one network operated by a different infrastructure manager~~;

(11) ‘multi-network capacity right’ means the entirety of capacity rights enabling the provision of a multi-network rail service;

(12) ‘partitioning of infrastructure capacity’ means assigning shares of the total available capacity of an element of infrastructure to different types of rail transport services and to capacity restrictions resulting from infrastructure work.

(13) ‘working timetable’ means the continuously updated data defining all planned train and rolling-stock movements which will take place on the relevant infrastructure, as expressed by allocated capacity rights, during a working timetable period;

(14) 'working timetable period' means the period of time during which a given working timetable is valid;

(14a) 'rolling planning process' means a method of allocating capacity to at least rail freight services outside of the deadlines of the annual allocation process;

(15) 'infrastructure work' means ~~interventions~~**an intervention** on the railway infrastructure for the purpose of development, maintenance, renewal and upgrade of the railway infrastructure as defined in Article 3, points (2a), (2c), (2d), and (2e)**, respectively,** of Directive 2012/34/EU;

(16) 'regulatory body' means the regulatory body referred to in Article 55 of Directive 2012/34/EU;

(17) 'incident' ~~shall mean~~**means** any occurrence, or series of occurrences having the same origin, which causes disruption of rail traffic~~.~~**;**

(17a) 'node' means a location connecting two or more railway lines none of which is excluded from the scope of Articles 2 and 3 of Chapter I and Chapters II to V of this Regulation pursuant to Article 1(3) of this Regulation;

(17b) 'specific timetable design' means a scheme organising during a time span, usually aimed to be replicated at regular intervals, the combination of paths on the sections and nodes of a defined network, or part of a network, including for multi-network traffic and taking into account, where relevant, the connections and transfer times between services.

CHAPTER II
MANAGEMENT OF INFRASTRUCTURE CAPACITY

SECTION 1

General principles for the management of infrastructure capacity

Article 5

Capacity management

1. Infrastructure managers shall manage rail infrastructure capacity through a planning and allocation process comprising three phases:

   (a) strategic capacity planning as referred to in section 2;

   (b) scheduling and allocation of infrastructure capacity as referred to in section 3;

   (c) adaptation and rescheduling of allocated capacity as referred to in section 4.

2. In addition to the content laid down in Annex IV to Directive 2012/34/EU, Infrastructure managers shall include in the network statement referred to in Article 27 of that Directive a section on the infrastructure made available to railway undertakings; a section on capacity management; a section on operations, including on traffic management, disruption management and crisis management; and a section on performance management, in accordance with Annex IV.

3. Decision making concerning capacity management as referred to in paragraph 1, including both the definition and the assessment of availability and the allocation of capacity rights, shall be an essential function of the infrastructure manager within the meaning of Article 3, point (2f) of Directive 2012/34/EU. The provisions on essential functions laid down in that Directive shall apply to it.

Article 6

European framework for capacity management

~~1. Infrastructure managers shall strive to follow common principles and procedures for the management of rail infrastructure capacity. For this purpose,~~**1. By [24 months of the entry into force of this Regulation]** ENIM shall develop and adopt a 'European framework for capacity management' in accordance with the provisions of Chapter II ~~by [12 months of the entry into force of this Regulation].~~

~~2. The European framework for capacity management shall define~~**after consulting the operational stakeholders, laying down** common principles and procedures for the management of rail infrastructure capacity and for the coordination between infrastructure managers~~, railway undertakings and other applicants, rail service facility operators~~ and other operational stakeholders**. Infrastructure managers shall strive to follow those common principles and procedures for the management of rail infrastructure capacity**.

~~3~~**1a. ENIM shall submit a draft for the European framework for capacity management to the European Network of Rail Regulatory Bodies (the 'ENRRB') within 18 months after the entry into force of this Regulatin. The ENRRB shall submit a recommendation to ENIM on the European framework for capacity management, within four months after receiving the draft prepared by ENIM. ENIM shall take the utmost account of this recommendation when adopting the European framework for capacity management.**

2. The European framework for capacity management shall include at least the elements listed in Annex III and shall be updated when necessary to take into account the experience of infrastructure managers, railway undertakings and other applicants and based on the activities of ENIM.**When updating the European framework for capacity management, ENIM shall sumit a draft to the ENRRB for recommendation.**

4. ~~Infrastructure managers shall take the utmost account of the European framework for capacity management when~~**When** preparing the network statement referred to in Article 27 of Directive 2012/34/EU~~, in particular the contents specified in Annex IV~~ **and Article 5(2)** of this Regulation~~.~~**, infrastructure managers shall take the utmost account of the European framework for capacity management.** They shall explain**,** in the network statement**,** the reason for any deviation from the common principles and procedures established in the European framework for capacity management.

Article 7

Applicants

1. Applicants shall make requests for infrastructure capacity. In order to use such infrastructure capacity, applicants **which are not railway undertakings** shall appoint a railway undertaking ~~to~~**. The railway undertaking shall** conclude an agreement with the infrastructure manager in accordance with Article 28 of Directive 2012/34/EU. This is without prejudice to the right of applicants to conclude framework agreements with infrastructure managers under Article 31 of this Regulation.

2. The infrastructure manager may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded. Such requirements shall be appropriate, transparent and non-discriminatory. They shall be specified in the network statement ~~as referred to~~ in ~~point (1)(b) of~~**line with** Annex IV**, point (2)(c)**. They may only include the provision of a financial guarantee that shall not exceed an appropriate level which shall be proportional to the contemplated level of activity of the applicant, and assurance of the capability to prepare compliant bids for infrastructure capacity.

3. The Commission may adopt implementing acts setting out the details of the criteria to be followed for **defining** the ~~application of~~**requirements referred to in** paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 72(3).

Article 8

Management of ~~*scarce*~~ infrastructure capacity

1. Infrastructure managers shall ensure that ~~scarce~~ infrastructure capacity is managed in accordance with the principles set out in Article 26 of Directive 2012/34/EU and in Article 2 of this Regulation in all phases of the capacity management process referred to in Article 5.

2. When taking decisions on ~~scarce~~ **infrastructure** capacity, infrastructure managers shall take into account **the** strategic guidance on the utilisation of infrastructure capacity

provided by Member States in accordance with Article 11(3)~~.~~**, where Member States have provided such guidance, without prejudice to subparagraph 4 thereof.**

Without prejudice to State aid rules, Member States may, where appropriate, grant the infrastructure manager compensation corresponding to losses of revenue related exclusively to the ~~need to comply~~**compliance** with the strategic guidance regarding the use of rail infrastructure capacity.

~~3.~~**2a.** Infrastructure managers shall plan and allocate ~~scarce~~**capacity to the largest extent possible seeking solutions agreeable to the applicants concerned, while ensuring the overall optimal use of railway infrastructure on the network concerned.**

3. Infrastructure managers shall address conflicts on capacity to the largest extent possible through the consensual conflict resolution mechanism referred to in Article 36 involving the applicants concerned and resulting in consensual solutions to conflicting capacity needs and requests.

4. If the mechanism referred to in paragraph 3 does not result in a satisfactory resolution of conflicting capacity needs and requests, infrastructure managers shall ~~manage scarce capacity or resolve~~**address** conflicts **on capacity** through ~~objective, transparent and non-discriminatory procedures.~~**the formal conflict resolution mechanism referred to in Article 37.**

~~Those procedures shall assess alternative options for the use of infrastructure capacity, based on the following socioeconomic and environmental criteria, subject to the availability of data:~~

~~(a) operating cost for operators of rail transport services and the resulting impact on prices for customers of rail transport services;~~

~~(b) time-related cost for customers of rail transport services;~~

~~(c) connectivity and accessibility for people and regions served by the rail transport services;~~

~~(d) emissions of greenhouse gases, local air pollutants, noise and other external cost of rail transport services and by their likely alternatives;~~

~~(e) safety and public health implications of rail transport services and their likely alternatives.~~

~~5. ENIM shall prepare and adopt the procedures referred to in paragraph 4 and include them in the EU framework for capacity management referred to in Article 6. The procedures shall involve the following steps:~~

~~(a) design alternative scenarios to partition the capacity available for different types of rail transport services, involving, where possible, the provision of alternative capacity on other routes or alternative timing with comparable characteristics;~~

~~(b) evaluate and rank the scenarios on the basis of objective and transparent methodologies taking into account the socio-economic and environmental criteria set out in paragraph 4;~~

~~(c) select the highest ranked scenario on the basis of the evaluation referred to in point (b) and amend the definition of the capacity model and the capacity supply plan accordingly.~~

~~6. ENIM shall develop the methodologies referred to in paragraph 5, point b. The parameters of those methodologies shall make it possible to take into account local or national circumstances based on accepted approaches and empirical evidence. ENIM shall include those methodologies in the European framework for capacity management referred to in Article 6.~~

~~7. Taking into account experiences with the preparation and implementation of the framework referred to in paragraph 6, the Commission may adopt implementing acts setting out the specific procedures, criteria and methodologies to be applied for the management of scarce capacity. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 72(3).~~

Article 9

Information about infrastructure capacity

1. Infrastructure managers shall provide ~~interested parties, in particular applicants, potential~~ applicants and regulatory bodies **and, where appropriate, other operational**

stakeholders, with accurate and up-to-date information on the availability of infrastructure capacity throughout the entire capacity management process, including in the strategic planning phase referred to in section 2, during the scheduling and allocation processes set out in section 3 and whenever there are changes to allocated capacity as referred to in section 4.

Infrastructure managers shall publish any update to the capacity supply plan referred to in Article 18 and to the working timetable referred to in Article 30 without delay.

2. Infrastructure managers shall publish the information referred to in paragraph 1 in accordance with Article 62(5) ~~and contribute to the development of relevant specifications in accordance with Article 62(3)~~.

3. At the request of applicants, infrastructure managers shall provide the information referred to in paragraph 1 on the basis of concrete ~~specifications of commercial and operational needs ('feasibility assessments'). For cross-border services, infrastructure managers shall receive and answer to such requests in a single place and single operation or via a single interface.~~**commercial and operational needs of the applicants.**

Article 10

Capacity restrictions resulting from infrastructure work and degraded infrastructure

1. Without prejudice to Articles 7**, 7a**, 7c and 7e of Directive 2012/34/EU, infrastructure managers shall plan infrastructure work in accordance with the business plan and with the investment and financial programmes referred to in Article 8(3) of Directive 2012/34/EU. Where amendments to those programmes after the adoption of the business plan affect or are likely to affect the planning of infrastructure works, the infrastructure manager shall provide an overview of such amendments and their likely impact in the network statement.

2. When planning infrastructure works, the infrastructure manager shall act in accordance with Article 2(3) and Article 3.

In particular, the infrastructure manager shall take into account in a balanced way the impact of infrastructure works on its own asset management and financial situation as well as the **estimated** operational and financial impact on all applicants concerned.

3. The infrastructure managers shall consult applicants on the infrastructure works in the context of the coordination mechanisms referred to in Article 7e of Directive 2012/34/~~EC~~**EU** and, as regards cross-border rail services, in accordance with Article 54 of this Regulation.

4. Infrastructure manager shall plan, inform and consult applicants on capacity restrictions resulting from infrastructure works sufficiently in advance, taking into account the estimated impact on railway undertakings. For that purpose, infrastructure managers shall respect the ~~schedule~~**requirements** set out in section 3 of Annex I.

4a. For capacity restrictions with ~~a~~ major impact ~~on~~**within** the ~~capacity available to applicants~~**meaning of point 0 of section 3 of Annex I**, applicants may request the infrastructure manager to provide alternative planning for the capacity restriction with a view to identify and select an option that takes into account the impacts on applicants and infrastructure managers in a balanced way. The infrastructure manager shall provide those applicants with an indicative planning of alternative capacity available during the capacity restriction.

The indicative planning shall cover both the line affected and alternative lines**, where such alternative lines exist,** and shall be reflected in the capacity model referred to in Article 17 and in the capacity supply plan referred to in Article 18.

5. Infrastructure managers shall take into account and mitigate the impact of infrastructure works on cross-border traffic. Infrastructure managers shall coordinate in accordance with Article 53 **at least regarding** all infrastructure works on the **railway** lines ~~referred to in Article 53(3)~~**which are part of the European Transport Corridors** and any other infrastructure work with significant cross-border impact.

Coordination shall address in particular the optimisation of the schedule of infrastructure works and the provision of alternative capacity on the line affected and on alternative routes, **where such alternative routes exist,** taking into account the operational and commercial needs of applicants.

6. Reductions in the capacity or performance of infrastructure below its design values resulting from the degradation of assets, such as reductions in permissible speed or axle load, shall also be considered as capacity restrictions. **Such capacity restrictions shall not**

give rise to penalties pursuant to Article 40. The information obligations set out in Article 9 shall apply to such **capacity** restrictions.

7. Infrastructure managers shall publish information and consult applicants on planned temporary capacity restrictions, their impact on capacity available for commercial purposes and on alternative capacity as early as possible.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 71 to amend-**:**

(aa) the classification of the capacity restrictions and the impact on traffic set out in point 0 of section 3 of Annex I**,**

(a) the deadlines for the publication set out in point 1 of that section,

(b) the deadlines for the coordination of capacity restrictions set out in point 4 of that section;

where those elements have proven ineffective or have led to major difficulties of implementation, with a view to reduce **further** the impact of capacity restrictions resulting from infrastructure works on rail traffic **and the administrative burden for the infrastructure managers** while taking into account planning, operational, technical and commercial considerations of the stakeholders concerned **and taking into account the experience and opinions of ENIM**.

Article 10a

Refusal or withdrawal of capacity rights on public order or public security grounds

1. A Member State may require the infrastructure manager to refuse to grant, or to withdraw, capacity rights to an applicant if the competent authorities of that Member State establish that granting such rights to that applicant entails a serious and grave risk for public order or public security, including to national security and defence of that Member State. Any such decision shall be duly justified and strictly necessary and proportionate to the objective pursued.

2. **Without prejudice to the confidentiality of classified information, Member States shall, within 10 days from the adoption of a decision on the basis of the first paragraph of this Article, inform the Commission, the regulatory body and, in case of multi-network capacity rights, other Member States concerned of the adoption of such a decision and of the reasons thereof. Member States shall regularly review any such decision.**

3. **In case a Member State raises concerns about a decision adopted by another Member State on the basis of the first paragraph of this Article, the Member States concerned shall coordinate between themselves in accordance with Article 53a.**

SECTION 2
STRATEGIC CAPACITY PLANNING

Article 11

Strategic capacity planning

1. Strategic capacity planning shall include all activities set out in Articles 12 to 25.

2. Strategic capacity planning shall result in the following sequence of planning documents which provide progressively increasing level of details about available capacity:

   (a) the capacity strategy referred to in Article 16;

   (b) the capacity model referred to in Article 17;

   (c) the capacity supply plan referred to in Article 18.

   The contents of and the schedule for preparing those deliverables are set out in sections 1 and 2 of Annex I.

   Infrastructure managers shall adopt the planning documents as a basis for the next phase in the planning process.

   The Commission shall be empowered to adopt delegated acts in accordance with Article 71

(i) **to delete parts of the detailed contents of the capacity strategy, of the capacity model and of the capacity supply plan set out in section 1 of Annex I and**

(ii) to amend ~~sections 1 and~~ **the deadlines of section** 2 of Annex I,

where those elements have proven ineffective or have led to major difficulties of implementation, in order to ensure an efficient strategic planning process and reflect the operational concerns of infrastructure managers and applicants, taking into account the experience **and opinions** of ENIM, ~~infrastructure managers,~~ applicants ~~and other operational stakeholders~~, regulatory bodies and the ~~ENRB~~**ENRRB** in implementing this section**. The Commission shall not delete from section 1 of Annex I elements corresponding to elements referred to in Articles 16 to 18**.

3. Subject to the principle of management independence laid down in Article 4 of Directive 2012/34/EU, Member States may provide the infrastructure manager with strategic guidance based on the indicative rail infrastructure development strategies referred to in Article 8(1) of Directive 2012/34/EU. ~~That guidance may cover/~~**That guidance shall respect the operational responsibilities of the infrastructure manager, enabling them to optimise use of the network, and coordinate effectively the attribution of capacity for cross-border traffic. That guidance shall be consistent with the provisions laid down in this Regulation. That guidance shall be timely provided, as for infrastructure managers to be able to follow the deadlines set out in Annex I, and may cover or** contain in particular:

(a) general objectives of national rail policy relevant for strategic capacity planning within the scope of this Regulation**, such as national practices for train timetables**;

(b) an outlook on the development of rail infrastructure, taking into account relevant plans and strategies at national or regional level and the work plans of the European Transport Corridors referred to in Article ~~53~~**[54]** of the [new TEN-T Regulation];

(c) general ~~requirements and~~ guidelines as regards the use of rail infrastructure capacity, **including where appropriate policy orientations, related to:**

(i) the volumes of the different types of traffic referred to in Article 12 that the infrastructure managers shall aim to accommodate through the strategic planning process;

(ii) the implementation of specific timetable designs for both freight and passenger services such as integrated clock-faced timetable;

(iii) the extent of capacity that can be reserved through framework agreements or rolling planning;

(iv) the implementation, by the infrastructure managers, of the rules of conflict resolution laid down in Article 37;

which the infrastructure manager shall take ~~into~~**utmost** account in strategic capacity planning, in particular in relation to highly utilised and congested infrastructure referred to in Article 21 **and in the pre-planning process referred to in Articles 18 and 20**;

(d) an outlook on the planned development of rail services operated under public service obligations, taking into account, where necessary, the views of the regional or local authorities involved.

Member States shall coordinate **in accordance with Article 53a** to ensure consistency between the respective strategic guidance they provide in accordance with this paragraph with a view to supporting the development of international passenger and freight rail services.

Infrastructure managers shall justify any deviation from the guidance provided by Member States pursuant to points c) and d) of this paragraph.

Member States may provide that elements of guidance referred to in point c) of this paragraph are binding.

Member States shall publish the strategic guidance adopted pursuant to this paragraph, where Member States have provided such guidance. The strategic guidance shall be published in a timely manner to allow the preparation of the strategic capacity planning.

4. Strategic capacity planning shall not involve the granting of capacity rights to individual applicants in accordance with Article 26.

Article 12

General requirements for strategic capacity ~~*management*~~planning

1. Infrastructure managers shall take into account in ~~a balanced, fair~~**an equitable, transparent** and non-discriminatory manner all types of rail transport services for which they are liable to receive requests for capacity, irrespective of their volume, size of downstream market, stability between consecutive timetables, regularity or frequency within a given working timetable period.

2. In strategic capacity planning, in particular in the capacity model referred to in Article 17 and in the capacity supply plan referred to in Article 18, infrastructure managers shall differentiate at least between the following types of rail transport services:

   (a) freight transport services;

   (b) inter-urban passenger services (long distance);

   (c) urban and regional passenger services.

   If necessary, in the light of experience gained in the implementation of this Regulation~~,~~ **and with a view to supporting the cross-border consistency of the strategic planning process,** ENIM may define a more detailed **harmonised** list which further differentiates between types of rail transport services. ~~With a view to supporting the cross-border consistency of the strategic planning process, a harmonised list~~ **That list** shall be included in the European framework for capacity management referred to in Article 6. **Infrastructure managers shall take utmost account of that list.**

3. In strategic capacity planning, in particular in the capacity model referred to in Article 17 and in the capacity supply plan referred to in Article 18, infrastructure managers shall indicate the pre-planned capacity suitable for the provision of multi-network transport services**, including cross-border rail services. Infrastructure managers shall coordinate in accordance with Article 53 when indicating the pre-planned capacity suitable for the provision of multi-network transport services**.

4. Strategic capacity planning shall also take into account:

(a) the observed structure and developments of demand for infrastructure capacity, as identified through capacity allocation in previous working timetable periods and through the market monitoring referred to in Article 15 of Directive 2012/34/EU;

(b) the expected development of transport needs and of the resulting demand for rail transport services and infrastructure capacity, as identified through the analysis referred to in Article 15 of this Regulation;

(c) **capacity needs announcements by applicants and** the input from the consultation of ~~current and potential applicants~~**operational stakeholders** in accordance with Article 13;

(d) the expected or planned development of infrastructure capacity, in particular as identified in the indicative rail infrastructure development strategy referred to Article 8(1) of Directive 2012/34/EU and the business plan of the infrastructure manager referred to in Article 8(3) of Directive 2012/34/EU;

(e) the planned infrastructure works which are expected to affect the network;

(f) ~~The~~**the** characteristics of different rail transport markets, as regards in particular:

(i) speed;

(ii) frequency;

(iii) tolerance for deviations from the allocated train path;

(iv) possibility to re-route, reschedule or replace services by other modes in the event of network disruptions;

(v) volatility of demand for rail transport and the consequent need to plan rail services on a different time horizon.

5. Strategic capacity planning shall reflect the capacity allocated through framework agreements and rolling planning.

5a. For the purpose of strategic capacity planning, infrastructure managers shall draw up a strategic route map which defines the following:

(a) the geographical scope of the capacity strategy referred to in Article 16, of the capacity model referred to in Article 17 and of the capacity supply plan referred to in Article 18;

(b) the alternative lines considered in the event of capacity restrictions referred to in Article 10 and in the context of contingency planning referred to in Article 19.

Member States shall ensure that the strategic route map is included in the register of infrastructure referred to in Article 49 of Directive (EU) 2016/797.

6. Strategic capacity planning shall cover the **railway** lines part of the TEN-T core **network** and extended core network~~ referred to in Article 6 of and Annex I to [new TEN-T Regulation]~~. Infrastructure managers**, including those which do not manage lines part of the TEN-T core network and extended core network,** may **decide to** include **in the strategic capacity planning** other lines and nodes of the network they manage. **In accordance with their respective strategic guidance referred to in Article 11(3), Member States may also provide that infrastructure managers shall perform strategic capacity planning on other lines and nodes of the network managed by those infrastructure managers.**

Strategic capacity planning shall be carried out at a level which is sufficiently detailed to allow capacity planning for specific sections of the network. For this purpose, the network shall be represented by nodes and sections that allow to take into account relevant characteristics of capacity demand and supply.

~~These nodes and~~**Member States shall ensure that these** sections ~~shall be~~**are** indicated in the register of infrastructure referred to in Article 49 of Directive (EU) 2016/797.

7. Strategic capacity planning shall cover a period that ~~is at least~~**starts** five years ~~ahead in time~~**before the change of working timetable to which it relates**. Infrastructure managers may extend the period to more than five years, in particular to support infrastructure development within the framework of the indicative rail infrastructure development strategy referred to in Article 8(1) of Directive 2012/34/EU.

8. Infrastructure managers shall ~~regularly~~ review and update **where necessary** the results of the strategic capacity planning taking account, in particular, of the following:

(a) the development of the railway infrastructure;

(b) changes in market demand for infrastructure capacity**, including through the capacity needs announcements**;

(c) the results of the allocation processes set out in sections 3 and 4 **of this Chapter** in previous working timetable periods, including the degree of utilisation of infrastructure capacity by applicants;

(d) insights from traffic management performed in accordance with Chapter III;

(e) the result of disruption and crisis management performed in accordance with Chapter III;

(f) the results of the performance review in accordance with Chapter IV.

9. ENIM shall develop **and include in the European framework for capacity management referred to in Article 6 of this Regulation** guidelines setting out common principles, procedures and methodologies for strategic capacity planning. ~~It shall include those guidelines in the European framework for capacity management referred to in Article 6 of this Regulation. Those guidelines should contain at least the elements listed in Annex III to this Regulation.~~

The infrastructure managers shall take the utmost account of those guidelines in the network statement referred to in Article 27 of Directive 2012/34/EU. They shall explain in the network statement the reason for any deviation from the common principles, procedures and methodologies established in the guidelines.

Article 13

Consultation of stakeholders on strategic capacity planning

1. Infrastructure managers shall**, in the framework of Article 7e of Directive 2012/34/EU,** consult all operational stakeholders**, including those operating multi-network rail services,** on strategic capacity planning**, including the planning documents referred to in articles 16 to 18,** in accordance with ~~Article 7e of Directive 2012/34/EU.~~ **the schedule laid down in section 2 of Annex I.**

2. **For the purpose of that consultation, the i**Infrastructure managers shall ~~consult all~~**take the utmost account of the principles contained in the European framework for capacity management refererd to in Article 6.**

For the purpose of consulting operational stakeholders operating multi-network rail services ~~on strategic capacity planning~~ **, infrastructure managers shall coordinate between themselves** in accordance with ~~Articles~~**Article** 53 and**, for European and cross-border matters, Article** 54.

Article 14

Coordination on strategic capacity planning between infrastructure managers

1. Infrastructure managers shall coordinate **where relevant** their activities related to strategic capacity planning in accordance with Article 53.

Coordination shall ensure in particular:

(a) the consistency of strategic planning across the networks concerned, in particular in relation to the capacity strategy, the capacity model and the capacity supply plan, the planning of infrastructure works and contingency planning;

(b) appropriate consideration of the capacity needs for multi-network rail services**, including cross-border rail services,** in the capacity strategy, capacity model and capacity supply plan;

(c) a review of the performance of strategic capacity planning and its outcomes in accordance with Chapter IV;

(d) the involvement of all operational stakeholders, regulatory bodies and the ~~European Network of Rail Regulatory Bodies ('the~~ ENRRB~~')~~, the European Coordinators and~~,~~ ~~where necessary,~~ Member State authorities and**, where necessary,** other stakeholders.

~~2. ENIM shall take into account any relevant complaint by applicants or potential applicants on the planning documents referred to in Article 11(2) and shall request additional information from the entities involved in the coordination in accordance with Article 53~~

~~and from operational stakeholders consulted in accordance with Article 54, prior to adopting an opinion or recommendation to improve the consistency of those planning documents. ENIM shall share its opinion on the draft planning documents with the ENRRB or inform the latter of a failure to adopt an opinion. The ENRRB shall act in accordance with Article 65(3).~~

3. Infrastructure managers shall take into account any recommendation adopted by ENIM in accordance with ~~paragraph 2~~**Article 54**. Where infrastructure managers do not follow the recommendation, they shall explain the reasons **thereof** in the planning documents.

4. The ENRRB shall monitor the coordination process and its implementation. It shall inform the Commission of its views on the need to address any shortcomings of the coordination process.

Article 15

Analysis of expected transport market developments

1. ~~Infrastructure managers and ENIM shall regularly monitor and analyse transport markets~~**The Network Coordinator shall regularly carry out a transport market study regarding network and market developments for cross-border rail services. The Network Coordinator shall communicate the results of this study to Member States, infrastructure managers and other relevant stakeholders, including the European Coordinators. The Network Coordinator shall review and update the transport market study as appropriate, and in any case at least every five years. Infrastructure managers shall take this market study into account** in order to inform their overall business strategy, capacity and contingency management and investment decisions. ~~Infrastructure managers shall communicate the results of this analysis to other stakeholders for similar purposes, including the European Coordinators.~~

2. For the purposes of this Regulation, the transport market ~~analysis~~**study** referred to in paragraph 1 shall in particular provide input to strategic capacity planning as referred to in Article 11, to the partitioning of infrastructure capacity as referred to in Article 25 and to the allocation of capacity on the basis of the formal conflict resolution mechanism referred to in Article 37.

~~3. ENIM shall carry out a European transport market study covering passenger and freight transport in multimodal context at the latest by [31 December 2028]. The study shall address in particular:~~

~~(a) projections of the demand for passenger and freight transport for all modes in the Union;~~

~~(b) estimates of the potential to increase the volume rail transport, both passenger and freight, and the conditions necessary to achieve such growth;~~

~~(c) if possible, a geographical breakdown of the projected transport flows as an input to strategic capacity planning.~~

~~4. ENIM shall consult applicants, customers of rail transport services and their associations, national and EU public authorities on the terms of reference for the study, in particular as regards the purpose of the study and the process for stakeholder involvement.~~

~~5. ENIM shall review and update the study as appropriate, and in any case at least every five years.~~

Article 16

Capacity strategy

1. The infrastructure manager shall adopt a capacity strategy setting out its expectations on future developments of demand and supply of rail infrastructure capacity and its vision on how to accommodate those developments.

   The capacity strategy shall serve as a ~~tool~~**basis** for communication, consultation and coordination between operational stakeholders.

2. The capacity strategy shall contain **the** information ~~about the future development of rail infrastructure, an outlook on the development of the demand for different rail transport services and any other relevant information about the availability and utilisation of railway infrastructure.~~ **listed in section 1 of Annex I.**

~~3. The capacity strategy shall comprise a strategic route map which defines the following:~~

~~(a) the geographical scope of the capacity strategy referred to in Article 16, of the capacity model referred to in Article 17 and of the capacity supply plan referred to in Article 18;~~

~~(b) the alternative lines considered in the event of capacity restrictions referred to in Article 10 and in the context of contingency planning referred to in Article 19.~~

~~The strategic route map shall be included in the register of infrastructure referred to in Article 49 of Directive (EU) 2016/797.~~

4. The infrastructure manager shall prepare~~,~~ **and** publish ~~and regularly update~~ the capacity strategy in accordance with the schedule ~~and the contents~~ set out in section 2 of Annex I. **In case of unforeseen and significant events, the infrastructure manager shall update the capacity strategy accordingly.**

~~5. Infrastructure managers shall consult applicants on the capacity strategy in accordance with Article 13 and coordinate capacities strategies with other infrastructure managers in accordance with Article 14.~~

Article 17

Capacity model

1. The infrastructure manager shall establish a capacity model that refines the capacity strategy on the basis of the outcome of the **capacity needs announcement referred to in Article 12(4)(c) and the** consultation and coordination activities referred to in Articles 13 and 14.

The capacity model shall support a balanced consideration of the capacity needs of different segments of rail transport services and of infrastructure managers' needs to maintain, renew and develop (upgrade of existing and construction of new) ~~the~~ rail infrastructure. It shall serve as ~~an instrument~~**a basis** for communication, consultation and coordination of strategic capacity planning between the operational stakeholders.

2. The capacity model shall ~~at least provide information about the total volume of capacity available by network section, the shares of capacity reserved for different segments of rail transport services and for capacity restrictions resulting from infrastructure works.~~**contain**

the information listed in section 1 of Annex I. Infrastructure managers shall prepare and publish the capacity model for each working timetable period and ~~regularly~~ update the capacity model in accordance with the ~~contents and~~ schedule set out in section~~s 1 and~~ 2 of Annex I**. The obligation to update the capacity model shall not apply if the capacity supply plan for the same working timetable period has been published**.

3. Infrastructure managers shall ~~document and~~, where relevant, **document and** justify any **substantial** divergence between the capacity model and the capacity strategy concerning the same working timetable period. ~~Where needed, the capacity strategy shall be revised in the light of developments since the adoption or the latest update of the capacity strategy.~~

~~4. Infrastructure managers shall consult applicants on the capacity model in accordance with Article 13 and coordinate capacities strategies with other infrastructure managers in accordance with Article 14.~~

Article 18

Capacity supply plan

1. The infrastructure manager shall establish a capacity supply plan with a view to providing comprehensive information about:

   (a) infrastructure capacity available for allocation to applicants;

   (b) infrastructure capacity not available for allocation.

   The capacity supply plan shall provide the basis for capacity allocation.

   The capacity supply plan shall contain the information listed in section 1 of Annex I.

1a. Infrastructure managers shall prepare the capacity supply plan in accordance with the results of the strategic capacity planning process referred to in Articles 11 to 17 and following the schedule set out in section 2 of Annex I.

2. Infrastructure managers shall publish the capacity supply plan for each working timetable period at the latest by the deadline set out in section 2 of Annex I and shall continuously update it until the end of the working timetable period, to which that plan refers. The

capacity supply plan shall be provided for each individual day of the working timetable period concerned.

3. Infrastructure managers shall ~~prepare the capacity supply plan on the basis of the results of the strategic capacity planning process referred to in Articles 11 to 17 and in sections 1 and 2 of Annex I.~~

~~Infrastructure managers shall document and~~, where relevant, **document and** justify any **substantial** divergence between the capacity supply plan and the capacity model concerning the same working timetable period.

4. In the capacity supply plan, infrastructure managers may indicate infrastructure capacity as pre-planned. Pre-planned capacity means capacity for which the infrastructure manager defines characteristics and volumes of the capacity available for requests by applicants, sets out rules for the allocation of such capacity and defines the process through which such capacity can be requested, in accordance with Article 20. The specified characteristics, rules and allocation processes shall be taken into account when allocating pre-planned capacity. **In the framework of their strategic guidance under Article 11(3)(c), Member States may oblige infrastructure managers to pre-plan infrastructure capacity on certain lines and nodes.**

5. Pre-planned capacity shall be presented in the capacity supply plan in the form of capacity **planning** objects as referred to in Article 20, which specify the volume and characteristics of capacity and which are linked to allocation rules and processes through which such capacity is made available.

~~6. Subject to paragraph 7, the~~ **5a. When pre-planning** capacity ~~supply plan~~**, infrastructure managers** shall ~~comprise the following elements:~~**take into account the criteria set out in Article 25 (2a) points (a) to (f).**

~~(a) capacity available for allocation to applicants for the working timetable period to which the capacity supply plan refers:~~

~~(i) capacity, which has not been pre-planned by the infrastructure manager;~~

~~(ii) capacity, which has been pre-planned by the infrastructure manager.~~

~~(b) capacity which is not available for allocation to applicants:~~

~~(i) capacity reserved for infrastructure works with significant commercial and operational impact on applicants and railway undertakings as referred to in section 3 of Annex I;~~

~~(ii) capacity reserved for regular time windows allowing to schedule infrastructure works with limited impacts at a later stage;~~

~~(iii) capacity already allocated through framework agreements in accordance with Article 31 or through the multi-annual rolling planning process in accordance with Article 33;~~

~~(iv) capacity reserved for purposes other than those set out in points (i), (ii) and (iii), which shall be clearly indicated by the infrastructure manager.~~

~~The capacity supply plan shall indicate the restrictions applicable for the use of specialised infrastructure referred to in Article 24.~~

~~7. Infrastructure managers shall include in the capacity supply plan the elements listed in paragraph 6, point (b) of for the rail infrastructure that they manage.~~

~~Infrastructure managers shall include in the capacity supply plan all elements listed in paragraph 6 for all lines and nodes included in the TEN-T core and extended core network as defined in [new TEN-T Regulation].~~

~~Infrastructure managers may include in the capacity supply plan the elements referred to in paragraph 6 for other lines and nodes of the network they manage.~~

~~8. When pre-planning capacity in accordance with paragraph 6, point (a)(ii), infrastructure managers shall follow the principles set out in Article 8(4).~~

~~Infrastructure managers shall pre-plan capacity based on the strategic guidance by Member States in accordance with Article 11(3),~~**For the purposes of capacity pre-planning, infrastructure managers shall take into account** the results of the consultation of applicants in accordance with Article 13 and **of** the coordination between infrastructure managers in accordance with Article 14.

9. The regulatory body shall analyse the capacity supply plan and may take a decision **within 30 days after the publication of the final capacity supply plan** requiring the

infrastructure manager to amend the capacity supply plan~~. The decision of the regulatory body shall take into account any opinion of or recommendation by ENIM,~~ where ~~such~~**the analysis** has ~~been provided.~~**concluded that that plan does not comply with the provisions of this Regulation or of the Directive 2012/34 or with the principles of transparency and non-discrimination.**

10. ENIM shall adopt guidelines and include them in the European framework for capacity management referred to in Article 6, setting out the following:

(a) the means for publication of the capacity supply plan, including digital services, tools, functions and interfaces;

(b) the process for the consultation of applicants on the capacity supply plan.

Article 19

Contingency planning

1. Infrastructure managers shall put in place and implement a continuous process of contingency planning to prepare for disruptions of network operations and for other crisis situations affecting rail traffic.

Contingency planning shall provide the basis for traffic management, disruption management and crisis management in accordance with Article 42, with a view to enabling a fast reaction in such situations and to minimize their impact on rail traffic.

Infrastructure managers shall document the results of contingency planning in a contingency plan.

2. Contingency planning shall involve in particular:

(a) the designation of alternative ~~routes~~**railway lines, where such alternative railway lines exist,** allowing to re-route traffic in the event of non-availability of the **railway** lines included in the core and extended core TEN-T network~~ as set out in Article 6 of~~**,** and ~~Annex I to [new TEN-T Regulation];~~**of the other railway lines and nodes covered by the strategic capacity planning documents;**

(b) an indicative planning of the infrastructure capacity available on the alternative ~~routes~~**railway lines** designated in accordance with point (a)**, where such alternative railway lines exist,** providing transparency about infrastructure capacity available on such lines **and technical characteristics**, which can be utilised in the case of incidents and, in particular, network disruptions in accordance with Article 46;

(c) the definition of rules and procedures for traffic and crisis management, including on the sharing of information between infrastructure managers, other operational stakeholders and other stakeholders**,** such as public authorities in charge of rail or security**,** and emergency response, as well as criteria for the activation of these procedures;

(d) the identification and listing of bodies to be informed in the event of serious incidents or serious disruptions to train movements;

(e) any other preparations necessary to perform disruption management and crisis management in accordance with Article 42 and with the European framework for the cross-border coordination of traffic management, disruption management and crisis management referred to in Article 44.

3. Infrastructure managers shall ensure the consistency of contingency planning with strategic capacity planning, in particular the capacity strategy, the capacity model, the capacity supply plan and with the planning for infrastructure works as referred to in Article 10.

4. The results of contingency planning, in particular the designation of alternative lines**, where such alternative railway lines exist,** in accordance with paragraph 2, point (a) and the indicative capacity planning on alternative lines**, where such alternative railway lines exist,** in accordance with paragraph 2, point (b) shall be included in the capacity model and in the capacity supply plan.

~~5. The Commission shall adopt implementing acts setting out the details of the procedure and criteria to be followed for the application of paragraph 2, in particular for situations which have a potential impact on cross-border traffic. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 72(3).~~

Article 20

Criteria and procedures for the allocation of pre-planned capacity and for the definition of capacity planning objects

1. Infrastructure managers shall allocate pre-planned capacity included in the capacity supply plan referred to in Article 18 via **equitable,** transparent and non-discriminatory criteria and procedures.

   Infrastructure managers may group capacity planning objects, such as pre-planned train paths when pre-planning capacity to provide a specific timetable design, in accordance with the strategic guidance referred to in Article 11(3) when provided and taking into account market needs expressed by applicants.

2. Capacity planning objects shall define the characteristics and properties of different types of pre-planned capacity, including capacity available for requests by applicants, capacity reserved for infrastructure works and capacity already allocated. Those characteristics and properties shall include all aspects relevant for specific types of pre-planned capacity, such as route, timing, guaranteed or required minimum speed, ~~the~~**maximum length,** technical ~~compatibility between rolling stock with infrastructure,~~ parameters and number of slots included **for both freight and passenger services**.

3. ENIM shall develop a common framework for the criteria and procedures referred to in paragraph 1 and include it in the European framework for capacity management referred to in Article 6. That common framework shall balance the benefits of reserving capacity for specific types of rail services or allocation processes with the need to ensuring flexibility to accommodate market needs in capacity allocation. For that purpose, the common framework shall provide for the possibility of taking into account requests for capacity rights not consistent with pre-planned capacity in the context of the consensual conflict resolution mechanism referred to in Article 36. **Infrastructure managers shall take utmost account of that common framework.**

4. ENIM shall develop and adopt ~~formal~~ specifications for capacity planning objects **referred to in paragraph 2** in human-readable and in machine-readable format. ENIM shall include these specifications in the European framework for capacity management referred to in Article 6. ~~Based on its experience in applying this Article, ENIM shall provide information~~

~~to the Commission on possible amendments to the technical specifications on interoperability as provided for by Directive (EU) 2016/797 and the implementing acts adopted under that Directive, in accordance with Article 62(3) of this Regulation~~**Infrastructure managers shall take utmost account of those specifications**.

Article 21

Highly utilised and congested infrastructure

1. Infrastructure managers shall declare without delay ~~an element~~**sections or nodes** of infrastructure either ~~to be~~**as being** highly utilised or ~~to be~~ congested if at least one of the following conditions is met:

(a) the ~~capacity~~ utilisation **of rail infrastructure capacity** has exceeded the threshold values for highly utilised or for congested infrastructure during the reference periods set out in ~~point 1 of~~ Annex II in the previous or the current working timetable period;

(b) the results of strategic capacity planning carried out in accordance with this section indicate that the capacity needs expressed during the strategic capacity planning phases exceed the capacity available for allocation during a given working timetable period~~;~~**, including due to infrastructure works with the duration of more than 12 months and resulting in capacity restrictions scheduled in accordance with Article 10.**

~~(c) infrastructure works resulting in capacity restrictions scheduled in accordance with Article 10 result in capacity becoming scarce.~~

Infrastructure managers shall assess the utilisation of rail infrastructure capacity on the basis of objective, transparent and appropriate procedures and methods.

Point (a) of the first subparagraph of this paragraph shall not apply to infrastructure of the Channel Fixed Link, as defined in the Treaty concerning the construction and operation by private concessionaires of a channel fixed link, between France and the United Kingdom of Great Britain and Northern Ireland, signed at Canterbury on 12 February 1986, and in **the Concession Agreement between the Secretary of State for Transport, Le Ministre de I'Urbanisme du Logement et des Transports, The Channel Tunnel Group Limited and France-Manche S.A.**

1a. ENIM shall develop a common method on the utilisation of rail infrastructure capacity. This method shall be included in the European framework for capacity management referred to in Article 6. Infrastructure managers shall take utmost account of this method.

2. The declaration referred to in paragraph 1 shall specify the working timetable period and the element of infrastructure and the specific time periods to which it relates.

3. Conflicting individual capacity requests submitted for allocation during the working timetable **period** shall not be a ground for declaring an element of infrastructure to be highly utilised or congested unless the conditions set in paragraph 1 are met.

4. Where infrastructure has been declared ~~to be~~**as** highly utilised or congested, the infrastructure manager shall carry out a capacity analysis in accordance with Article 22, unless a capacity-enhancement plan, as provided for in Article 23, **has been carried out in the five years preceding the declaration of infrastructure as highly utilised or congested or** is already being implemented.

5. For elements of infrastructure declared highly utilised or congested, infrastructure managers shall reserve capacity in the capacity supply plan referred to in Article 18, taking into account the outcome of the capacity analysis referred to in Article 22.

For sections or nodes of infrastructure declared congested, the infrastructure manager may lay down specific threshold quotas for the application of Article 27(6).

6. Where charges in accordance with Article 31(4) of Directive 2012/34/EU have not been levied or have not achieved a satisfactory result and the infrastructure has been declared to be congested, the infrastructure manager shall apply a procedure to partition or to allocate ~~scarce~~ infrastructure capacity on the basis of transparent and objective criteria. That procedure shall be implemented in accordance with Article ~~8~~**25** of this Regulation and shall be set out, together with the applicable criteria, in the network statement.

7. ~~Infrastructure managers~~**Member States** shall ~~indicate infrastructure~~**ensure that the nodes or sections** declared **as** highly utilised or congested **are indicated** in the register of infrastructure referred to in Article 49 of Directive (EU) 2016/797.

~~8. The procedures to be followed and the criteria to be used where infrastructure is congested shall be set out in the network statement and shall respect any measures and criteria adopted in accordance with paragraph 7.~~

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 71 to amend ~~Annex II,~~**the thresholds for capacity utilisation and the reference periods set out in Annex II where those elements have proven ineffective or have led to major difficulties of implementation, in order** to ensure an efficient management of capacity on highly utilised and congested infrastructure and reflect the operational concerns of infrastructure managers and applicants, taking into account the experience of ENIM, infrastructure managers, applicants and other operational stakeholders, regulatory bodies and the ~~ENRB~~**ENRRB** in implementing this Article.

10. The Commission may adopt implementing acts, setting out the key principles of the method to be developped by ENIM under paragraph 1a on the utilisation of rail infrastructure capacity, in accordance with the examination procedure referred to in Article 72(3).

Article 22

Capacity analysis in case of highly utilised or congested infrastructure

1. The infrastructure manager shall carry out a capacity analysis within six months of the declaration of infrastructure as highly utilised or congested**, unless a capacity-enhancement plan has been carried out in the five years preceding the declaration of infrastructure as highly utilised or congested or is already being implemented**.

The capacity analysis shall determine the constraints on infrastructure capacity which prevent the inclusion of capacity needs expressed by applicants in the capacity model, or in the capacity supply plan, or which prevent requests for infrastructure capacity from being adequately met.

The capacity analysis shall also include a first indicative set of possible measures to be taken in the short, medium and long term to ease the congestion and increase the availability of capacity.

2. The capacity analysis shall consider the characteristics of infrastructure in terms of capacity, capabilities and interoperability, operating procedures, the nature of the different services operating and the effect of all those factors on infrastructure capacity. Measures to be considered shall include in particular rerouting services, retiming services, speed alterations, harmonisation of operating procedures and infrastructure improvements.

3. Infrastructure managers shall consult applicants on the draft capacity analysis in accordance with Article 7e of Directive 2012/34/EU and, if the section of the infrastructure concerned is part of a European Transport Corridor, in accordance with Article 54 **of this Regulation**.

The infrastructure manager shall make public the result of the capacity analysis. ~~ENIM shall ensure that these publications are easily available.~~

4. Infrastructure managers shall take into account**, where relevant,** the results of any capacity analysis carried out pursuant to this Article in strategic capacity planning, in particular in the capacity strategy, in the capacity model and in the capacity supply plan.

The results of the capacity analysis shall be submitted to Member States' authorities in charge of preparing the indicative rail infrastructure development strategy referred to in Article 8(1) of Directive 2012/34/EU and to the European Coordinator in charge of the European Transport Corridor concerned.

Article 23

Capacity-enhancement plan

1. Within six months of the completion of a capacity analysis in accordance with Article 22, the infrastructure manager shall establish a capacity-enhancement plan **for sections or nodes declared congested**.

The capacity-enhancement plan shall identify:

(a) the reasons for the congestion;

(b) the likely future development of traffic;

(c) the constraints on infrastructure development;

(d) the options and costs for capacity enhancement, including **organisational measures and** likely changes to access charges.

On the basis of a cost benefit analysis of the possible measures identified, the capacity-enhancement plan shall also determine the action to be taken to enhance infrastructure capacity, including a timetable for implementing the measures.

2. The capacity-enhancement plan shall be established after consultation with users of the relevant congested infrastructure in accordance with Article 13.

~~It~~**A Member State** may **decide that that plan shall** be subject to **its** prior approval~~ by the Member State~~.

3. The Member State concerned shall take into account capacity-enhancement plans when renewing the indicative rail infrastructure development strategy referred to in Article 8(1) of Directive 2012/34/EU.

~~The European Coordinator of the European Transport Corridor concerned shall take into account the capacity-enhancement plan in its work plan referred to in Article 53 of [new TEN-T Regulation].~~

4. Without prejudice to Article 40 of this Regulation, the infrastructure manager shall cease to levy any charges for the relevant infrastructure under Article 31(4) of Directive 2012/34/EU in one of the following cases:

(a) the infrastructure manager does not produce a capacity-enhancement plan;

(b) the infrastructure manager does not make progress with the actions identified in the capacity enhancement plan.

5. Notwithstanding paragraph 4, the infrastructure manager may, subject to the approval of the regulatory body, continue to levy the charges in one of the following cases:

(a) if the capacity-enhancement plan cannot be realised for reasons beyond its control;

(b) if the options available are not economically or financially viable.

Article 24

Specialised infrastructure

1. Without prejudice to paragraph 2, infrastructure capacity shall be considered to be available for the use of all types of traffic compatible with the route intended for operation in accordance with Directive (EU) 2016/797 and the specifications laid down in implementing acts adopted ~~under it~~**on the basis thereof**.

2. Where there are suitable alternative routes and where in accordance with the procedure set out in Article 25 it can be demonstrated that it is justified from a social, economic and environmental perspective to do so, the infrastructure manager may, after consultation with interested parties, designate particular infrastructure for use by specified types of traffic. In that case the infrastructure manager shall indicate the designation in the planning documents referred to in Article 11(2) and **in the network statement** and shall reserve capacity for the specified types of traffic in the capacity supply plan.

   Such designation shall not prevent the use of such infrastructure by other types of traffic when capacity is available.

3. ~~Infrastructure~~**Member States shall ensure that the infrastructure** designated pursuant to paragraph 2 ~~shall be~~**is** indicated in the ~~network statement, in the~~ register of infrastructure referred **to** in Article 49 of ~~the~~ Directive (EU) 2016/797~~, in the capacity strategy, in the capacity model and in the capacity supply plan~~.

Article 25

~~Partitioning~~Capacity partitioning of infrastructure ~~capacity on the basis of socio-economic and environmental criteria~~declared as being highly utilised or congested

1. Where an element of infrastructure has been declared ~~to be~~**as being** highly utilised or congested in a future working timetable period, the infrastructure manager ~~shall~~**may** partition capacity on that element of infrastructure in the capacity model referred to in Article 17 and in the capacity supply plan referred to in Article 18 which relate to the working timetable period concerned.

2. When partitioning infrastructure capacity pursuant to paragraph 1, the infrastructure manager shall act in accordance with **the strategic guidance referred to in** Article ~~8.~~

~~The infrastructure manager~~**11(3), where Member states have provided such guidance and have provided that it** shall **be binding, and** take into account the need for capacity for multi-network rail services.

2a. With the view of partitioning infrastructure capacity pursuant to paragraph 1, infrastructure managers shall assess alternative partitioning options based on, but not limited to, the following socioeconomic, operational and environmental criteria, subject to the availability of data:

(a) operating cost for operators and technical parameters of rail transport services, and the resulting impact on prices for customers of rail transport services;

(b) time-related cost for customers of rail transport services;

(c) connectivity and accessibility for people and regions served by the rail transport services, including the quality of connections and transfer times for rail passenger and freight services;

(d) environmental impact, such as emissions of greenhouse gases and noise;

(e) volume of people and freight transported;

(f) utilisation of the infrastructure network.

In proceeding to the assessment of alternative partitioning options, infrastructure managers shall take into account the procedures developed by ENIM referred to in paragraph 2b.

2b. ENIM shall prepare and adopt an equitable, transparent and non-discriminatory procedure for the assessment of the alternative partitioning options, and include it in the European framework for capacity management referred to in Article 6. The procedures shall involve the following steps:

(a) define ranges of standard values for rail services as an initial basis for assessment;

(b) design alternative scenarios to partition the capacity available for different types of rail transport services;

(c) evaluate and rank the scenarios on the basis of objective, transparent and non-discriminatory methodologies taking into account the socio-economic, operational and environmental criteria set out in paragraph 2a, and making it possible to take into account local or national circumstances based on accepted approaches and empirical evidence;

(d) select the highest ranked scenario on the basis of the evaluation referred to in point (c) and amend the capacity supply plan accordingly.

SECTION 3

Scheduling and capacity allocation

Article 26

Capacity rights

1. Applicants may apply**,** under public or private law**,** to the infrastructure manager to request an agreement granting rights ~~to use~~**for capacity on** railway infrastructure against a charge as provided for in section 2 of Chapter IV of Directive 2012/34/EU.

Infrastructure managers shall allocate ~~the right to use~~**rights for capacity on railway** infrastructure ~~capacity~~ to applicants in the form of one of the following:

(a) capacity specifications;

(b) train paths.

ENIM shall define the characteristics of capacity specifications and include those in the European framework for capacity management referred to in Article 6. **Infrastructure managers shall take utmost account of those characteristics.**

2. Infrastructure managers shall convert the capacity rights allocated in the form of a capacity specification into capacity rights in the form of a train path prior to the actual train run in accordance with the deadlines set out in sections 4, 5 and 6 of Annex I.

3. Capacity rights in the form of a train path may be granted to applicants for a maximum duration of one working timetable period. Capacity rights in the form of a capacity specification may be allocated for a duration exceeding one working timetable period in accordance with Articles 31 and 33.

4. Unless otherwise specified in this Regulation, the respective rights and obligations of infrastructure managers and applicants in respect of any allocation of capacity shall be laid down in contracts or in ~~Member States' legislation~~**national law**.

~~5~~**6. Once allocated to an applicant, a capacity right shall not be transferred by the recipient to another undertaking or service.**

Any form of transfer shall lead to exclusion from the further allocation of capacity during the current working timetable period and the following one.

The use of capacity by a railway undertaking when carrying out the business of an applicant which is not a railway undertaking shall not be considered as a transfer. An applicant which is not a railway undertaking shall inform the infrastructure manager, at least 10 days before the use of the capacity, which railway undertaking will use the capacity. That information shall include evidence of the railway undertaking's acceptance.

7. Where an applicant intends to request infrastructure capacity with a view to operating a passenger service, in a Member State where the right of access to railway infrastructure is limited in accordance with Article 11 of Directive 2012/34/EU, it shall inform the infrastructure managers and the regulatory bodies concerned no less than 18 months before the entry into force of the working timetable to which the request for capacity relates. In order to enable the regulatory bodies concerned to assess the potential economic impact on existing public service contracts, regulatory bodies shall ensure that any competent authority that has awarded a rail passenger service on that route defined in a public service contract, any other interested competent authority with the right to limit access under Article 11 of Directive 2012/34/EU and any railway undertaking performing the public service contract on the route of that passenger service is informed without undue delay and at the latest within 10 days.

~~6. Once allocated to an applicant, a capacity right shall not be transferred by the recipient to another undertaking or service.~~

~~Any form of transfer shall lead to exclusion from the further allocation of capacity.~~

~~The use of capacity by a railway undertaking when carrying out the business of an applicant which is not a railway undertaking shall not be considered as a transfer.~~

Article 27

Methods of capacity allocation

1. Infrastructure managers shall grant capacity rights to applicants by means of the allocation processes referred to in Articles 31 to 34.

Any change to allocated capacity shall also be considered capacity allocation.

4. Infrastructure managers shall allocate infrastructure capacity via digital tools and digital services in accordance with Article 62, for the entire round trip when requested.

5. When requesting or making changes to allocated capacity, applicants and infrastructure managers shall comply with Article 39.

6. The infrastructure manager shall cancel a capacity right which, over a period of at least one month, has been used for less than a threshold quota, to be defined in the network statement, unless this was due to *force majeure*. ENIM shall define ranges for the threshold quota and include them in the European framework for capacity management referred to in Article 6. Infrastructure managers shall take utmost account of the ranges for the threshold quota defined by ENIM.

The regulatory body shall monitor the equitable, transparent and non-discriminatory application of this paragraph and investigate any complaints received.

6a. In accordance with the criteria and procedures referred to in Article 20(1) where applicable, an infrastructure manager may refuse to allocate capacity if requests are inconsistent with its strategic capacity planning. In that case, the infrastructure manager shall make its utmost effort to provide the applicant with an alternative

capacity. A refusal shall be communicated to the applicant without delay. The applicant shall have the right to lodge a complaint with the regulatory body pursuant to Article 63(2).

6b. Infrastructure managers shall inform at least every year the regulatory body of all capacity requests received that did not fit the parameters of the available capacity as defined in the capacity supply plan, regardless of whether they were accepted or refused. On the basis of this information the regulatory body may issue an opinion, which may recommend to the infrastructure manager to amend the capacity model.

Article 28

Allocation of multi-network capacity rights

~~2~~**0**. Applicants shall have the right to request multi-network capacity rights **by means of the allocation processes referred to in Articles 31 to 34, including the entire round trips**, and to receive answers to such requests, in a single place and in a single operation~~.~~**, in accordance with Article 62(5).**

Infrastructure managers shall cooperate in the allocation of capacity for multi-network rail services, including in particular international rail freight services and international rail passenger services.

~~Infrastructure managers shall allocate and manage multi-network capacity rights in accordance with Article 28.~~

~~3. Infrastructure managers shall respect the commercial confidentiality of information provided to them.~~

~~4. Infrastructure managers shall allocate infrastructure capacity via digital tools and digital services in accordance with Article 62.~~

~~For multi-network capacity rights, ENIM shall establish a single interface or a common system in accordance with Article 62, in order to manage capacity allocation in a single place and operation.~~

~~5. When requesting or making changes to allocated capacity, applicants and infrastructure managers shall comply with Article 39.~~

~~6. The infrastructure manager shall cancel a capacity right which, over a period of at least one month, has been used less than a threshold quota, to be laid down in the network statement, unless this was due to non-economic reasons beyond the applicant's control. ENIM shall define ranges for the threshold quota and include them in the European framework for capacity management referred to in Article 6.~~

~~The regulatory body shall monitor the transparent and non-discriminatory application of this paragraph and investigate any complaints received.~~

~~7. Where the infrastructure manager cancels, in accordance with paragraph 6, multi-network capacity rights, the regulatory body responsible for that infrastructure manager shall inform the relevant regulatory bodies and the ENRRB.~~

~~*Article 28*~~

~~***Coordination of the allocation of multi-network capacity rights***~~

1. Where the infrastructure manager receives a request for multi-network capacity rights ~~pursuant to Article 27(2),~~**,** they shall coordinate with the other infrastructure managers concerned in accordance with Article 53.

2. In particular, **the** coordination **referred to in paragraph 1** shall ensure:

   (a) the appointment of a single point of contact in charge of communication with the applicant in relation to the request for multi-network capacity right, which shall be notified to the applicant without delay after receipt of the request;

   (b) the compliance of the multi-network capacity right with minimum quality criteria in terms of consistency between networks and as regards aspects such as routing, timing, availability on different running days and status of the allocation;

   (c) the consistent performance of the process of allocating multi-network capacity rights, including in particular of the consensual conflict resolution mechanism referred to in Article 36 and of the formal conflict resolution mechanism referred to in Article 37;

(d) the coordination of any changes to allocated multi-network capacity rights in accordance with section 4~~with~~**4 with** a view to ensuring the integrity of multi-network capacity rights at all times.

If infrastructure managers fail to appoint a single point of contact, the **applicant shall select the** infrastructure manager ~~on whose network the first place of departure is located~~**which** shall be responsible to act as the single point of contact for enquiries related to the specific capacity request.

~~3. Infrastructure managers~~**2a. An infrastructure manager** shall not ~~provide capacity rights of worse quality~~**cancel a multi-network capacity right under Article 27, paragraph 6 without prior coordination with the other concerned infrastructure managers.**

If the infrastructure manager cancels, in ~~response to requests for~~**accordance with Article 27, paragraph 6,** multi-network capacity rights~~ compared to requests for capacity concerning a single network~~**, it shall inform the regulatory body. If the cancelled multi-network capacity right involves cross-border traffic, the regulatory body shall inform the relevant regulatory bodies and the ENRRB**.

~~4. As regards the compensation for changes to capacity rights referred to in Article 40, a multi-network capacity right shall be considered as a single capacity right. In particular, a cancellation due to *force majeure* on one network shall be considered as a cancellation due to *force majeure* for the capacity right along the entire route covered by it.~~

5. ENIM shall define the detailed procedures and methods to ~~implement~~**promote uniform application of** this Article and the minimum quality requirements referred to in paragraph 2(b) and include them in the European framework for capacity management referred to in Article 6.

Infrastructure managers shall take utmost account of those procedures and methods.

Article 29

Cooperation in the allocation of rail infrastructure capacity and service facilities

~~1. Operators of service facilities that provide indicative information on available service facility capacity in accordance with Article 6(3) of Commission Implementing Regulation~~

~~(EU) 2017/2177[22] shall cooperate with infrastructure managers for the purpose of the latter offering train paths that include rail facility capacity. Other operators of service facilities may enter into an agreement with infrastructure managers for the joint provision of capacity.~~

1. Infrastructure managers and operators of service facilities that are offering services which are necessary for operating a rail transport service and whose service facilities are part of the trans-European transport network as specified in the Annex II to [new TEN-T Regulation], including those located in the urban nodes defined in Article 3(f) of the Regulation thereof, shall cooperate with the view of ensuring, where necessary, that the allocation of capacity on infrastructure and in service facilities is consistent.

2. Infrastructure managers shall provide a list in the network statement of the service facilities referred to in paragraph 1.

3. Infrastructure managers shall ensure that applicants can request**,** in one place and operation**,** capacity rights on railway infrastructure and in the service facilities referred to in paragraph 1.

4. For the purpose of paragraph 3, infrastructure managers and ~~service facility~~ operators **of service facilities** shall coordinate the capacity and shall provide capacity rights including capacity in the ~~rail~~**service** facility that meets the requirements of the applicant or shall make an effort to provide a viable alternative.

5. The operators of service facilities referred to in paragraph 1 shall make available information~~, upon request or in real time where necessary,~~ about the available capacity to the infrastructure manager in a digital format in accordance with Article 62**(5) and in accordance with the schedules of Annex I**.

~~6. For the purpose of this Article and in accordance with Article 62, ENIM shall provide guidelines on the functional and technical requirements for the exchange of information between the operators of rail facilities and infrastructure managers for the purposes of this Article. Without prejudice to Article 2 of Implementing Regulation (EU) 2017/2177,~~

~~[22] Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services (OJ L 307, 23.11.2017, p. 1).~~

~~operators of service facilities may request to be exempted from the application of this Article. Such requests shall be submitted to the regulatory body and be duly substantiated. Regulatory bodies may decide to extend an exemption in duly justified cases.~~

~~7. The ENRRB shall monitor the application of paragraph 7 and shall provide recommendations on the criteria to be used in assessing the requests for exemptions.~~

6. This Article shall not apply to operators of service facilities benefiting from an exemption under Article 2 of Implementation Regulation 2017/2177.

Article 30

Working timetable

1. Infrastructure managers shall ~~establish~~**publish** a new working timetable before the start of each working timetable period. ~~The duration of the working timetable period shall be one year.~~

   Infrastructure managers shall initiate the preparation of the working timetable when allocating capacity through the annual allocation process referred to in Article 32, taking into account capacity rights allocated through framework agreements in accordance with Article 31 and through the rolling planning process referred to in Article 33.

2. Infrastructure managers shall ~~continuously update the working timetable~~**ensure,** until the end of the working timetable period**, that the working timetable is up to date**, taking into account capacity allocated through the rolling planning process referred to in Article 33, capacity allocated through the ad hoc process referred to in Article 34, changes to capacity rights in accordance with Article 39 and rescheduling in the context of disruption management and crisis management in accordance with Article 41.

Article 31

Capacity allocation through framework agreements

1. An applicant shall have the right to request infrastructure capacity over a period of time exceeding one working timetable period.

1a. Infrastructure managers shall indicate the capacity that they plan to reserve for allocation through framework agreements in the planning documents of the strategic capacity planning. Without prejudice to Articles 101, 102 and 106 TFEU, the **capacity reserved for framework agreements in those planning documents shall be allocated by the** infrastructure manager ~~shall allocate~~**to applicants through** such ~~capacity through framework~~ agreements~~ concluded with that applicant~~, subject to paragraph 3 and paragraph 4. **This shall not prevent infrastructure manager from allocating the requested capacity through framework agreements in cases where such capacity is not reserved in the planning documents, subject to paragraph 4.**

1b. Framework agreements may be concluded between several infrastructure managers and an applicant in case they cover more than one network.

Framework agreements shall specify the capacity rights granted in the form of a capacity specification as referred to in paragraph 1, point (a) of Article 26. They may not include capacity rights in the form of a train path.

Member States may require prior approval of framework agreements by the regulatory body. **In the case of framework agreements involving cross-border traffic, the relevant regulatory bodies shall coordinate.**

2. An applicant who is a party to a framework agreement shall request the conversion of the capacity specifications included in the framework agreement into a corresponding train path in accordance with that agreement. **This conversion shall be carried out in accordance with Article 26(2).**

3. Infrastructure managers shall ~~conclude~~**ensure that** framework agreements ~~only where the capacity right requested is~~**are** consistent with the planning documents of the strategic capacity planning referred to in Article 11(2~~). Infrastructure~~**), where available, and with the strategic guidance referred to in Article 11(3), where Member States have provided such guidance and have provided that it shall be binding.**

Neighbouring infrastructure managers shall ~~indicate~~**coordinate their strategic capacity plannings on** the **share of** capacity ~~that they plan to reserve~~**available** for ~~allocation through~~**cross-border** framework agreements~~ in these planning documents~~.

4. Framework agreements shall not be such as to preclude the use of the relevant infrastructure by other applicants or services. For this purpose, infrastructure managers shall set the maximum shares of total capacity that can be allocated through framework agreements and include these in the network statement.

5. Framework agreements shall allow for the amendment of their terms to enable better use to be made of the railway infrastructure~~, without prejudice to Article 39 and~~**. Those amendements shall not be considered as changes to capacity rights subject to a penalty pursuant to Article 40. Other changes to capacity rights allocated through framework agreements shall be subject to a penalty in accordance with** Article 40.

~~6. Changes to capacity rights allocated through framework agreements shall be subject to compensation in accordance with Article 40, except for the situation referred to in paragraph 5.~~

7. Framework agreements shall, in principle, cover the period indicated in section 5 of Annex I. The infrastructure manager may agree to a shorter or longer period in specific cases. Any period longer than the period indicated in ~~point~~**section** 5 of Annex I shall be justified by the requirement of dedicated investments by new entrants or by the substantial novelty of the service~~.~~**, including significant improvement of service quality.**

8. For services using specialised infrastructure referred to in Article 24, which requires substantial and long-term investment, duly justified by the applicant, framework agreements may be concluded for a period of 15 years. Any period longer than 15 years may be agreed only in exceptional cases, in particular where there is large-scale and long-term investment and where such investment is covered by contractual commitments including a multiannual amortisation plan.

9. Infrastructure managers shall include capacity allocated through framework agreements in the capacity model referred to in Article 17 and in the capacity supply plan referred to in Article 18.

10. While respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party.

11. Based on the experience of regulatory bodies, competent authorities~~ and~~**,** railway undertakings**, infrastructure managers** and ~~based on the activities~~ of the ENRRB, the

Commission may adopt ~~an~~ implementing ~~act~~**acts** setting out ~~the details of~~ **detailed rules regarding** the procedure ~~and criteria~~**for concluding framework agreements, the form and the content of such agreements** to ~~be followed for~~ **ensure** the uniform application of this Article ~~and of Article 33~~. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 72(3).

Article 32

Capacity allocation through the annual allocation process

1. The infrastructure manager shall establish the ~~first operational version of the~~ working timetable**, referred to in Article 30,** for a given working timetable period on the basis of the following:

   (a) requests for capacity rights received in the annual allocation process;

   (b) capacity rights relating to the working timetable period concerned and granted through framework agreements in accordance with Article 31;

   (c) capacity rights relating to the working timetable period concerned and granted through the rolling planning process in accordance with Article 33.

2. The infrastructure manager shall allocate capacity through simultaneous capacity allocation, with a view to meeting, to the extent possible, all requests for infrastructure capacity referred to in paragraph 1, subject to ~~paragraphs 5~~**paragraph 6** and ~~6.~~**to Article 27(6a).** The infrastructure manager shall take into account, to the extent possible, all constraints on applicants, including the economic effect on their business.

~~3. In the event of a conflict between two or more capacity requests, the infrastructure managers shall first attempt to resolve the conflict through the consensual consultation mechanism referred to in Article 36.~~

~~4. If the consensual dispute resolution mechanism referred to in paragraph 3 has not resolved the capacity conflict, the infrastructure managers shall apply the formal conflict resolution mechanism referred to in Article 37.~~

~~5. In accordance with Article 18 and Article 20, the infrastructure manager shall give priority to requests that are consistent with the pre-planned capacity defined in the capacity supply plan. As a result, the infrastructure manager may either accept or refuse requests that are not consistent with the capacity supply plan.~~

~~When accepting requests not consistent with the capacity supply plan, the infrastructure manager shall aim to maintain the overall balance between the elements of the capacity supply plan listed in Article 18(6).~~

~~When refusing requests not consistent with the capacity supply plan, the infrastructure manager shall, without delay, inform the applicant concerned of its intention to refuse a request. The latter shall have the right to lodge a complaint with the regulatory body.~~

6. Capacity rights granted through the annual allocation process may comprise:

(a) train paths;

(b) capacity specifications.

Infrastructure managers shall convert capacity rights granted in the form of capacity specifications to train paths in accordance with section 4 of Annex I.

7. The infrastructure manager shall comply with the schedule for the allocation process set out in section 4 of Annex I.

~~8. The infrastructure manager shall consider requests submitted after the initial deadline and prior to the final deadline set out in point 4 of Annex I. In such cases, the infrastructure managers shall allocate capacity rights in accordance with section 4, point 2 of Annex I.~~

~~9. For requests for the working timetable received after the initial deadline, which cannot be accommodated either with residual capacity reserved for the working timetable, or with the available unplanned capacity, the infrastructure manager shall try to offer alternatives via a different itinerary.~~

10. The infrastructure manager shall consult interested parties on the draft working timetable. Interested parties shall include all those who have requested infrastructure capacity and other parties who wish to have the opportunity to comment on how the working timetable may affect their ability to procure rail services during the working timetable period.

11. The infrastructure manager shall take appropriate measures to deal with any concerns that are expressed.

Article 33

Capacity allocation through the rolling planning process

1. Infrastructure managers shall allocate capacity through the rolling planning process **at least to rail freight services** in accordance with the deadlines set out in ~~point~~**section** 6 of Annex I. Infrastructure managers shall reserve capacity for this purpose in the capacity supply plan referred to in Article 18.

Without prejudice to Articles 101, 102 and 106 TFEU, the capacity reserved for rolling planning in the planning documents shall be allocated by the infrastructure manager to applicants through the rolling planning process. This shall not prevent infrastructure manager from allocating the requested capacity through rolling planning in cases where such capacity is not reserved in the planning documents. The rolling planning process shall not be such as to preclude the use of the relevant infrastructure by other applicants or services.

2. Capacity rights granted through the rolling planning process may comprise:

(a) train paths or capacity specifications for all running days during the working timetable period comprising the first running day included in the request;

(b) capacity specifications for all running days beyond the working timetable period comprising the first day included in the request for a maximum period specified in ~~point~~**section** 6 of Annex I.

Infrastructure managers shall convert capacity rights granted in the form of capacity specifications to train paths in accordance with section 6 of Annex I.

2a. Infrastructure managers and applicants may jointly decide to amend the capacity specifications granted through the rolling planning process to enable a better use of the railway infrastructure. Those amendements shall not be considered as changes to capacity rights subject to a penalty pursuant to Article 40. Other changes to capacity

rights allocated through rolling planning process shall be subject to a penalty in accordance with Article 40.

3. Without prejudice to Article 18, infrastructure managers shall allocate capacity reserved for the rolling planning ~~allocation~~ process on the basis of the ~~allocation~~**first come, first served** principle ~~set out in section 5, point 2 of Annex I~~.

~~4. In accordance with the rules and procedures set out in Article 20, infrastructure managers may refuse to allocate capacity for rolling planning requests if requests are inconsistent with the capacity supply plan adopted in accordance with Article 18. A refusal shall be communicated to the applicant without delay. The applicant shall have the right to lodge a complaint with the regulatory body.~~

~~5. Infrastructure managers shall inform the regulatory body of all capacity requests received that did not fit the parameters of the available capacity as defined in the capacity supply plan, regardless of whether they were accepted or refused. On the basis of this information the regulatory body shall issue an opinion at least every two years, which may recommend to the infrastructure manager to amend the capacity model.~~

6. The infrastructure manager, following a notification to the regulatory body, ~~or following a recommendation by the regulatory body,~~ shall refuse rolling planning requests, if they ~~are of repetitive nature and~~ meet the characteristics of capacity that is normally allocated through framework agreements in accordance with Article 31. The regulatory body shall inform the ENRRB of such ~~decisions and recommendations and the former~~**refusals and** shall ensure a coherent application of this paragraph.

Article 34

Capacity allocation through the ad hoc process

1. The infrastructure manager shall respond promptly, and in any event within the deadlines set out in section 7 of Annex I, to ad hoc requests for infrastructure capacity submitted at any time during the validity of the working timetable. Information on available spare capacity shall be made available in accordance with Article 9 to all applicants who may wish to use this capacity.

Capacity rights granted through the ad hoc process shall take the form of train paths.

2. The allocation of infrastructure capacity in response to ad hoc requests shall be based on the first come, first served principle.

Article 35

Scheduling of capacity restrictions resulting from infrastructure works

~~1. Infrastructure managers shall schedule capacity restriction resulting from~~**0a. When scheduling** infrastructure works ~~not included~~ in ~~the capacity supply plan referred to in~~ **accordance with this** Article ~~18 as soon as possible.~~**, infrastructure managers shall adhere to the schedule and requirements set out in section 3 of Annex I.**

~~2~~**0b**. When scheduling infrastructure works, infrastructure managers shall limit the impact on pre-planned capacity included in the capacity model or in the capacity supply plan to the extent possible.

~~3. If the scheduling of a~~**1. Infrastructure managers shall schedule** capacity restriction resulting from infrastructure works ~~requires a change to an allocated~~ **not included in the** capacity ~~right within the meaning of Article 39, the applicant or applicants concerned shall be entitled to the compensation~~**supply plan** referred to in Article ~~40~~**18 as soon as possible**.

4. If the scheduling of a capacity restriction resulting from infrastructure works requires a change to an allocated capacity right within the meaning of Article 39, the infrastructure manager shall do its utmost to provide the applicants concerned with alternative capacity~~.~~ **which allows the railway undertaking to operate the services concerned.**

For that purpose, the infrastructure manager shall inform all applicants concerned about the intended change to the capacity rights concerned. It shall offer to the applicants concerned alternative capacity rights or launch a coordination with the applicants concerned with a view to agreeing on alternative capacity rights.

~~5. When scheduling infrastructure works in accordance with this Article, infrastructure managers shall adhere to the schedule set out in section 3 of Annex I.~~

6. Infrastructure managers shall include ~~all~~ capacity restrictions resulting from infrastructure works**, as soon as they are scheduled** in the capacity model ~~and~~**or** in the capacity supply plan, ~~irrespective~~**regardless** of the moment when they are scheduled.

Article 36

Consensual conflict resolution mechanism and coordination of requests

1. Where in the context of simultaneous capacity allocation the infrastructure manager encounters conflicts between different requests for infrastructure capacity, it shall attempt to ensure the best possible matching of all requirements, through coordination of the requests.

2. Where a situation requiring coordination arises, the infrastructure manager shall **attempt to accommodate all requests through coordination and shall** have the right, within reasonable limits, to propose infrastructure capacity that differs from that which was requested. The infrastructure manager shall define the applicable limits in its network statement. ENIM shall provide guidelines on the definition of such limits and include them in the European framework for capacity management referred to in Article 6.

3. The infrastructure manager shall attempt, through consultation with the appropriate applicants, to resolve any conflicts. Such consultation shall be based on the disclosure of the following information within a reasonable time, free of charge and in electronic form:

   (a) train paths requested by all other applicants on the same routes;

   (b) train paths allocated on a preliminary basis to all other applicants on the same routes;

   (c) alternative train paths proposed on the relevant routes in accordance with paragraph 2;

   (d) full details of the criteria being used in the capacity-allocation process.

   Without prejudice to Article ~~27(~~3**(1a**) and subject to the agreement of all applicants, the infrastructure manager may establish contact between all applicants potentially involved in the resolution of a conflict to facilitate the coordination of requests.

4. The principles governing the coordination of **conflicting** capacity requests for domestic rail services shall be set out in the network statement.

~~5. Where requests for infrastructure capacity cannot be satisfied without coordination, the infrastructure manager shall attempt to accommodate all requests through coordination.~~

~~6. Without prejudice to the existing appeal procedures and to Article 56 of Directive 2012/34/EU, in the event of disputes relating to the allocation of infrastructure capacity, Member States shall ensure that a dispute resolution system is made available in order to resolve such disputes promptly. That system shall be set out in the network statement for capacity requests for domestic rail services. If this system is applied, a decision shall be reached within a time limit of 10 working days.~~

7. In case of **a conflict involving at least one** multi-network capacity ~~requests~~**request**, the consensual conflict resolution mechanism set out in paragraphs 1, 2 and 3 shall be performed in accordance with Article 53 and shall involve the Network Coordinator.

8. ENIM shall prepare guidelines for the consensual conflict resolution mechanism for ~~multi-network capacity requests and include them in the European framework for capacity management referred to in Article 6~~**conflicts including at least one multi-network capacity request and include them in the European framework for capacity management referred to in Article 6. Infrastructure managers shall take utmost account of those guidelines.**

Article 37

Formal conflict resolution mechanism ~~on the basis of socio-economic and environmental criteria~~

1. Where the consensual conflict resolution mechanisms referred to in Article 36 has not resolved the capacity conflict, ~~infrastructure managers shall allocate infrastructure capacity in accordance with Article 8.~~ **the infrastructure manager shall give priority to requests that are consistent with the pre-planned capacity defined in the capacity supply plan referred to in Article 18. As a result, the infrastructure manager may either accept or refuse requests that are not consistent with the capacity supply plan.**

When accepting requests not consistent with the capacity supply plan, the infrastructure manager shall aim to maintain the overall balance between the elements of the capacity supply plan listed in Section 1 of Annex I.

When refusing requests not consistent with the capacity supply plan, the infrastructure manager shall, without delay, inform the applicant concerned of its intention to refuse a request. In that case, the infrastructure manager shall make its utmost effort to provide the applicant with an alternative capacity. The applicant shall have the right to lodge a complaint with the regulatory body in accordance with Article 56(9) of Directive 2012/34/EU.

1a. Infrastructure managers shall resolve conflicts, not resolved in accordance with paragraph 1, through an equitable, transparent and non-discriminatory procedure, in accordance with the strategic guidance referred to in Article 11(3), where Member States have provided such guidance and have provided that it shall be binding.

If the application of that guidance does not allow to resolve the conflict, infrastructure managers shall resolve conflicts through an equitable, transparent and non-discriminatory procedure taking into account the procedure established by ENIM under paragraph 1b.

1b. ENIM shall prepare and adopt the procedures referred to in paragraph 1a and include them in the European framework for capacity management referred to in Article 6. The procedures shall involve the following steps:

(0) define ranges of standard values for rail services as an initial basis for assessment;

(a) design alternative scenarios to allocate the capacity available for different types of rail transport services involving, where possible, the provision of alternative capacity on other routes or alternative timing with comparable characteristics;

(b) evaluate and rank the scenarios referred to in point (a) on the basis of objective, transparent and non-discriminatory methodologies taking into account the socio-economic, operational and environmental criteria set out in paragraph 1c, and making it possible to take into account local or national circumstances based on accepted approaches and empirical evidence;

(c) select the highest ranked scenario on the basis of the evaluation referred to in point (b) and amend the capacity supply plan accordingly.

1c. The procedures established by ENIM under paragraph 1b shall assess alternative options for the use of infrastructure capacity, based on, but not limited to, the following socioeconomic, operational and environmental criteria, subject to the availability of data referred to in paragraph 1b, point (0):

(a) operating cost for operators and technical parameters of rail transport services, and the resulting impact on prices for customers of rail transport services;

(b) time-related cost for customers of rail transport services;

(c) connectivity and accessibility for people and regions served by the rail transport services, including the quality of connections and transfer times for rail passenger and freight services;

(d) environmental impact, such as emissions of greenhouse gases and noise;

(e) volume of people and freight transported;

(f) technical parameters for an efficient use of the infrastructure, such as homogeneity of traffic, train length or circulation frequencies.

2. In the context of the formal conflict resolution ~~process~~**mechanism**, requests for multi-network capacity rights shall be taken into consideration in their entirety. If, in accordance with ~~Article 8(6~~**paragraph 1b point (b**), different national parameters apply, those parameters shall be used for the respective sections.

3. In case of conflicting capacity requests involving rail services with similar characteristics and socio-economic profile, the infrastructure manager shall assign capacity ~~on the basis of an auction or~~ in a way providing access to the largest number of applicants. ~~The latter~~ **Infrastructure managers may, for that purpose, assign capacity on the basis of an auction. The** method **to assign capacity applied pursuant to this paragraph** shall be ~~applied~~ subject to **prior** approval by the regulatory body.

Article 38

Schedule for capacity allocation processes

1. **For the purposes of implementing Articles 31 to 34, t**~~T~~**he** infrastructure manager and applicants shall comply with the schedule for capacity allocation processes set out **respectively** in sections 4, 5, 6, and 7 of Annex I.

2. Infrastructure managers may decide time periods and deadlines for the schedule for capacity allocation which are different from those referred to in this Regulation and in point 2(b) of Annex VI of Directive 2012/34/EU if~~.~~**:**

   - the establishment of international train paths in cooperation with infrastructure managers of third countries on a network whose track gauge is different from the main rail network within the Union has a significant impact on the schedule for capacity allocation in general~~.~~**; or**

   - the establishment of international train paths in cooperation with infrastructure managers of other third countries has a significant impact on the schedule for capacity allocation in general, provided that this has no impact on the capacity allocation processes of other infrastructure managers of the Union that are not involved in those international train paths.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 71 to amend **the deadlines and durations set out in** sections 4, 5, 6, and 7 of Annex I ~~with a view~~**, and to adjust, within the limits of the framework laid down in Articles 31 to 34, the milestones and time periods set out therein, where those elements have proven ineffective or have led to major difficulties of implementation, taking into account the experience of infrastructure managers and of applicants, with the objectives to rationalise the capacity allocation processes,** to ensure an efficient allocation process and **to** address planning, operational, technical and commercial interests of the stakeholders concerned relating to scheduling and capacity allocation.

SECTION 4
Adaptation and rescheduling

Article 39

Changes to capacity rights after allocation

1. Infrastructure managers may change capacity rights allocated to an applicant on their own initiative only in accordance with this Regulation. Applicants may request changes to allocated capacity at all times. ~~A cancellation shall be considered a specific type of change.~~

   In the event of changes to allocated capacity rights, Article 40 shall apply. Infrastructure managers shall, without delay, update the working timetable referred to in Article 30.

2. Infrastructure managers ~~and applicants~~ shall limit changes to capacity rights after allocation to the largest extent possible, in accordance with the ~~objectives~~**principles** set out in Article 2(3). **Applicants shall also limit their request for changes to such rights after allocation to the largest extent possible.**

3. Changes to capacity rights shall include cases where the infrastructure manager cannot allow the train to run in accordance with the allocated capacity right and has sufficient time to offer the applicant an alternative capacity right after having informed the applicant of the need for the change.

3aa. A cancellation of capacity rights shall also be considered as a specific type of change.

3a. In case of changes to capacity rights, i~~I~~nfrastructure managers may ~~indicate different~~**apply shorter** deadlines for the allocation of ~~capacity~~**such** rights ~~on a single network and~~**compared to** the ~~allocation of multi-network capacity rights~~**deadlines indicated in section 8 of Annex I**. Infrastructure managers shall provide information on the time necessary to construct a train path in the network statement. ~~This time shall not be longer than the deadlines indicated in section 8 of Annex I.~~

4. The rules and procedures to be applied **by the infrastructure manager** in the event of a change to a capacity right shall take into account the impact of the change to the capacity right on the applicant in operational and commercial terms. For that purpose,

infrastructure managers shall categorise changes ~~shall be categorised~~ based on their impact ~~in accordance with~~ **and identify category of changes having a major impact, taking into account the procedures adopted by ENIM on the basis of** paragraph 8 ~~of this Article and shall give rise to different levels of compensation referred to in Article 40~~.

5. In the event of a change to a multi-network capacity right, the infrastructure managers concerned shall make all reasonable efforts to ensure the consistency between the capacity rights over the entire train run.

The infrastructure manager making a change to a multi-network capacity right shall ~~be responsible for the process to~~ coordinate the allocation of an alternative multi-network capacity right with the other infrastructure managers concerned and shall inform the applicant and all parties concerned about the outcome of the coordination. That outcome can be either the allocation of an alternative multi-network capacity right or the information that no alternative capacity right is available.

~~6. For the purpose of this Regulation, failure to use an allocated capacity right by railway undertakings shall be considered equivalent to a cancellation on the day of the train run concerned.~~

7. Where an infrastructure manager changes an allocated capacity right, it shall inform the applicant and the railway undertaking concerned without delay.

The infrastructure manager shall offer alternative capacity rights to the applicant within the deadlines set out in section 8 of Annex I. Where this is not possible, the infrastructure manager shall provide the applicant with relevant information enabling the applicant to place a new request for infrastructure capacity. Where relevant, that information shall make reference to the capacity supply plan referred to in Article 18 and the contingency planning referred to in Article 19.

8. ENIM shall prepare and adopt ~~harmonised~~**uniform** procedures to manage changes to capacity rights after allocation and include them in the European framework for capacity management referred to in Article 6.

~~These harmonised~~**Those** procedures shall **establish criteria to** differentiate between changes~~, which have a major~~ **depending on their** impact on applicants and railway undertakings in commercial and operational terms ~~and changes with minor impacts. The~~**,**

including criteria ~~to be used~~ to categorise ~~a change~~**changes** as **having a major impact**~~major shall take into account, among others, the ability of the railway undertaking to perform the service in accordance with its contractual obligations, delays at departure or changes to the route that result in increase of distance, time of travel, track access charges or other related costs, as well as thresholds for these changes. More stringent criteria shall apply to changes with major impact~~.

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 71 to amend **the durations set out in** section 8 of Annex I ~~with a view~~ to ensure efficient adaptation and rescheduling processes taking into account planning, operational, technical and commercial considerations of the stakeholders concerned. **In doing so, the Commission shall take into account the experience of infrastructure managers and of applicants.**

Article 40

~~*Compensation*~~Penalty for changes to capacity rights

1. Where the infrastructure manager or an applicant ~~do~~**does** not fulfil ~~their~~**its** commitments with respect to an allocated capacity right and where this results in a change that is categorised as major in accordance with Article 39**(4)**~~, the party initiating the change~~**, it** shall pay a ~~compensation~~**penalty** to the other party.

For the purpose of this Article, failure to use an allocated capacity right by railway undertakings shall be considered equivalent to a cancellation after the time of departure of the train concerned.

2. The ~~compensation~~**penalty** referred to in paragraph 1 shall not be due in cases of force majeure. **In the case of multi-network capacity rights, a cancellation due to force majeure on one network shall be considered as a cancellation due to force majeure for the capacity rights along the entire route covered by it.**

2a. Where an infrastructure manager, in accordance with Articles 10 and 35, plans and schedules a capacity restriction falling within the scope of section 3 of Annex I and complies with the schedule and requirements set out therein, the penalty referred to in paragraph 1 shall not be due.

2b. Where an infrastructure manager withdraws capacity rights in accordance with measures taken by Member States in accordance with Article 10a, the penalty referred to in paragraph 1 shall not be due.

3. Infrastructure managers shall include in their network statement conditions giving rise to a penalty taking into account the guidelines adopted by ENIM pursuant to the second subparagraph of this paragraph.

~~3.~~ Following a consultation of the **applicants and the** ENRRB, ENIM ~~shall define harmonised conditions giving rise to compensation. Those~~**may adopt guidelines for the definition of uniform** conditions ~~shall take~~**giving rise to a penalty taking** into account the rules **and procedures** set out ~~in~~**under** Article 39(4) and (8). ENIM shall include these ~~conditions~~**guidelines** in the European framework for capacity management referred to in Article 6. The ENRRB shall publish an opinion on ~~the conditions~~**those guidelines** defined by ENIM.

4. Following the approval of the regulatory body, the infrastructure managers shall set out in the network statement the levels of ~~compensation~~**penalty** to be paid by the applicants.

Following a proposal by the infrastructure manager and after consulting applicants ~~and potential applicants~~, the regulatory body shall set the levels of ~~compensation~~**penalty** to be paid by the infrastructure manager. The infrastructure manager shall publish that information in the network statement.

The levels of ~~compensation~~**penalty** shall be such that they provide effective incentives for the infrastructure manager and for applicants to respect the planned use of capacity and minimise disturbances. These levels shall be proportionate and non-discriminatory.

~~Infrastructure managers and regulatory bodies may set different levels of compensation depending on the impact of the change and whether the capacity can be re-allocated and used by another applicant.~~ Those levels shall, in particular, take into account the rules **and procedures set out under** ~~in~~ Article 39(4) and (8)~~, the time left after the change was requested or took place until the time of the train run and the rate of utilisation of the rail infrastructure included in the capacity right~~.

The level of the penalties shall be modulated up to twice the level of track access charges on the basis of at least the following criteria:

(a) impact of the change to capacity rights,

(b) the timing of the notification of the change provided by the party initiating the change to the other party,

(c) where the change is caused by the infrastructure manager, the quality of the alternative capacity provided in terms of routing, timing, technical characteristics and other relevant aspects, when alternative capacity exists, or

(d) where the change is caused by the applicant, whether the capacity can be re-allocated and used by another applicant.

For the purposes of applying the fifth subparagraph of this paragraph, a Member State may define modulation scales. Those scales shall comply with the conditions laid down in the third subparagraph of this paragraph. Member States shall endeavour to coordinate between themselves in accordance with Article 53a.

5. ~~In the case of~~**A** multi-network capacity ~~rights, the~~ **right shall be considered as a single capacity right. The** obligation to pay the ~~compensation~~**penalty** to the applicant shall apply to the infrastructure manager or managers which is or are responsible for the change to the capacity right, taking into account the capacity right in its entirety and, where more than one infrastructure manager is responsible, the ratio of the length of their networks in the capacity right. The ~~compensation~~**penalty** for the entirety of the capacity right shall not exceed the ~~compensation~~**penalty** due for the capacity right allocated by the ~~infrastructure~~**infratructure** manager multiplied by ~~three~~**two**.

6. ~~Regulatory~~**The regulatory** bodies **concerned** shall decide on disputes related to the reason for the change to a capacity right or ~~delayed compensation~~**related to delays in the payment of a penalty** and shall take a decision without delay and within ~~one month~~**six weeks** of collecting all the necessary information to assess the cause of the change. Regulatory bodies shall inform and may consult the ENRRB on such decisions. ~~The~~ **When consulted, the** ENRRB shall **advise Regulatory bodies with the aim to** ensure that such decisions are coherent and based on commonly recognized principles.

In the case of multi-network capacity rights an applicant shall have the right to appeal to the regulatory body responsible for the infrastructure manager acting as

the single point of contact according to Article 28. The regulatory body responsible shall inform the other relevant regulatory bodies and the ENRRB.

7. **Without prejudice to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 ('COTIF'), in particular to Appendix E to that Convention, where applicable, and to the right to appeal under national and EU law any decision taken pursuant to this Article, the payment of a penalty by the party initiating the change to capacity rights in accordance with this Article exhausts for the other party other financial claims related to the same change.**

Article 40a

Implementing acts relating to the changes to capacity rights and penalty

If ENIM fails to adopt the procedures referred to in Article 39(8) or the conditions referred to in Article 40(3) [within 24 months from the date of application referred to in the introductory part of Article 77(2)] or if those procedures and conditions do not allow for a uniform implementation of Article 39 or of Article 40 either for reasons linked to the content of those procedures and conditions or for reasons due to a lack of implementation by infrastructure managers, t~~T~~he Commission may adopt implementing acts setting out the ~~conditions giving rise to the payment of compensations, the~~ categorisation of changes to capacity rights and the ~~methodologies~~**conditions giving rise** to ~~set~~ the ~~levels~~**payment** of ~~compensation~~**penalties**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 72(3).

Article 41

Rescheduling in the context of disruption management and crisis management

1. In the event of a network disruption as referred to in Article 46 or of a crisis situation as referred to in Article 47, the infrastructure manager or managers concerned shall make all possible efforts to reschedule traffic affected by the disruption. For that purpose, infrastructure managers shall allocate rail infrastructure capacity ~~in accordance with the European framework for the cross-border coordination of traffic management, disruption management and crisis management referred to in Article 44~~**taking into account the guidelines referred to in paragraph 2**, on the basis of the contingency plans prepared in accordance with Article 19 and in close coordination with operational stakeholders and, where relevant, other stakeholders concerned.

2. ENIM shall develop and adopt guidelines for managing and allocating infrastructure capacity in the event of a network disruption in a transparent and non-discriminatory way. In particular, ENIM shall provide guidelines on the application of the ~~simultaneous capacity allocation process~~**disruption management** and the first come, first served principle.

   ~~Where the simultaneous allocation process~~ **When disruption management** applies, ENIM shall provide guidelines on the procedures to **be** applied, involving as appropriate the application of the consensual conflict resolution ~~process~~**mechanism** referred to in Article 36 and of the formal conflict resolution ~~process~~**mechanism** referred to in Article 37. ENIM shall include those guidelines in the European framework for ~~capacity~~**the cross-border coordination of traffic management, disruption management and crisis** management referred to in Article ~~6~~**44**.

3. When rescheduling, infrastructure managers shall **do its utmost** not **to** unilaterally change or cancel existing capacity rights for the purpose of managing disruptions. ~~However, based on the experience of regulatory bodies, infrastructure managers and railway undertakings and on activities of ENIM and the ENRRB~~

4. Infrastructure managers and applicants may define measures providing for a replacement of certain capacity rights in the event of a network disruption. Such measures shall be mentioned in the contingency plan referred to in Article 19.

5. In the case of a network disruption affecting traffic on more than one network, the infrastructure managers concerned shall coordinate the allocation of alternative capacity in accordance with Article 53 and taking into account the European framework for the cross-border coordination of traffic management, disruption management and crisis management referred to in Article 44.

6. If ENIM fails to adopt the guidelines for managing and allocating infrastructure capacity in the event of a network disruption *[within 24 months from the date of application referred to in the introductory part of Article 77(2)]* or if those guidelines do not allow for a uniform implementation of this Article either for reasons linked to the content of those guidelines and conditions or for reasons due to a lack of implementation by infrastructure managers, the Commission may adopt an implementing act setting out the criteria and procedures for rescheduling, including unilateral changes to allocated capacity rights by infrastructure managers for the purpose of managing network disruptions. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 72(3).

~~4. Infrastructure managers and applicants may conclude, on a voluntary basis, agreements providing for a replacement of certain capacity rights in the event of a network disruption. Such agreements shall be mentioned in the contingency plan referred to in Article 19.~~

~~5. In the case of a network disruption affecting traffic on more than one network, the infrastructure managers concerned shall coordinate the allocation of alternative capacity in accordance with Article 53 and with the European framework for the cross-border coordination of traffic management, disruption management and crisis management referred to in Article 44.~~

CHAPTER III
TRAFFIC, DISRUPTION AND CRISIS MANAGEMENT

Article 42

Traffic management, disruption management and crisis management

1. Infrastructure managers shall perform traffic management in accordance with this Regulation and Directive (EU) 2016/797 and the specifications laid down in implementing acts adopted under that Directive.

   For that purpose, infrastructure managers shall perform:

   (a) traffic management during normal operating conditions involving the management of incidents resulting in limited deviations from the working timetable;

   (b) disruption management to address significant disturbances to network operations requiring concerted action in accordance with Article 46;

   (c) traffic management during crisis situations as set out in Article 47.

~~2. In the event of large-scale crisis situations, both within and beyond the transport sector, Member States may implement measures derogating from the rules applicable in normal situations in accordance with Article 47. In such cases and where relevant, infrastructure managers shall adopt and apply special rules and procedures, subject to the conditions specified in Article 47.~~

3. When managing traffic, infrastructure managers shall adhere to the principles set out in Article 2.

   In particular, infrastructure managers shall minimise disturbances and their impact on rail traffic and shall:

   (a) ensure a fast and coordinated reaction to disturbances, in particular in the event of network disruptions and crisis situations;

   (b) stabilise and optimise rail traffic during the entire duration of network disruptions and crises;

(c) provide relevant, accurate and up-to-date information to operational stakeholders and to other concerned parties, in particular authorities in charge of managing crisis situations outside the rail sector. This information shall be provided by the appropriate means, including those referred to in Article 62.

Article 43

Rules and procedures for traffic management and disruption management

1. Infrastructure managers shall put in place rules and procedures to manage deviations of train movements from the working timetable. Those rules and procedures shall be published in the network statement referred to in Article 27 of Directive 2012/34/EU and shall cover traffic management in the situations set out in Article 42(1), points (a), (b) and (c) of this Regulation.

2. The rules and procedures referred to in paragraph 1 shall aim at minimising the overall impact of deviations from the timetable on **all types of** rail traffic, taking into account the needs of all types of transport. The ~~principles~~**rules and procedures** may involve priority rules for the management between the different types of traffic and the specific procedures, criteria and targets to be applied in an optimisation-based approach that relies on the optimisation of a target function, such as the minimization of the delay minutes or of the time to return to normal operations, rather than explicit priority rules.

3. In the event of a disruption to train movements caused by technical failure or accident, the infrastructure manager shall take all necessary steps to restore the situation to normal. To that end, it shall implement ~~a~~**the** contingency plan **developed** in accordance with Article 19. In the event of a disturbance which has a potential impact on cross-border traffic, the infrastructure managers concerned shall cooperate with each other to restore the cross-border traffic to normal in accordance with the European framework for the coordination of traffic, disruption and crisis management referred to in Article 44.

4. When setting out the rules and procedures referred to in paragraph 1, infrastructure managers shall take the utmost account of the European framework for the coordination of traffic, disruption and crisis management referred to in Article 44. ~~They shall explain in the~~

~~network statement the reason for any deviation from the common rules and procedures established in the European framework for the coordination of traffic, disruption and crisis management.~~

5. In cases of *force majeure,* and, where absolutely necessary, on account of an incident making the infrastructure temporarily unusable, allocated capacity rights may be withdrawn without warning for as long as is necessary to repair the system.

The infrastructure manager may, if it deems this necessary, require railway undertakings to make available to it the resources which it considers are the most appropriate to restore the situation to normal as soon as possible.

~~6. Member States may require railway undertakings to be involved in assuring the enforcement and monitoring of their own compliance with the safety standards and rules.~~

Article 44

European framework for the coordination of cross-border traffic management, disruption management and crisis management

1. **By [24 months of the entry into force of this Regulation],** ENIM shall develop and adopt a **'**European framework for the coordination of cross border traffic~~, traffic~~ **management,** disruption **management** and crisis ~~management~~**management'** in accordance with **the principles referred to in** Article 42~~ at the latest by [12 months after the entry into force of this Regulation].~~**, laying down guidelines for the coordination between infrastructure managers, railway undertakings and other operational stakeholders. Infrastructure managers shall strive to follow those guidelines for the coordination of cross border traffic management, disruption management and crisis management. They shall explain, in the network statement, the reasons for any deviation from those guidelines.**

1a. ENIM shall develop the European framework for the coordination of cross-border traffic management, disruption management and crisis management in cooperation with operational stakeholders and interested parties through the consultation process referred to in Article 54, taking into account the work of the Europe's Rail Joint Undertaking established ~~in Title IV~~**under Article 3(1), point (d),** of Regulation (EU ~~2012~~**2021**/2085~~.~~**).**

~~2.~~ **1b. ENIM shall submit a draft for t**~~T~~he European framework for the coordination of cross-border traffic management, disruption management and crisis management ~~shall provide guidelines for the coordination between infrastructure managers, railway undertakings and other operational stakeholders~~**to the ENRRB within 18 months after the entry into force of this Regulation. The ENRRB shall submit a recommendation to ENIM on the European framework for the coordination of cross-border traffic management, disruption management and crisis management, within 4 months after receiving the draft prepared by ENIM. ENIM shall take the utmost account of this recommandation when adopting the European framework for the coordination of cross-border traffic management, disruption management and crisis management**.

3. ~~In particular, t~~**T**he European framework for the coordination of cross-border traffic management, disruption management and crisis management shall comprise **at least** the elements listed in Annex V **and shall be updated when necessary to take into account the experience of infrastructure managers, railway undertakings and other applicants and based on the activities of ENIM. When updating the European framework for the coordination of cross-border traffic management, disruption management and crisis management, ENIM shall submit a draft to the ENRRB for recommendation**.

Article 45

Coordination of cross-border traffic management, disruption management and crisis management

Infrastructure managers shall coordinate traffic management in accordance with Article 53 ~~and on~~**. When doing so, they shall take** the ~~basis~~**utmost account** of the European framework for the ~~cross-border~~ coordination of **cross-border** traffic management, disruption management and crisis management referred to in Article 44.

Coordination shall ensure in particular:

(a) that international rail services operate with minimum disruptions both under regular operations and in disturbed situations;

(b) that the specific challenges related to cross-border sections resulting, inter alia, from limited interoperability in terms of infrastructure, technical equipment and operations,

language and training requirements related to staff, administrative or border formalities are properly taken into account;

(c) an efficient exchange of up-to-date and relevant information between infrastructure managers, applicants~~, railway undertakings~~ and other operational stakeholders, as well as any EU-level relevant crisis management governance structures as appropriate, including in accordance with Article 62.

Article 46

Network disruptions

1. Where an incident results or is likely to result in restrictions to network operations, which require concerted action by operational stakeholders to ensure the best possible management of traffic during the restrictions, the affected infrastructure managers shall assess the likely duration and impact of the incident on the basis of all available information and previous experience**, taking utmost account of the common method referred to in paragraph 5a**.

   If the estimated duration and impact meet the criteria for the declaration of network disruptions as set out in Annex VI, the infrastructure managers concerned shall declare a network disruption and implement the measures laid down in Article 43.

2. Where the ~~incident~~**network disruption** has, or is likely to have, impacts on more than one network, the **manager of the** infrastructure ~~manager where~~**on which** the ~~incident~~**network disruption** took place shall declare a multi-network disruption and coordinate actions in accordance with Articles ~~44, 45 and 53~~**45 and 53, while taking the utmost account of the European framework for the coordination of cross-border traffic management, disruption management and crisis management referred to in Article 44**.

~~3. ENIM shall define a harmonised method to estimate the likely duration and impact of network disruptions and include it in the European framework for the coordination of traffic and crisis management referred to in Article 44.~~

2a. Where the network disruption has impacts on a line part of a European Transport Corridor, and is resulting in a partial or a total interruption of services for more than 15 days, the infrastructure manager shall provide an incident report to the Nework

Coordinator as soon as possible after the declaration of the disruption made pursuant to paragraph 1 or 2, and provide an update every 30 days during the entire duration of the disruption.

The Network Coordinator shall submit this report to ENIM and the relevant European Coordinators and, upon request, to the applicants concerned.

4. The infrastructure manager shall inform, as soon as possible, interested parties about the unavailability of infrastructure capacity~~, in particular due to an incident~~.

The regulatory body may require the infrastructure manager to make such information available to it, if it deems it necessary.

5. The Network Coordinator shall collect information on network disruptions, analyse the response, draw conclusions on the effectiveness of the management of such incidents~~ and~~**,** consult operational stakeholders~~-~~**, taking into account the guidelines adopted by ENIM** in accordance with Article 54**(1),** and report to ENIM~~ and the Performance Review Body~~.

~~6. The Commission shall be empowered to adopt delegated acts in accordance with Article 71 to amend Annex VI with a view to ensure an effective and efficient management of network disruptions, taking into account planning, operational, technical and commercial considerations of the stakeholders concerned.~~

ENIM shall take into account the conclusions of the Network Coordinator on network disruptions when updating the European framework for the coordination of cross-border traffic management, disruption management and crisis management referred to in Article 44.

5a. ENIM shall define a common method to estimate the likely duration and impact of network disruptions on traffic, define the minimum content of the incident report and provide a template for the incident report. ENIM shall include that method, that minimum content and that template in the European framework for the coordination of cross-border traffic management, disruption management and crisis management referred to in Article 44. Infrastructure managers shall take utmost account of that common method, that minimum content and that template.

Article 47

Crisis situations

1. **Without prejudice to Article 1(5), i**~~I~~n cases of crises **or imminent risk of a crisis occuring** related to public safety, health epidemics, natural disasters, ~~environmental~~**environment**, defence ~~and~~**or** security~~ crises,~~ that have or are expected to have a critical effect on the supply or demand of rail transport services, Member States shall be allowed to apply emergency measures that include, by way of derogation from the rules of this Regulation:

   (a) the cancellation of capacity rights without ~~compensation~~**penalty in accordance with Article 40**;

   (b) alternative principles, rules and procedures for capacity management~~, in particular for the allocation of scarce infrastructure capacity~~;

   (c) alternative procedures for traffic management;

   (d) the use of alternative routes;

   (e) the amendment of capacity supply plans.

   The Member State concerned shall ensure that the emergency measures follow to the extent possible the principles on capacity and traffic management set out in this Regulation and that they make use of existing **contigency** plans prepared in accordance with Article 19. ~~They~~**It** shall coordinate such emergency measures with other Member States **in accordance with Article 53a**.

   The content and the duration of emergency measures shall be limited to what is strictly necessary to address the crisis situation in question.

2. The Member State concerned shall inform the Commission and ENIM without delay of its decision to apply emergency measures**, and of the repeal of such measures,** and shall provide a justification and a description of those measures and the expected duration of their application. ~~If applicable~~**Where [Regulation establishing a framework of measures on the emergency and resilience of the internal market] applies**, the Member ~~States~~**State concerned** shall also notify the ~~Commission and the~~ central liaison ~~offices as~~

~~foreseen under~~**office designated by that Member State pursuant to** Article ~~8~~**[5]** of ~~the~~ ~~[~~**that** Regulation ~~on a Single Market Emergency Instrument]~~.**of the measures adopted pursuant to this Article.**

3. ~~The infrastructure manager shall appoint a focal point~~**Focal points appointed** in ~~the meaning of~~**accordance with** Article 60~~, which~~ shall provide information to the Commission, ENIM, other infrastructure managers and other interested parties about the emergency measures and shall help coordinate such measures.

4. Where emergency measures have a significant impact on cross-border traffic, infrastructure managers shall coordinate between themselves in accordance with ~~Articles 53 and 54~~ .**Article 53, while taking into account the guidelines adopted by ENIM in accordance with Article 54(1).** When performing coordination through dedicated coordination structures in accordance with Article 53, paragraph 2, point (a), the Commission and the Member States concerned shall be involved.

5. **Where emergency measures have a significant impact on cross-border traffic and a**~~A~~t the request of the Commission, regulatory bodies and the ENRRB shall provide their opinion on the emergency measures to the Commission within the deadline set by the latter. ~~The Commission may adopt decisions requiring a Member State to repeal the emergency measures, if they are deemed not to be necessary.~~

6. Member States shall provide updated information where necessary or upon the request of the Commission. Member States shall provide all the information required by the Commission about the emergency measures within the deadlines set by the latter.

7. Public authorities in charge of managing crisis situations, including the military, civil protection agencies, and others, may organise exercises simulating crisis situations falling within the scope of this Article. In such cases, the infrastructure manager shall allocate capacity as needed, including the cancellation of allocated capacity rights if necessary. The public authorities concerned shall ~~compensate the applicants concerned~~**be subject to a penalty for changes to capacity rights. The rules set out** in ~~accordance with~~ Article 40 **shall apply mutatis mutandis to such penalty**.

Article 48

Exchange of information on traffic management

1. All operational stakeholders directly involved in the operation of a rail transport service shall have the right of access to the information concerning this rail transport service set out in Annex VIII.

   The parties concerned may only use this information for the purposes of this Regulation and for the purposes of Directive (EU) 2016/797 and implementing acts adopted under that Directive, unless specified otherwise in contractual agreements.

2. The information shall be made accessible in accordance with Article 62.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 71 to amend Annex VIII with a view to ensure that it reflects any changes to the technical specifications for interoperability laid down in the relevant implementing acts that are adopted in accordance with Directive (EU) 2016/797 and taking into account planning, operational, technical and commercial considerations of the stakeholders concerned.

CHAPTER IV
PERFORMANCE REVIEW

Article 49

General principles for performance review

1. In accordance with Article 7f, point (d) of Directive 2012/34/EU, ENIM shall monitor and benchmark performance of rail infrastructure services **provided by infrastructure managers,** taking into account the general ~~objectives~~**principles** set out in Article 2 of this Regulation. ~~Rail infrastructure managers~~**ENIM** shall ~~also monitor~~**cooperate with** the ~~performance of rail transport services~~**European Coordinators and ENRRB for that purpose**.

2. ~~For this purpose, infrastructure~~**Infrastructure** managers shall set out their own performance targets ~~in the~~**defined in accordance with Article 50(2)(c) in the business**

plan referred to in Article 8(3) of Directive 2012/34/EU, taking into account any ~~objectives~~**targets** set out in the contractual agreements referred to in Article 30**(2)** of that Directive. ~~They~~**These targets shall include the target values set out in [Article 19(1), points (a) and (b) of new TEN-T Regulation].**

Infrastructure managers shall put in place and perform procedures to monitor and report on progress towards the achievement of the targets, to identify the causes of performance deficiencies with operational stakeholders and to design and implement remedial measures to improve performance. These procedures shall take into account the European framework for performance review referred to in Article 50 of this Regulation. ~~Infrastructure managers shall explain in the network statement the reason for any deviation from the common procedures established in the European framework for performance review.~~

~~3. ENIM shall cooperate with the European Coordinators on performance reviews in accordance with the operational requirements for the European Transport Corridors set out in Article 18 of [new TEN-T Regulation].~~

3. Where related to their own performance targets, infrastructure managers shall also monitor the performance of rail transport services.

Article 50

European framework for performance review

1. ~~ENIM shall set up and implement by [12~~**By [24** months ~~after~~**of** the entry into force of this Regulation~~]~~**], ENIM shall develop and adopt** a **‘**European framework for the review of ~~performance.~~**performance’, after consulting the operational stakeholders, laying down common principles and procedures.** This framework shall take into account in particular the principles defined in Article 2(3)~~, Article 8(4),~~ **and** Article 42(3) and the operational ~~requirements, the performance objectives and target values~~**priorities** set out in [Article ~~18~~**19** of the new TEN-T Regulation~~].~~**], and the implementing acts adopted under Article 15 (6) of Directive 2012/34/EU. Infrastructure managers shall strive to follow those common principles and procedures. They shall explain, in the network statement, the reason for any deviation from the common principles and procedures established in the European framework for performance review.**

1a. ENIM shall submit a draft for the European framework for the review of performance to the ENRRB within 18 months after the entry into force of this Regulation. The ENRRB shall submit a recommendation to ENIM on the European framework for performance, within 4 months after receiving the draft prepared by ENIM. ENIM shall take the utmost account of this recommendation when adopting the European framework for performance review.

2. The European framework shall cover **at least** the performance areas set out in Annex VII. In particular, it shall include:

(a) a list of priority performance issues to be addressed in the performance areas set out in Annex VII;

(b) performance indicators allowing to monitor progress on the performance issues, including methodology and data requirements to calculate such indicators;

(c) criteria and procedures to define performance ~~objectives~~**targets** at the level of infrastructure managers;

(d) procedures to monitor and review the elements in points (a) to (c) as well as the implementation of corrective measures and the achievement of the performance ~~objectives referred to in paragraph 4.~~**targets.**

3. On the basis of paragraph 2, point (d), ENIM shall regularly review the European framework for performance review and ~~the results of~~ its implementation **by infrastructure managers** and ~~shall propose~~**, when** appropriate ~~changes to~~**, update** the framework**. When updating the European framework for performance review, ENIM shall submit a draft to the ENRRB for recommendation**.

~~4. Infrastructure managers shall take the utmost account of the European framework for performance review when fulfilling their functions. In particular, infrastructure managers shall include the objectives defined in accordance with paragraph 2 point (c) of this Article in the business plan referred to in Article 8(3) of Directive 2012/34/EU. These objectives shall include the target values set out in [Article 18(1), points (a) and (b) of new TEN-T Regulation].~~

5. The Commission may adopt implementing acts, setting out detailed rules on the elements in paragraph 2, points (b) to (d), in accordance with the ~~advisory~~**examination** procedure referred to in Article 72(~~2). In doing so~~**3). When preparing draft implementing acts**, the Commission shall take into account the work done by ENIM in accordance with paragraph 3~~ and any recommendations~~**, as well as the self-standing section** of the **European** performance review ~~body.~~**report referred to in Article 51(2).**

Article 51

European performance review report

1. Without prejudice to Article 15 of Directive 2012/34/EU and ~~Article 3 of Commission Implementing Regulation (EU) 2015/1100[23]~~**of the implementing acts adopted on the basis thereof**, ENIM shall prepare and publish by [~~24~~**30** months after the entry into force of this Regulation] a European performance review report on the basis of the European framework for performance review referred to in Article 50 of this Regulation**. ENIM shall prepare** and publish ~~it~~**an update of the report** every year.

2. ~~The Performance Review Body~~**ENRRB** shall prepare a self-standing section of the report providing its assessment of the performance of rail infrastructure services and rail transport services, recommendations on performance issues to be addressed with priority and recommendations on measures to improve performance. **ENIM shall include that section in the report referred to in paragraph 1.**

3. The **European** performance review report shall cover at least the lines included in the European Transport Corridors ~~referred to in Regulation [new TEN-T Regulation]~~ and shall include the information ~~required by~~ **referred to in** [Article ~~53~~**54**(3)(g)] ~~thereof.~~**of the [new TEN-T Regulation].** The information presented shall be sufficiently detailed in terms of geographical scope and~~ should~~ cover a sufficiently long period of time to allow for meaningful interpretations.

~~[23] Commission Implementing Regulation (EU) 2015/1100 of 7 July 2015 on the reporting obligations of the Member States in the framework of rail market monitoring (OJ L 181, 9.7.2015, p. 1).~~

4. The **European** performance review report shall include a dedicated section on the performance of coordination between infrastructure managers in accordance with Article 53 and on the consultation mechanism referred to in Article 54 of this Regulation.

~~*Article 52*~~

~~***Performance Review Body***~~

~~1. In accordance with the procedure referred to in Article 73(3), the Commission may set up or designate an impartial and competent body to act as a Performance Review Body.~~

~~2. The Performance Review Body shall provide advice to the Commission and the European Coordinators on matters related to the performance of rail infrastructure services and rail transport services, on request by the Commission or the European Coordinators.~~

~~3. The Performance Review Body shall perform the following tasks:~~

~~(a) providing recommendations to ENIM as regards the establishment and review of the European framework for performance review referred to in Article 50, including on performance areas, performance issues to be addressed under each of the performance areas, harmonisation of methodologies, processes, criteria and definitions for the collection and analysis of data related to performance and performance indicators;~~

~~(b) providing recommendations to ENIM, the ENRRB, infrastructure managers, applicants, regulatory bodies, Member State authorities, and, where relevant, other stakeholders for corrective measures, on capacity management, traffic management, disruption management and crisis management;~~

~~(c) reviewing the results of the draft European performance report and, preparing the self-standing section referred to in Article 51(2);~~

~~(d) providing opinions and recommendations relating to the performance of rail infrastructure services in relation to the indicative rail infrastructure development strategy referred to in Article 8(1), the business plan referred to in Article 8(3), the contractual agreements referred to in Article 30(2) and the performance scheme referred to in Article 35 of Directive 2012/34/EU.~~

~~(e) providing advice to the European Coordinators on matters related to the performance of rail infrastructure services and rail transport services.~~

~~4. The addressees of opinions and recommendations referred to in paragraph 3 shall provide responses to the Performance Review Body within the deadlines set by the latter.~~

~~5. ENIM, the Network Coordinator, infrastructure managers, regulatory bodies, the ENRRB and, where relevant, other stakeholders shall cooperate with the performance review body, in particular by providing information related to performance on their own initiative or upon the body's request and make the utmost effort to take into account its recommendations in their work on rail performance management.~~

~~6. The performance review body shall respect the confidentiality of business secrets when handling information provided by relevant stakeholders or the Commission.~~

CHAPTER V
EUROPEAN NETWORK FOR COORDINATION

Article 53

Coordination between infrastructure managers

1. When reference is made to this Article, infrastructure managers shall coordinate between themselves and with other relevant stakeholders **at least** in relation to the responsibilities and tasks entrusted to them in this Regulation.

~~2. Infrastructure managers shall coordinate at least on the issues set out in Annex IX and shall comply with the specific coordination requirements set out in the Articles referenced therein.~~

2. Infrastructure managers shall in particular:

(a) establish organisational structures, procedures and tools, as appropriate, including the digital tools referred to in Article 62;

(b) coordinate at the most appropriate geographical level, **including at the level of the European Transport Corridors,** involving the entities which are best placed to achieve effective and efficient outcomes, in line with the principle of subsidiarity;

(c) cooperate with other infrastructure managers through the designated focal points referred to in Article 60;

(d) involve ENIM or the Network Coordinator, as appropriate, on matters having Union relevance.~~Coordination between infrastructure managers may be implemented at more than one level, in particular for matters where coordination is required both at Union level and within a more specific geographical scope~~**;**

(e) appoint a leading entity, whenever coordination activities involve multiple actors, which shall report to ENIM and shall be responsible for organising consultation activities~~ in accordance with Article 54~~;

(f) refer to ENIM cases where agreed outcomes cannot be reached;

(g) review the performance of coordination activities in accordance with Chapter IV.

Coordination between infrastructure managers may be implemented at more than one level, in particular for matters where coordination is required both at Union level and within a more specific geographical scope.

Where ENIM or the Network Coordinator are involved in the coordination between the infrastructure managers, they shall ensure that cross-border aspects are well taken into account.

~~3. Coordination shall cover all lines and nodes which are part of the the European Transport Corridors set out in Article 7 of and Annex III to [new TEN-T Regulation].~~

~~Infrastructure managers may extend coordination to additional lines subject to an agreement between all infrastructure managers concerned.~~

~~4. Coordination between infrastructure managers relating to the allocation of multi-network capacity rights in accordance with Article 29 shall cover the entire networks of the infrastructure managers which are members of ENIM.~~

~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 71 to amend Annex IX with a view to ensure an efficient coordination between infrastructure managers, taking into account planning, operational and commercial considerations of all stakeholders concerned, and in the light of experience gained in the implementation of this Regulation.~~

Article 53a

Coordination between Member States

1. When reference is made to this Article, or for the purpose of promoting cross-border traffic by addressing issues on capacity, Member States shall coordinate between themselves. They shall in particular define, where necessary, procedures and timings for their coordination.

2. For the purposes of paragraph 1, Member States shall in particular:

(a) coordinate at the most appropriate geographical level and, to the extent possible, in the context of existing fora, to achieve effective and efficient outcomes, in line with the principle of subsidiarity, in particular at the level of European Transport Corridors;

(b) involve the European Coordinators, as appropriate, and in particular when making progress on the operational priorities set out in Article 19 of [new TEN-T Regulation];

(c) invite the European Commission for matters where coordination is required at Union level or where otherwise relevant.

Article 54

Consultation mechanism for European and cross-border matters

0. Infrastructure managers shall ~~1. ENIM shall prepare, adopt and implement guidelines to~~ ensure **an** appropriate and regular consultation of interested parties **on European and cross-border matters. For this purpose, they shall take into account the guidelines developed by ENIM referred to in paragraph 1.**

1. ENIM shall prepare, adopt and implement guidelines with the purpose of ensuring appropriate and regular consultation of interested parties regarding European and cross-border matters and include them in the European framework for capacity management referred to in Article 6, the European framework for the cross-border coordination of traffic management, disruption management and crisis management referred to in Article 44 and the European framework for performance review referred to in Article 50. ~~The process~~**Those guidelines** shall be developed and implemented with the support of the Network Coordinator and with the involvement of the ~~designated~~ focal points ~~of~~**designated by** infrastructure managers ~~referred to in~~**under** Article 60.

2. Where ENIM adopts an opinion or a recommendation likely to have ~~an~~**a substantial** impact on ~~railway undertakings, other~~ applicants, other operational stakeholders and interested parties, it shall publish a draft for the consultation of concerned parties. The concerned parties shall be given ~~an appropriate amount of time~~**at least two weeks** to

provide feedback on the draft ~~decision.~~**opinion or recommendation.** Member State authorities shall be involved ~~when required~~**where necessary**.

3. ENIM shall take account of the feedback provided by concerned parties **when preparing the guidelines referred to** in ~~accordance with~~ paragraph ~~2~~**1 and** when adopting the final opinion or recommendation **referred to in paragraph 2**. Where ENIM fails to take into account significant elements of the feedback provided, it shall provide the reasons ~~for doing so~~**thereof**.

Article 55

Organisation of the European Network of Infrastructure Managers

1. For the purposes of this Regulation, the European Network of Infrastructure Managers **(ENIM)** referred to in Article 7f of Directive 2012/34/EU shall be organised in accordance with this ~~article~~**Article**.

2. All ~~rail~~ infrastructure managers, which are responsible for lines that form part of the core and extended core TEN-T network~~, referred to in [Article 6 of and Annex I to new TEN-T Regulation],~~ shall be members of ENIM. They shall appoint a representative and an alternate.

3. ~~Rail infrastructure~~**Infrastructure** managers, which ~~do~~**are** not ~~meet~~**responsible for** the ~~criterion defined~~ **lines referred to** in paragraph 2 **and are thus not members of ENIM,** may ~~appoint a non-member representative to~~ participate in the deliberations of ENIM~~.~~ **without voting rights. They may submit statements for consideration by ENIM.**

3a. Infrastructure managers responsible for lines that form part of the core and extended core TEN-T network of States which are members of the European Free Trade Association (EFTA) and of South East European Parties to the Treaty establishing the Transport Community signed by the Union in accordance with Council Decision (EU) 2017/1937 shall have the right to become members, without voting rights, of ENIM provided that those States or parties apply this Regulation pursuant to an international agreement concluded with the Union and in accordance with the conditions set out under such agreement.

ENIM shall conclude working arrangements defining the details of the participation of the infrastructure managers concerned.

3b. Without prejudice to paragraph 3a, ENIM may, on an ad hoc basis, invite infrastructure managers from third countries to participate in its meetings as observers, without voting rights.

3c. The members of ENIM shall provide ENIM with the necessary resources to perform its tasks.

4. ~~Following the consultation of and the approval by~~**After consulting** the Commission, ENIM shall adopt and publish its rules of procedure. It shall organise its activities in accordance with ~~the~~**those** rules of procedure.

5. ENIM shall take its decisions by a ~~simple~~ majority **of two-thirds of its members**, unless otherwise provided for in the rules of procedure. All members from one Member State shall together have one vote. In the absence of a member **representative**, the alternate shall be entitled to exercise the right to vote.

6. ENIM shall meet at regular intervals. It shall elect a Chair from among its members ~~with a two-thirds majority of its members~~**in accordance with the voting procedure referred to in paragraph 5**.

7. The Commission shall be a non-voting member of ENIM. It shall support the work of ENIM and facilitate coordination **among ENIM members**.

8. ENIM shall define its work programme. The work programme shall cover at least a period of two years~~.~~ **and five years at most.** ENIM shall consult applicants and other operational stakeholders ~~through~~**, following** the ~~consultation mechanism~~**guidelines** referred to in Article 54**,** on the draft work programme~~. In addition, it shall consult the European~~**, as well as the** Commission, the European Union Agency for Railways ~~and~~**,** the Europe's Rail Joint Undertaking and, as appropriate, other stakeholders**.**

Article 56

Responsibilities of ENIM

1. In addition to the tasks laid down in Article 7f of Directive 2012/34/EU, ENIM shall be responsible for all tasks assigned to it in this Regulation. **Those tasks may not be delegated.** It shall, in particular:

(a) adopt the European framework for capacity management referred to in Article 6;

(b) adopt the European framework for the coordination of **cross-border** traffic **management, disruption management** and crisis management referred to in Article 44;

(c) adopt the European framework for performance review, referred to in Article 50;

(ca) adopt a common structure for the network statement and a common schedule for consultation, referred to in Article 61;

(d) adopt opinions and recommendations to infrastructure managers in accordance with the provisions of this Regulation and on its own initiative;

~~(e) adopt opinions and recommendations to infrastructure managers in the cases referred to in Article 53(2)(f);~~

(f) ~~organising~~**organise, with the contribution of the Network Coordinator,** the coordination between infrastructure managers in accordance with Article 53.

~~2. When performing coordination through dedicated coordination groups, infrastructure managers shall appoint the entities participating in this group, including focal points appointed by infrastructure managers in accordance with Article 60, the Network Coordinator or both.~~

ENIM shall have no policy-making or regulatory powers.

1a. ENIM shall establish working groups to ensure the coordination between infrastructure managers and other operational stakeholders, including railway undertakings, operators of service facilities and operators of intermodal transport, and the consultation of those operational stakeholders. Members of the working groups may issue an opinion on any proposal by ENIM which has consequences on operational stakeholders. They may also issue own initiative opinions addressed to ENIM.

Article 57

Transparency

1. ENIM shall ensure that its membership, ~~methods of operation~~**functioning** and all relevant information about its work are made publicly available on its website. It shall include contact details of dedicated coordination groups, established by the infrastructure managers**,** and references to coordination tools and procedures in accordance with Article 53.

2. ENIM shall invite~~ the Commission, including~~ the European Coordinators and, where relevant, representatives of the Member States, to its meetings with a view to discuss issues related to the development of rail infrastructure and to ensure cooperation with the European Coordinators, as outlined in [new TEN-T Regulation].~~ ENIM shall provide the information required under [Article 53, third subparagraph of the new TEN-T Regulation].~~

Article 58

Network Coordinator

1. ~~The infrastructure managers shall provide ENIM with the necessary resources to perform its tasks. For this purpose, they~~**ENIM** shall appoint by [12 months after the entry into force of this Regulation] an impartial and competent entity to fulfil the functions referred to in Article 59. Such entity ~~will~~**shall** be designated as ~~a~~**the** Network Coordinator.

The members of ENIM shall provide the Network Coordinator with the necessary resources to perform its tasks. Prior to the appointment of the Network Coordinator, ~~infrastructure managers~~**the members of ENIM** shall ~~seek the consent of~~**consult** the Commission regarding the designated entity and the following aspects:

(a) the terms and conditions for the appointment of the Network Coordinator;

(b) the conditions of withdrawal of the appointment **and of appointment of a new Coordinator**;

(c) the procedure to regularly monitor its work and to assess whether it has performed its tasks effectively;

(d) any additional operational duties and tasks of the Network Coordinator.

Aspects covered by points (a) to (c) of this paragraph shall be regulated by ENIM rules of procedure adopted pursuant to Article 55. The operational duties and tasks of the Network Coordinator referred to in point (d) of this paragraph shall be specified in the act by which ENIM appoints the Network Coordinator.

2. The Network Coordinator shall execute its tasks in an impartial**, transparent** and cost-effective manner~~ and shall act on behalf of ENIM~~. For this purpose, it shall submit to ENIM its annual work programme with respect to the tasks set out in this Regulation as well as an annual report on the implementation of the work programme. **ENIM shall approve the annual work programme and the annual report prior to their adoption.**

Article 59

Tasks and responsibilities of the Network Coordinator

The Network Coordinator shall carry out in support of ENIM the following tasks:

(a) act as secretariat and prepare ENIM's meetings, documents, decisions and opinions~~;~~

~~(b) contribute~~**, in particular by contributing** to the preparation of the European framework for capacity management referred to in Article 6, the European framework for the coordination of cross-border traffic management, disruption management and crisis management referred to in Article 44 and the European framework for performance review referred to in Article 50;

(c) contribute to the operational coordination between infrastructure managers in accordance with Article 53;

(d) identify rules, procedures and tools within the scope of this Regulation and adopted at national or infrastructure manager level which create obstacles for multi-network rail services, as set out in this Regulation**, and propose to ENIM methods to facilitate crossborder rail services**;

(da) contribute to the coordination between infrastructure managers concerning strategic capacity planning according to Article 14 by elaborating specific timetable designs facilitating competitive multi-network long-distance train paths;

(e) act as a contact point on behalf of infrastructure managers for ~~enquiries related to capacity planning and allocation~~**the provision of information**, in particular ~~regarding potential requests for capacity, for information or contact points~~ related to rail incidents and temporary capacity restrictions;

(f) act as a first point of contact ~~for stakeholders outside the rail sector interested in using rail services~~, providing contacts to relevant actors at infrastructure managers and other operational stakeholders~~;~~**.**

~~(g) act as a contact point on behalf of ENIM for applicants and other operational stakeholders on issues not explicitly covered by this Regulation, in particular the launch or change of cross-border rail transport services or organising support for ad hoc activities, in particular to address the crisis situations referred to in Article 47.~~

Article 60

Focal points for coordination of infrastructure managers

1. In order to ensure coordination between infrastructure managers in accordance with Article 53, the infrastructure managers shall designate focal points. The focal point shall act as the central interface between the organisation of the infrastructure manager and the other entities involved in the coordination activities.

1a. For each European Transport Corridor, infrastructure managers managing infrastructure part of such European Transport Corridor may designate a single focal point to act as the central interface between them and the other entities involved in the coordination activities, in accordance with point (a) of paragraph 2 of Article 53.

1b. The designated single focal point referred to in paragraph 1a shall act as a contact point for applicants and other operational stakeholders for the launch or change of cross-border rail transport services or for organising support for ad hoc activities, in particular to address the crisis situations referred to in Article 47.

1c. The designated single focal point referred to in paragraph 1a shall monitor the allocation of the multi-network requests on the railway lines part of the European Transport Corridors until the end of the annual working timetabe.

2. Infrastructure managers shall inform without delay ENIM about any changes in focal points for inclusion in the publications referred to in Article 57(1~~) (Transparency~~).

Article 61

Common structure, contents and schedule for network statements

1. ENIM shall prepare and adopt a common structure for the network statement referred to in Article 27 of Directive 2012/34/EU, which shall take into consideration the information listed in Annex IV to that Directive, Annex IV to this Regulation, and a common schedule for the consultation of interested parties on the draft network statement. Infrastructure managers shall take the utmost account of this structure and schedule when preparing the network statement.

2. When preparing the network statement referred to in Article 27 of Directive 2012/34/EU, the infrastructure manager shall ~~the~~ take **the** utmost account of the European framework for capacity management **referred to in Article 6 of this Regulation**, the European framework for the cross-border coordination of traffic management, disruption management and crisis management **referred to in Article 44 of this Regulation** and the European framework for performance review~~,~~ referred to ~~respectively~~ in ~~Articles 6, 44 and~~**Article** 50 of this Regulation.

3. ~~Where the infrastructure manager does not comply with paragraph 1 or 2, it~~**Infrastructure managers** shall ~~provide a justification~~**explain** in the network statement **the reason for deviation from the structure and schedule referred to in paragraph 1 and the European frameworks referred to in paragraph 2** and inform the competent regulatory body and ENIM **of those reasons**.

Article 62

Digitalisation of capacity and traffic management

1. Infrastructure managers shall ensure that capacity management and traffic management processes within the scope of this Regulation are implemented by means of digital tools and digital services.

Capacity management tools shall be compliant with the requirements concerning capacity planning and allocation process laid down in Chapter II of this Regulation and the requirements defined in the Directive (EU) 2016/797 and the delegated and implementing acts adopted on the basis thereof. Infrastructure managers may continue to use capacity management tools existing prior to the date of application referred to in Article 77(2)(d) provided that those tools allow infrastructure managers to comply with the abovementioned requirements.

2. The digital tools deployed and the digital services provided shall:

(a) ~~improve the~~**ensure effective** performance and ~~the~~ quality, including full interoperability, of the services infrastructure managers ~~provide~~**provided** to applicants;

(b) ~~improve~~**ensure** the transparency of rail capacity management and traffic management throughout all their phases **including through real time solutions which shall be deployed gradually**;

(c) reduce the administrative burden for applicants by requesting each piece of information only once and by providing information or data in a single place, including as regards cross-border services~~.~~**;**

(d) ensure data alignment with the register of infrastructure referred to in Article 49 of Directive (EU) 2016/797.

~~3. Where the digital tools or of the digital services necessary to support capacity management or traffic management processes need to be covered by technical specifications for interoperability, or where existing specifications covering or partially covering those tools, as provided for by Directive (EU) 2016/797 and the implementing acts adopted under that Directive, need to be amended, ENIM and infrastructure managers shall contribute to the development and maintenance of such specifications in cooperation with the Europe's Rail Joint Undertaking and through the process referred to in Article 5 of Directive (EU) 2016/797.~~

4. Infrastructure managers shall contribute **to** the work of the Europe's Rail Joint Undertaking on issues that fall within the scope of this Regulation. For this purpose, ENIM and the infrastructure managers shall ~~seek for~~**ensure** appropriate representation in the System Pillar Steering Group and the Deployment Group referred to respectively in Articles 96 and 97 of Regulation (EU) 2021/2085.

5. Infrastructure managers, ~~railway undertakings, other~~ applicants and, where relevant, the operators of ~~rail~~ service facilities shall exchange digital information related to capacity management and traffic management by means of digital tools and digital services which are based on a harmonised architecture and which involve standardised interfaces or common systems in accordance with Directive (EU) 2016/797 and the specifications ~~laid down in implemented acts~~ adopted ~~under that Directive~~**on the basis thereof**.

In the case of multi-network rail **services or cross-border** services, infrastructure managers shall provide digital services and digital information through a single interface or common systems developed and deployed under coordination of ENIM ~~in accordance with paragraph 3~~**, in particular in order to manage capacity allocation**.

5a. By [6 months after the date of application referred to in 77(2)(d)], ENIM shall provide guidelines on the functional and technical requirements for the exchange of information under paragraph 5 between infrastructure managers, applicants and, where relevant, the operators of service facilities, taking into account the work of the Europe's Rail Joint Undertaking.

CHAPTER VI
REGULATORY OVERSIGHT OF CAPACITY AND TRAFFIC MANAGEMENT

SECTION 1

Regulatory bodies

Article 63

Responsibilities of regulatory bodies

1. **Member States shall ensure that t**~~T~~he functions and the powers laid down in Article 56 of Directive 2012/34/EU ~~shall~~**are** also ~~be~~ exercised with respect to the matters covered by this Regulation. In particular, the regulatory body shall monitor the activities of infrastructure managers as set out in Chapters II to V **of this Regulation** and shall verify compliance with this Regulation on its own initiative and with a view to preventing discrimination against applicants.

2. ~~A railway undertaking, an applicant, a potential~~**An** applicant, a national, regional or local authority responsible for **rail** transport **services** shall have the right to appeal to the regulatory body ~~in accordance with article~~**under the procedure set out in Article** 56 of Directive 2012/34/EU if it believes it has been unfairly treated, discriminated against or in any other way aggrieved by the infrastructure manager when the latter carried out the activities set out in Chapters II, III, IV and V of this Regulation ~~(Management of infrastructure; Traffic and crisis management; Performance review and management; European network for coordination)~~.

SECTION 2

European Network of Rail Regulatory Bodies

Article 64

Cooperation of regulatory bodies within the European Network of Rail Regulatory Bodies (ENRRB)

1. For the purpose of fulfilling their responsibilities under this Regulation, the regulatory bodies shall cooperate in the framework of the ENRRB ~~referred to in~~**established under** Article 57(1) of Directive 2012/34/EU, including through joint consultations and investigations, by adopting opinions or recommendations or through other relevant activities. Regulatory bodies shall provide all the required information to the ENRRB **in accordance with paragraph 6**.

   When acting within the scope of this Regulation, the ENRRB shall have the tasks and responsibilities and organise its work as defined in section 2 of this Chapter.

2. In the case of a complaint or an own-initiative investigation on a matter falling within the scope of this Regulation and affecting the access to or the use of rail networks in more than one Member State, the regulatory body concerned shall inform the ENRRB and the Commission of the complaint or the investigation.

3. A regulatory body may transmit any relevant matter, complaint or investigation to the ENRRB for an exchange of views or for the adoption of an opinion or recommendation.

4. When taking decisions on matters ~~affecting more than one Member State~~**impacting cross-border rail services**, the regulatory bodies concerned shall cooperate in preparing their respective decisions under the coordination of the ENRRB in order to bring about a resolution of the matter. For that purpose, the regulatory bodies concerned shall carry out their functions in accordance with paragraph 1 of this Article and Article 56 of Directive 2012/34/EU. They shall take into account any relevant opinion and recommendation adopted by the ENRRB and shall provide these decisions to the ENRRB.

4a. Where the cooperation referred to in paragraph 4 results in diverging decisions of the regulatory bodies concerned, they shall provide to the ENRRB an explanation laying out the differences.

5. Where a regulatory body adopts a decision, which departs from any relevant opinion or recommendation of the ENRRB or where it refuses to adopt a decision, it shall provide to the ENRRB an explanation laying out the differences and its reasoning for not following the opinions or recommendations of the ENRRB.

6. The regulatory bodies consulted by the ENRRB shall reply within the deadlines set by the ENRRB and, upon the latter's request, shall provide all the information that they have the right to request under their national law. This information may only be used for the purpose of the activities carried out by the regulatory bodies in accordance with this Regulation.

7. Infrastructure managers shall provide, without delay, all the information necessary for the purpose of handling the complaint or investigation referred to in this Article and requested by the regulatory body of the Member State in which the infrastructure manager is located. Regulatory bodies shall have the right to request information from ENIM on investigations within their competence. Regulatory bodies shall be entitled to transfer such information to the ENRRB.

8. Rail regulatory bodies shall provide the necessary resources for the functioning of the ENRRB.

Article 64a

Organisation and structure of the European Network of Rail Regulatory Bodies (ENRRB)

For the purpose of this regulation, the ENRRB shall be organised into:

(a) a Board of Regulatory Bodies (the 'Board');

(b) a Secretariat.

Regulatory bodies shall ensure the operation of the Secretariat.

~~SECTION 2~~

~~Tasks and responsibilities of the European Network of Rail Regulatory Bodies~~

Article 65

Tasks and responsibilities of the ENRRB

1. In addition to its tasks under Directive 2012/34/EU, the ENRRB shall also have the tasks and responsibilities laid down in this Regulation. **The ENRRB shall make public any opinion and recommandation it has adopted. The ENRRB shall have no policy-making or regulatory powers.**

2. The ENRRB shall**, where relevant,** coordinate all cooperation activities of rail regulatory bodies as outlined in Article 64 and promote alignment of decisions of regulatory bodies in relation to ~~international~~**cross-border** rail services.

~~3. Based on requests by applicants, infrastructure managers, and other interested parties,~~**4. Applicants may inform** the ENRRB ~~shall provide opinions or recommendations on pending or adopted decisions on complaints submitted to the rail regulatory bodies.~~

~~4. Interested parties may lodge a complaint with the ENRRB on matters~~**on issues falling** within the scope of this Regulation ~~or affecting~~**which may affect** the access to or the use of rail infrastructure in more than one Member State. Where the ENRRB receives such ~~a complaint~~**information**, it shall transfer it to the competent regulatory body or bodies without delay.

The ENRRB may decide to adopt an opinion or recommendation on such issues. In such cases, the ENRRB shall immediately inform the ~~rail~~ regulatory bodies concerned about its intention ~~to adopt an opinion or recommendation on any such matter~~**thereto** .

~~5.~~ The ENRRB shall submit its opinion or recommendation to the ~~rail~~ regulatory bodies concerned within ~~one month~~**four weeks** of receipt of all the relevant information regarding the ~~complaint~~**issue in question**. The ENRRB may extend the period for particularly complex matters.

6. The ENRRB shall develop common principles and practices for ~~taking~~**the adoption, by regulatory bodies, of** the decisions for which ~~regulatory~~**those** bodies are empowered under this Regulation.

7. The ENRRB shall provide recommendations on the European framework for capacity management referred to in Article 6, the European framework for the cross-border coordination of traffic management, disruption management and crisis management referred to in Article 44 and the European framework for performance review referred to in Article 50, before their adoption by ENIM.

8. The ENRRB shall prepare a self-standing section of the European performance review report referred to in Article 51, providing its assessment of and recommendations on the performance of rail infrastructure services and rail transport services. It shall provide advice to the Commission and the European Coordinators on matters related to performance of rail infrastructure services and rail transport services.

9. The ENRRB shall provide its opinions or recommandations to the Commission on any shortcomings of the coordination process referred to Article 14 and, on request of the Commission, on emergency measures adopted by Member States having a significant impact on cross-border traffic as referred to in Article 47(5).

10. The ENRRB shall submit its opinion or recommendation to ENIM on the guidelines developed by ENIM on the definition of conditions giving rise to penalty, as referred to in Article 40(3).

~~*Article 66*~~

~~**Organisation and structure of the European Network of Rail Regulatory Bodies (ENRRB)**~~

~~For the purpose of this regulation, the ENRRB shall be organised into:~~

~~(a) a Board of Regulatory Bodies;~~

~~(b) a Secretariat.~~

~~Regulatory bodies shall ensure the operation of the Secretariat.~~

Article 67

Composition and organisation of the Board ~~of Regulatory Bodies~~

1. The ~~Board of~~ Regulatory Bodies ~~shall be composed of one voting member~~ from each Member State that has a rail network in use ~~and one member appointed by the Commission.~~

~~2. The voting~~ **shall be** members **of the Board. They shall appoint a representative and an alternate to the Board.**

The representatives shall be the head, or a deputy head, of the regulatory body referred to in Article 55 of Directive 2012/34/EU. ~~They shall have one alternate to represent the member in her or his absence.~~ The alternate shall be appointed ~~by the regulatory body~~ from among the governance or the management of the regulatory body or, where this is not possible, from its staff.

3. Members of the Board ~~and their alternates~~ shall act independently and objectively in the interests of the Union, regardless of any particular national or personal interests. They shall neither seek nor take instructions from any government, institution, person or body.

4. An up-to-date list of **representatives of the** members of the Board and their alternates, together with their declarations of interest, shall be made public by the Secretariat of the ENRRB.

5. After consulting the Commission, the Board shall adopt and publish its rules of procedure. The rules of procedure may establish more detailed voting arrangements, in particular the procedure for voting on urgent matters.

6. The Board shall take decisions by a majority of two-thirds of its members, unless otherwise provided for in the rules of procedure. Each member shall have one vote. **In the absence of a member representative, the alternate shall be entitled to exercise the right to vote.**

7. The Commission shall be a non-voting member of the Board. It shall coordinate and support the work of the Board and make recommendations to the Board, as appropriate.

8. The Secretariat shall provide the necessary services for organising the meetings and the work of the Board.

9. In accordance with the Board's rules of procedure, the Board may decide to set up working groups to organise the work of the ENRRB on specific topics related to the implementation of this Regulation, in particular on matters related to the performance of rail infrastructure services.

The working groups shall be open to the participation of experts from rail regulatory bodies and the Commission. The experts from operational stakeholders and from other public or private bodies may be invited to participate in those working groups on an ad-hoc basis.

Article 68

Role and tasks of the Board

1. The Board shall perform all tasks of the ENRRB set out in this Regulation.

2. In particular, the Board shall:

(a) adopt**, in accordance with the procedural rules laid down in, or referred to in, Article 67,** opinions or recommendations **of the ENRRB** on complaints or investigations ~~presented~~**transmitted** to it by ~~its Chair or by~~ a regulatory body or bodies ~~in accordance with the rules laid down in~~**pursuant to** Article ~~69;~~**64(3);**

(b) draft and adopt an annual report on the ENRRB's activities;

(c) set up working groups and appoint their Chairs.

~~*Article 69*~~

~~***Organisation of the work of the Board***~~

~~1. The Board shall adopt its rules of procedure, following approval by the Commission.~~

~~2. The Commission shall chair the meetings of the Board. It shall have no voting right.~~

~~3. The Secretariat shall provide the necessary services for organising the meetings and the work of the Board.~~

~~4. The Board shall take decisions by a simple majority of its members, unless otherwise provided for in the rules of procedure.~~

~~5. Each member shall have one vote. In the absence of a member, the alternate shall be entitled to exercise the right to vote.~~

~~6. The rules of procedure may establish more detailed voting arrangements, in particular the procedure for voting on urgent matters and on cases of recommendations on decisions of rail regulatory bodies.~~

~~*Article 70*~~

~~***Working groups of the ENRRB***~~

~~1. On its own initiative or upon a proposal by the Commission, and in accordance with the Board's rules of procedure, the Board may decide with a simple majority to set up working groups to organise the work of the ENRRB on specific topics related to the implementation of this Regulation.~~

~~2. The Board shall define the mandate of the working group and appoint the Chairs of the working groups, representing, where possible, different rail regulatory bodies.~~

~~3. The working groups shall be open to the participation of experts from rail regulatory bodies, the Commission, operational stakeholders and, where relevant, from other public or private bodies.~~

~~4. The Secretariat shall provide administrative support to the working groups.~~

~~5. The Board or the Chairs of the working groups may invite individual experts recognised as competent in the relevant field to participate in the working group meetings if necessary on a case-by-case basis.~~

CHAPTER VII
FINAL PROVISIONS

Article 71

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 10(8), Article 11(2), Article 21(9), Article 38(3**)**, Article 39(9), ~~***Article 46(6), Article 48(3)***~~ and Article ~~53(5~~**48(3)** shall be conferred on the Commission for a period of five years from [1 January ~~2026~~**2029**]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of powers referred to in Article 10(8), Article 11(2), Article 21(9), Article 38(3), Article 39(9) and Article 48(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following

the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 10(8), Article 11(2), Article 21(9), Article 38(3), Article 39(9) and Article 48(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 72

Committee procedure

1. The Commission shall be assisted by the Committee referred to in Article 62 of Directive 2012/34/EU. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

~~2~~**3**. Where reference is made to this paragraph, Article ~~4~~**5** of Regulation (EU) No 182/2011 shall apply.

~~3.~~ Where ~~reference is made to this paragraph,~~**the committee delivers no opinion, the Commission shall not adopt the draft implementing act and** Article 5**(4), third subparagraph,** of Regulation (EU) No 182/2011 shall apply.

Article 73

Report and review

~~By [31 December 2030~~**By [*10 years after entry into force of this Regulation*]**, the Commission shall evaluate the impact of this Regulation on the rail sector and shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on its implementation.

The report shall, in particular, evaluate:

(a) the impact of this Regulation on the performance of rail infrastructure services;

(b) the impact of this Regulation on the development of rail **transport** services, notably international services, long-distance services and freight services;

(ba) the financial and administrative impacts of this Regulation on the infrastructure managers and other operational stakeholders, regulatory bodies and Member States authorities;

(c) the work of ~~the European Network of Infrastructure Managers~~**ENIM**, of the Network Coordinator~~, the European Network~~ **and** of ~~Rail Regulatory Bodies and~~ the ~~Performance Review Body~~**ENRRB** in general and in relation to the development, adoption and implementation of common criteria, methodologies and procedures~~.~~**;**

(d) the ~~need to reinforce~~ **effectiveness of the** coordination mechanisms ~~by replacing elements of~~**within** the European ~~frameworks~~**framework capacity management** referred to in ~~Articles~~**Article** 6**, the European framework for the cross-border coordination of traffic management, disruption management** and **crisis management referred to in Article** 44 ~~with binding rules~~**and the European framework for performance review referred to in Article 50**;

~~(e) the need to strengthen regulatory oversight by establishing a Union rail regulatory body.~~

(e) the functioning of the socioeconomic, operational and environmental criteria, and the need to submit, if appropriate, a proposal for possible amendments to Articles 25 and 37.

Article 74

Amendments to Directive 2012/34/EU

1. Directive 2012/34/EU is amended as follows:

(a) In Article 1, point (c) is replaced by the following:

'(c) the principles and procedures applicable to the setting and collecting of railway infrastructure charges as set out in Chapter IV.'

(b) In Article 2, paragraph 6 is deleted;

(c) **In Article 3,** points (20), (22), (23), (27) and (28) are deleted;

(d) Article 7b is deleted;

(da) Article 27(2) is replaced by the following:

‘2. The network statement shall contain information setting out the conditions for access to the relevant railway infrastructure. The network statement shall also contain information setting out the conditions for access to service facilities connected to the network of the infrastructure manager and for supply of services in these facilities or indicate a website where such information is made available free of charge in electronic format. The content of the network statement is laid down in Annex IV.’

(e) Article 36 is deleted;

(f) Articles 38 to 54 are deleted;

(g) In Annex IV, points (1) and (3) are deleted;

(h) Annex VII is deleted.

2. References to the deleted provisions of Directive 2012/34/EU shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Section 1 of Annex X.

Article 75

Transitional provisions

1. Framework agreements concluded in accordance with Article 42 of Directive 2012/34/EU shall continue to apply until their expiration date.

2. Article 3, points (20), (22), (23), (27) and (28), Articles 7b, 36 and 38 to 54, Annex IV point (3) and Annex VII of Directive 2012/34/EU shall not apply to activities and tasks carried out in relation to the working timetables entering into force **on or** after [~~8~~**13** December ~~2029~~**2031**].

3. The Commission shall, by [2 years after the date referred in Article 77(2), first subparagraph], submit a report to the Council and European Parliament on the monitoring of the transition provisions referred to in Article 75.

Article 76

Repeal

1. Regulation (EU) No 913/2010 is repealed with effect from [~~9~~**8** December 2029].

2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Section 2 of Annex X.

Article 77

Entry into force and application

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from [1 January ~~2026~~**2029**]. However:

   (a) Articles 1, 2 and 3, Chapter II, with the exception of Article 9(1) and (2) and Article 27(4), and Chapter III, with the exception of Article 48, of this Regulation shall apply only to activities and tasks carried out in relation to the working timetables entering into force **on or** after [~~8~~**13** December ~~2029~~**2031**];

   (b) Article 9(1) and (2) shall apply from [1 January ~~2028~~**2030**];

   ~~(c) Article 27(4) shall apply from [1 March 2026];~~

   (d) Articles **27(4), 28(0),** 48 and 62 shall apply from [~~13~~**31** December ~~2026~~**2029**];

   (e) Article 74 shall apply from [~~9~~**13** December ~~2029~~**2031**].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ~~Strasbourg,~~**…,**

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

DELIVERABLES AND SCHEDULE FOR CAPACITY MANAGEMENT

REFERRED TO IN ARTICLES 11, 16, 18 AND 38

1. DELIVERABLES TO BE PREPARED BY INFRASTRUCTURE MANAGERS IN STRATEGIC CAPACITY PLANNING REFERRED TO IN ARTICLES 11, 16, 17 AND 18

Deliverable	Contents
Capacity strategy (Article 16)	– **Geographical scope of the capacity strategy: lines covered by the strategic capacity planning pursuant to Article 12(6);** – Planned development of physical infrastructure, including new construction, upgrades, renewals and closures /decommissioning**, detailing the characteristics of that infrastructure**; – Forecasted development of demand for rail transport services; – ~~Strategic~~**The strategic** guidance on capacity utilisation by Member States, ~~including an outlook on the evolution on public service obligations~~**where Member States have provided such guidance**; – Capacity allocated in framework agreements and capacity **that may be** required to provide transport services under public service contracts; – ~~Infrastructure~~**Information about the availability and utilisation of railway infrastructure, including infrastructure** declared highly utilised or congested; – ~~Major~~**Planned infrastructure works resulting in** capacity restrictions ~~resulting from infrastructure works~~**with major impact**.
Capacity model (Article 17)	– All information included in the capacity strategy, where relevant updated and further detailed – ~~Volume~~**Total volume** of capacity available**, including multi-network capacity,** to applicants by **network section including volume of capacity available by** rail transport market segment **for different segment of rail transport services** and/or by allocation process

	– Volume of capacity ~~required for~~ **reserved for capacity restrictions resulting from** infrastructure works by impact on **the estimated** traffic ~~(categories)~~ – ~~Geographical scope: at least the lines included~~**volume, as laid down** in ~~the TEN-T core and extended core network~~**Section 3 of Annex I.** – Geographical detail: breakdown in appropriate planning sections reflecting infrastructure and demand characteristics – Temporal scope: one working timetable period – Temporal detail: at least annual overview (capacity restrictions) and one or more representative day/days (capacity available for requests)
Capacity supply plan (Article 18)	– All information included in the capacity model, where relevant updated **and** further detailed – ~~Prep~~**Capacity available for allocation to applicants for the working timetable period to which the capacity supply plan refers:** – **(i)Where applicable under Article 18(4) and in accordance with Article 18(4) and (5), pre-**planned capacity available for requests, **including multi-network capacity,** defined in the form of capacity objects **in accordance with Article 18(5);** **(ii) capacity, which has not been pre-planned by the infrastructure manager;** **(iii) capacity, which is available in the service facilities referred to in Article 29(1).** – Capacity **which is not available for allocation to applicants:** **(i) capacity** restrictions, defined in the form of capacity objects**, including capacity restrictions referred to in point 1, section 3, of this Annex;** **(ii) capacity already allocated through framework agreements in accordance with Article 31 or through the multi-annual rolling planning process in accordance with Article 33;**

	(iii) capacity reserved for purposes other than those set out in points (i) and (ii), which shall be clearly indicated by the infrastructure manager; **(iv) other capacity already allocated, when updating the capacity supply plan during the working timetable to which the capacity supply plan refers.** – Alternative capacity available during capacity restrictions – Alternative capacity available in the event of network disruptions – **Restrictions applicable for the use of specialised infrastructure referred to in Article 24.**

2. SCHEDULE FOR STRATEGIC CAPACITY MANAGEMENT REFERRED TO IN ARTICLES 11, 16, 17 AND 18

1. When preparing the deliverables of strategic capacity planning for a given working timetable period, infrastructure managers shall respect the schedule set out in this section.

Infrastructure managers may define earlier deadlines. Such **earlier** deadlines shall be ~~harmonised at EU level~~**coordinated by ENIM** and included in the European framework for capacity management referred to in Article 6.

The consultation of stakeholders **regarding European and cross-border matters** shall be carried out in accordance with Article 54 and shall involve ~~at least railway undertakings and other applicants,~~**all** operational stakeholders~~ and public authorities.~~**.** Infrastructure managers shall coordinate the deliverables on a continuous basis ~~when coordinating in accordance with~~**in the framework of the coordination process provided by** Article 53.

Deliverable	**Milestone**	**Deadline (at latest)**
Capacity strategy (Article 16)	~~Publication of the first elements~~**Start** of the capacity strategy **phase**	X–60
	First consultation of **operational** stakeholders	X–58
	Publication of the draft strategy	**X–39**
	~~Publication of the draft strategy and second~~**Second** consultation of **operational** stakeholders **on the draft strategy**	X~~–~~-38

	Publication of final capacity strategy following final coordination between infrastructure managers	X–36
Capacity model (Article 17)	Start of preparation	X–36
	~~Consultation of~~ **Capacity needs announcements by** applicants and **potential applicants and consultation of** operational stakeholders	X–24
	Publication of draft capacity model	X–21
	Coordination with applicants and operational stakeholders	X–19
	Publication of final capacity model following final coordination between infrastructure managers	X–18
Capacity supply plan (Article 18)	Start of preparation	X–18
	Consultation of applicants and operational stakeholders	X–14
	Publication of capacity restrictions referred to in point (1) of section (3) of this Annex	X–12
	Publication of final capacity supply plan following final coordination between infrastructure managers	X–11
	Publication of capacity restrictions referred to in point (5) of section (3) of this Annex	X–4
	Re-purposing of capacity reserved for allocation through the working timetable for other allocation processes	X–2
	Update of capacity supply plan to reflect any changes to pre-planned or allocated capacity	Until X+12 without delay
Note: (1) ‘X–m’ means ‘m’ months before the date of entry into force of the working timetable (‘X’), in accordance with section 4.		

2. By way of derogation to point 1, the following simplified and shortened schedule applies to the deliverable 'Capacity strategy' in relation to the working timetable periods starting in December ~~2029~~**2030** and December ~~2030~~**2031**:

Capacity strategy (Article 16)	Publication of the draft strategy ~~and consultation of stakeholders~~	X–38
	Consultation of operational stakeholders on the draft strategy	**X-37**
	Publication of final capacity strategy following final coordination between infrastructure managers	X–36

3. SCHEDULE AND REQUIREMENTS FOR COORDINATION, CONSULTATION AND PUBLICATION OF CAPACITY RESTRICTIONS RESULTING FROM INFRASTRUCTURE WORKS REFERRED TO IN ARTICLES 10 AND 35

0. Capacity restrictions shall be classified depending on their duration in number of consecutive days and their impact on traffic (estimated traffic volume on a railway line per day that is cancelled, re-routed or replaced by other modes of transport) according to the following table.

	Duration	**Impact on traffic**
Major impact	**More than 30 consecutive days**	**More than 50%**
High impact	**More than 7 consecutive days**	**More than 30%**
Medium impact	**7 consecutive days or less**	**More than 50%**
Minor impact	**Unspecified**	**More than 10%**

1. As regards ~~temporary restrictions of the capacity~~ **capacity restrictions** of railway lines, for reasons such as infrastructure works, including associated speed restrictions, axle load, train length, traction, or structure gauge ('capacity restrictions'), ~~of a duration of more than 7 consecutive days and for which more than 30 % of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes of transport,~~**that have a high or a major impact** the infrastructure managers concerned shall publish all

capacity restrictions and the preliminary results of a consultation with the applicants for a first time at least 24 months **to the extent they are known** and, in an updated form, for a second time at least 12 months before the change of the working timetable concerned. ~~These infrastructure restrictions shall be included in the capacity supply plan referred to in Article 18.~~

2. As part of the coordination between **themselves,** infrastructure managers ~~in accordance with Article 53, the entities designated in paragraph 5 of that Article~~ shall ~~also~~ jointly discuss those capacity restrictions, if the impact of the capacity restrictions is not limited to one network, with interested applicants and the main operators of service facilities concerned when they are published for the first time.

3. When publishing capacity restrictions in accordance with point (1) for a first time, the infrastructure manager shall launch a consultation with the applicants and the main operators of services facilities concerned on the capacity restrictions. Where a coordination in accordance with point (4) is required between the first and second publication of capacity restrictions, the ~~entities designated in accordance with Article 53(5)~~**infrastructure managers which are subject to this Regulation** shall consult with applicants and the main operators of service facilities concerned a second time between the end of that coordination and the second publication of the capacity restriction.

4. Before publishing capacity restrictions in accordance with point (1), if the impact of the capacity restrictions is not limited to one network, the ~~entities designated in accordance with Article 53(5),~~**infrastructure managers which are subject to this Regulation ,** including infrastructure managers that might be impacted by the rerouting of trains, shall coordinate between themselves capacity restrictions that could involve a cancellation, re-routing of a train path or a replacement by other modes.

The coordination before the second publication shall be completed:

(a) no later than 18 months before the change of the working timetable ~~if more than 50% of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes of transport for a duration of more than 30 consecutive days~~**for capacity restrictions with a major impact**.

(b) no later than 13 months and 15 days before the change of the working timetable period ~~if more than 30% of the estimated traffic volume on~~ **for capacity restrictions with** a ~~railway line per day is cancelled, re-routed or replaced by other modes of transport for a duration of more than 7 consecutive days~~**high impact**.

(c) no later than 13 months and 15 days before the change of the working timetable period ~~if more than 50% of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other modes of transport for a duration of 7 consecutive days or less~~**for capacity restrictions with a medium impact**.

The entities performing the coordination between infrastructure managers in accordance with Article 53(~~5~~**4**) shall, if necessary, invite the applicants active on the lines concerned and the main operators of service facilities concerned to get involved in that coordination.

5. As regards capacity restrictions ~~of a duration of 7 consecutive days or less that need not be published in accordance with point (1) and for which more than 10% of the estimated traffic volume on a railway line per day is cancelled, re-routed or replaced by other~~

~~modes,~~**with a minor impact** that occur during the following timetable period and that the infrastructure manager becomes aware of no later than 6 months and 15 days before the change of the working timetable, the infrastructure manager shall consult the applicants concerned on the envisaged capacity restrictions and communicate the updated capacity restrictions at least four months before the change of the working timetable. The infrastructure manager shall provide details on the offered train paths for passenger trains no later than four months and for freight trains no later than one month before the beginning of the capacity restriction, unless the infrastructure manager and the concerned applicants agree on a shorter lead time.

6. Infrastructure managers may decide to apply more stringent thresholds for capacity restrictions based on lower percentages of estimated traffic volumes or shorter durations than indicated in section 3 of this Annex or to apply criteria in addition to the ones mentioned in this Annex, pursuant to a consultation with applicants and facility operators. They shall publish the thresholds and criteria for clustering capacity restrictions in their network statements under point ~~3~~**2** of Annex IV~~ of Directive 2012/34/EU~~.

7. ~~Without prejudice to Article 40, t~~**T**he infrastructure manager may decide not to apply the periods laid down in points (1) to (5), if the capacity restriction is necessary to re-establish safe train operations, the timing of the restrictions is beyond the control of the infrastructure manager, the application of those periods would be cost ineffective or unnecessarily damaging in respect of asset life or condition, or if all concerned applicants agree. In those cases and in case of any other capacity restrictions that are not subject to consultation in accordance with other provisions of this Annex, the infrastructure manager shall consult the applicants and the main operators of service facilities concerned forthwith.

8. The information to be provided by the infrastructure manager when acting in accordance with points (1), (5) or (7) shall include:

   (a) the planned day;

   (b) time of day, and, as soon as it can be set, the hour of the beginning and of the end of the capacity restriction;

   (c) the section of line affected by the restriction;

   (d) where applicable, the capacity of diversionary lines.

   The infrastructure manager shall publish that information, or a link where it can be found, in its network statement as referred to in point (~~3~~**2**) of Annex IV~~ of Directive 2012/34/EU~~. The infrastructure manager shall keep this information updated. In addition, infrastructure managers shall publish this information in digital format in accordance with Article 9 and 62.

9. As regards ~~the~~ capacity restrictions ~~of~~**with** a ~~duration of at least 30 consecutive days and affecting more than 50% of the estimated traffic volume on a railway line, the infra-structure~~**major impact, the infrastructure** manager shall provide the applicants upon their request during the first round of consultation with a comparison of the conditions to be encountered under at least two alternatives of capacity restrictions. The infrastructure manager shall design those ~~alter-natives~~**alternatives** on the basis of the input provided by the applicants at the time of their requests and jointly with them.

The comparison shall, for each alternative, include at least:

(a) the duration of the capacity restriction,

(b) the expected indicative infrastructure charges due,

(c) the capacity available on diversionary lines,

(d) the available alternative routes, and

(e) the indicative travel times.

Before making a choice between the alternatives of capacity restrictions, the infrastructure manager shall consult the interested applicants and take into account the impacts of the different alternatives on those applicants and on the users of the services.

The analysis of alternative capacity restrictions shall include situations concerning more than one infrastructure manager. In this case, the infrastructure managers shall coordinate the planning of alternative of the capacity restriction in accordance with Article 53.

10. As regards ~~the~~ capacity restrictions ~~of~~**with** a ~~duration of more than 30 consecutive days and affecting more than 50 % of the estimated traffic volume on a railway line~~**major impact**, the infrastructure manager shall establish criteria for which trains of each type of service should be re-routed, taking into account the applicant's commercial and operational constraints, unless those operational constraints result from managerial or organisational decisions of the applicant, and without prejudice to the aim of reducing costs of the infrastructure manager in accordance with Article 30(1) of Directive 2012/34/EU. The infrastructure manager shall publish in the network statement those criteria.

11. ENIM shall publish the information required under point (8) on its website.

~~12. The Commission shall review the implementation of section 3 of this Annex until 31 December 2024 and propose a legislative proposal if necessary.~~

4. SCHEDULE FOR CAPACITY ALLOCATION THROUGH THE ANNUAL ALLOCATION PROCESS REFERRED TO IN ARTICLES 32 AND 38

1. The infrastructure manager and the applicants shall comply with the following schedule:

Milestone or time period	**Deadline or duration**[1]
Period of validity of the working timetable ('working timetable period')	~~One year~~**Starting at midnight on the second Saturday of December up to midnight of the second Saturday of December of the following year.**

Entry into force of the working timetable	Midnight on the second Saturday in December
Publication of capacity supply plan	In accordance with section 2 of this Annex
Publication of capacity restrictions resulting from infrastructure works	In accordance with sections 2 and 3 of this Annex
Deadline for applicants to submit requests for capacity rights	X–8.5
Preparation of draft working timetable Deadline for infrastructure manager(s) to submit draft capacity offer to applicants	X–6.5
Finalisation of coordination with applicants	X–~~6~~**5.5**
Deadline for infrastructure manager(s) to submit final capacity offer to applicants	X–~~5~~**4**.5
Publication of ~~final~~ working timetable Deadline for infrastructure manager to allocate capacity rights to applicants	X–~~5~~**4**.25
Conversion of capacity specifications in train paths	To be specified ~~in~~**by the infrastructure managers taking into account** the European framework for capacity management referred to in Article 6
Note: (1) 'X–m' means 'm' months before the date of entry into force of the working timetable ('X')	

~~Infrastructure managers shall allocate capacity requests received in accordance with Article 32(8) on the basis of the first come, first served principle.~~

3. The deadline for applicants to submit requests for capacity rights laid down in the table under point 1 shall be the deadline for requests for infrastructure capacity referred to in Article 27(4) of Directive 2012/34/EU.

5. SCHEDULE FOR CAPACITY ALLOCATION THROUGH FRAMEWORK AGREEMENTS REFERRED TO IN ARTICLES 31 AND 38

The infrastructure manager shall comply with the following schedule:

Time period	**Duration**[(1)]
Standard period of validity of framework agreements	5 years
Conversion of capacity specifications in train paths	Between X–8.5 and X–6.5 (jointly with coordination under the annual allocation process referred to in section 4)
Note: (1) 'X–m' means 'm' months before the date of entry into force of the working timetable ('X') in accordance with section 4	

6. SCHEDULE FOR THE ROLLING PLANNING CAPACITY ALLOCATION PROCESS REFERRED TO IN ARTICLES 33 AND 38

The infrastructure manager and the applicants shall comply with the following schedule during the rolling planning process~~,~~:

Milestone or time period	**Deadline or duration**[(1)]
Earliest point in time for applicants to submit capacity requests under the rolling planning allocation process	4 months before the first train run
Latest point in time for applicants to submit capacity to requests under the rolling planning allocation process	1 month before the first train run
Maximum duration of capacity rights granted under the rolling planning allocation process	36 months starting from the first train run
Conversion of capacity specifications in train paths for capacity rights granted in accordance with paragraph 2, point (a) of Article 33	Between X–8.5 and X–6.5 (jointly with coordination under the annual allocation process referred to in section 4)
Conversion of capacity specifications in train paths for capacity rights granted in accordance with paragraph 2, point (b) of Article 33	To be specified by the infrastructure managers taking into account the European framework for capacity management referred to in Article 6
Maximum period for infrastructure managers to prepare	**15 days**

an offer of capacity rights under rolling planning process	
Note: (1) 'X–m' means 'm' months before the date of entry into force of the working timetable ('X') in accordance with section 4	

~~4. Infrastructure managers shall allocate capacity through the rolling planning process based on the first come, first served principle.~~

7. SCHEDULE FOR CAPACITY ALLOCATION THROUGH THE AD HOC PROCESS REFERRED TO IN ARTICLES 34 AND 38

When allocating infrastructure capacity through the ad hoc process, the infrastructure manager shall comply with the following schedule:

Time period	**Duration**
Maximum period for infrastructure managers to prepare an offer of capacity rights concerning a single network	~~1 day~~**5 days**
Maximum period for infrastructure managers to prepare an offer of multi-network capacity rights	~~5~~**8** days

8. SCHEDULE FOR CHANGES TO CAPACITY ALLOCATED REFERRED TO IN ARTICLE 39

When changing infrastructure capacity rights, the infrastructure manager shall comply with the following schedule:

Milestone or time period	**Deadline or duration**
Maximum time for the infrastructure manager to offer an alternative capacity right involving a single network	~~24 hours~~**5 days**
Maximum time for infrastructure managers concerned to offer an alternative multi-network capacity right	~~5~~**8** days

ANNEX II

~~Highly utilized and congested infrastructure referred to in Article 20~~

Thresholds for the declaration of highly utilised and congested infrastructure referred to in Article 21

~~1. THRESHOLDS FOR THE DECLARATION OF HIGHLY UTILISED AND CONGESTED INFRASTRUCTURE~~

Utilisation	Classification	Capacity utilisation	Reference period
Heterogenous traffic	Highly utilised	> ~~65~~**85**% of theoretical capacity	More than 4 hours for more than 200 days per year
Heterogenous traffic	Congested	> 95% of theoretical capacity	More than 4 hours for more than 250 days per year
Homogeneous traffic	Highly utilised	> ~~80~~**90**% of theoretical capacity	More than 4 hours for more than 200 days per year
Homogenous traffic	Congested	> 95% of theoretical capacity	More than 4 hours for more than 250 days per year

~~Capacity utilisation means the ratio between capacity allocated, or for previous timetable periods, the actual number of trains running and the theoretical capacity available on an element of infrastructure on the basis of the methodology referred to in section 2.~~

Infrastructure managers shall take utmost account of the method referred to in Article 21(1a) to determine the utilisation of rail infrastructure capacity.

'Homogenous traffic' means that trains on the section concerned generally have similar characteristics relevant for capacity utilisation, in particular speed, stopping pattern and acceleration.

'Heterogenous traffic' means that trains on the section concerned differ in characteristics relevant for capacity utilisation, in particular speed, stopping pattern and acceleration.

~~2. PROCEDURES AND METHODS TO CALCULATE THE DEGREE OF CAPACITY UTILISATION~~

~~Infrastructure managers shall assess the degree of capacity utilisation on the basis of objective, transparent and appropriate procedures and methods.~~

~~Infrastructure managers may continue to use existing procedure and methods that meet these criteria. At the latest 3 years of the entry into force of this Regulation, ENIM shall prepare a~~

~~recommendation on the use of a harmonised EU procedure and method to assess the utilisation of rail infrastructure capacity.~~

~~Alternatively, capacity utilisation can be assessed as the ratio between the demand for capacity (observed / past or estimate of future demand) and capacity available in the capacity utilisation plan in accordance with Article 18.~~

ANNEX III

CONTENTS OF THE EUROPEAN FRAMEWORK FOR CAPACITY MANAGEMENT REFERRED TO IN ARTICLE 6

The European framework for capacity management referred to in Article 6 shall contain at least the following elements:

Element	**Reference(s)**
~~Procedures and methodologies to manage and allocate scarce infrastructure capacity on the basis of socio-economic and environmental criteria.~~	~~Article 8(5), Article 8(6)~~
Types and description of rail transport services to be used for the purposes of strategic planning of rail infrastructure capacity.	Article 12(2)
Common principles, procedures and methodologies for strategic capacity planning, including for the coordination between infrastructure managers and the consultation of stakeholders~~.~~**, including for the Capacity Needs Announcements.**	Article 12(**4), Article 12(**9), Article 13, Article 14**, Article 17(1), Article 54**
Guidelines setting out procedures and methodologies to be used for the transport market analysis	**Article 15(3)**
Means for publication of the capacity supply plan and process for consultation of applicants	Article 18(10)
Rules and procedures for the allocation of pre-planned capacity included in the capacity supply plan.	Article 20(3)
Common method on the utilisation of rail infrastructure capacity	**Article 21(1a)**
Characteristics of capacity specifications	Article 26(1)
Ranges for threshold quotas applicable to the cancelation of unused capacity rights	Article 27(6)
Procedures and methods to coordinate the allocation of multi-network capacity rights, including minimum quality requirements.	Article 28(5)
Guidelines on **the definition of** the limits regarding the differences between capacity requests by applicants and infrastructure capacity proposed by infrastructure managers in	Article 36(2)

the consensual conflict resolution process.	
Guidelines for the consensual conflict resolution mechanism for conflicts including at least one multi-network capacity request	**Article 36(8)**
Procedures and methodologies to resolve conflicts on infrastructure capacity on the basis of socio-economic and environmental criteria.	**Article 37(1b)**
Procedures to manage changes to capacity rights after allocation.	Article 39(8)
~~Conditions~~**Guidelines for the definition of conditions** giving rise to ~~compensation~~**penalties** for changes to capacity rights.	Article 40(3)
~~Principles, rules and procedures to manage and allocate infrastructure capacity in the event of a network disruption.~~	~~Article 41(2)~~

ANNEX IV

Contents of the Network Statement referred to in Article 27 of Directive 2012/34/EU – section on capacity management and traffic management

In addition to the elements referred to in Article 27(2) of Directive 2012/34/EU, t~~T~~he network statement referred to in **that** Article~~ 27 of Directive 2012/34/EU~~ shall contain:

(1) A section setting out the nature of the infrastructure, which is available to railway undertakings and the conditions of access to it. This section shall refer to information available in the register of infrastructure referred to in Article 49 of Directive (EU) 2016/797.

(2) A section on the principles and criteria for capacity management. This shall set out the general capacity characteristics of the infrastructure, which is available to railway undertakings and any restrictions relating to its use, including likely capacity requirements for maintenance. It shall also specify the procedures and deadlines which relate to the capacity management process. It shall contain specific criteria, which are employed during that process, in particular:

(a) the procedures according to which applicants are consulted on strategic capacity planning **and provide capacity needs announcements**;

(b) the procedures according to which applicants may request capacity from the infrastructure manager;

(c) the requirements governing applicants;

(d) the schedule for strategic capacity planning, for application, allocation, adaptation and rescheduling processes and the procedures which shall be followed to request information on the scheduling and the procedures for scheduling planned and unforeseen maintenance work;

(e) the principles governing the consensual conflict resolution mechanism referred to in Article 36, including the dispute resolution system made available as part of this process, and the formal conflict resolution mechanism referred to in Article 37;

(f) the structure and level of ~~compensations~~**penalties** for changes to capacity rights;

(g) the procedures which shall be followed and criteria used where infrastructure is highly utilised or congested;

(h) details of restrictions on the use of infrastructure;

(i) an explanation for any deviations from the European framework referred to in Article 6.

(3) A section on operations, including on traffic management, disruption management and crisis management. This shall set out the implementation of requirements laid out in this

Regulation and in Directive (EU) 2016/797, Directive (EU) 2016/798 and Directive 2007/59/EC, including:

(a) operational rules, including priority rules or priority principles for traffic management, a list of or references to technical, operational and safety rules and to rules relating to operational staff;

(b) operational measures, including rules and procedures for disruption management and crisis management, operational communication and data exchange with railway undertakings and other operational stakeholders;

(c) a list of and references to information systems used in operations;

(d) an explanation for any deviations from the European framework referred to in Article 44.

(4) A section on the key elements of performance management, including in particular:

(a) references to performance objectives set out in the business plan referred to in Article 8(~~2~~**3**) of Directive 2012/34/EU and in the contractual agreement referred to in Article 30 of that Directive;

(b) procedures to monitor and report on progress towards the achievement of the targets, to identify the causes of performance deficiencies with operational stakeholders and to design and implement remedial measures to improve performance;

(c) an explanation for any deviations from the European framework referred to in Article 50.

ANNEX V

CONTENTS OF THE EUROPEAN FRAMEWORK FOR THE CROSS-BORDER COORDINATION OF TRAFFIC MANAGEMENT, DISRUPTION MANAGEMENT AND CRISIS MANAGEMENT REFERRED TO IN ARTICLE 44

The European framework for the coordination of cross-border traffic, disruption and crisis management shall contain at least the following elements:

Element	**Reference(s)**
Common principles for traffic management, disruption management and crisis management to be taken into account by infrastructure managers when setting out rules and procedures for traffic management.	Article 43
Common rules and procedures for the coordination of traffic management, disruption management and crisis management between infrastructure managers and with operational stakeholders.	Article 42, Article 43, Article **44(2) Article** 45, Article 46~~, Article 47, Article 48~~
Common rules and procedures for managing and allocating capacity in the event of network disruptions and crisis situations.	Article 41(1**), Article 41(2**)
Definition of responsibilities of operational stakeholders involved in the management of cross-border traffic, based on a set of agreed operational procedures, milestones and interfaces.	Article 45
Procedures, rules, tools and interfaces for communication and the exchange of information, including harmonised digital tools and interfaces, between infrastructure managers, operational stakeholders and other stakeholders concerned, in particular public authorities.	Article 45, Article ~~48, Article~~ 62
~~Principles to establish dedicated coordination groups in relation to traffic management, disruption management and crisis management.~~	~~Article 53(2)~~
~~Arrangements for simulation and training, in particular in relation to network disruptions and crisis situations.~~**Common method to estimate the conditions on duration and likely impact on traffic and the content of the incident report of the Network Coordinator**	~~Article 42, Article 46,~~ Article 47**(5a)**
~~Arrangements to review the performance of traffic management,~~	Article ~~50, Article~~

~~disruption management and crisis management, including the coordination between operational stakeholders.~~**Guidelines with the purpose of ensuring appropriate and regular consultation of interested parties regarding European and cross-border matters**	~~51~~**54(1)**

ANNEX VI

Network Disruptions referred to in Article 46

Type of incident	Estimated likely duration	Estimated likely impact
Network disruption	The return to pre-incident levels of available capacity for train utilisation requires 3 or more days	– 50% or more of the trains on the affected section operating on a single network need an operational treatment – Less than 50% of trains on the affected section that operate on more than one network need or are expected to need an operational treatment
Multi-network disruption	The return to pre-incident levels of available capacity for train utilisation requires 3 or more days	– 50% or more of trains on the affected section that operate on more than one network need or are expected to need an operational treatment

The conditions on duration and the likely impact on traffic are cumulative.

ANNEX VII

~~*Performance areas subject to performance review referred to in Article 50*~~

CONTENTS OF THE EUROPEAN FRAMEWORK FOR PERFORMANCE REVIEW REFERRED TO IN ARTICLE 50

Performance area	**Relevant issues (indicative)**
Infrastructure and equipment	– Capacity and capabilities of the physical infrastructure and its equipment, including deployment of TEN-T standards – Reductions in infrastructure capacity or capability due to deferred infrastructure renewal, maintenance or repair
Infrastructure capacity	– Capacity offer in terms of quantity and quality – Capacity utilisation, spare capacity to accommodate traffic growth – Consistency between available capacity (planned or unplanned) and market needs**, at single and multi-network levels** – Stability of the capacity offer, in particular in connection with infrastructure works – Congested infrastructure – Planned dwelling times of trains at border stations
Traffic management	– Punctuality / delays of different types of rail services, at origin, intermediate stops and destination and at operationally important locations – Train cancellations – Actual dwelling times of trains at border stations
Disruption management and crisis management	– Share of traffic that could be re-routed or re-scheduled during the disruption or crisis – Impact of disruptions on rail traffic in terms of delays and cancellations – Impact of disruptions on operators of rail services and their customers

	– Specific issues encountered (qualitative)
Deployment and performance of digital services, tools and interfaces	– Support of the processes related to capacity management, traffic management and disruption management – Completeness and quality of the information and data provided – Alignment with European architecture developed in ~~ERJU~~**Europe's Rail Joint Undertaking** and with the relevant technical specifications in accordance with Directive (EU) 2016/797
Compliance with regulation; regulatory oversight	– Process indicators monitoring compliance with rules and procedures – Complaints lodged with regulatory bodies and ENRRB

ANNEX VIII

Information to be provided to operational stakeholders referred to in Article 48

The following information**,** provided **where applicable** in accordance with Directive (EU) 2016/797 and **the** relevant implementing acts ~~under that~~**adopted on the basis thereof, and subject to the respective responsibilities of stakeholders as referred to by the [Commission** Regulation **(EU) No 1305/2014 and Commission Regulation (EU) No 454/2011 as amended]** shall be ~~in the scope of~~ **provided under** Article 48:

Information provided by the infrastructure manager

- Train ~~running~~ number
- Train reporting
- **Path allocation**
- **Train Running Information and Train Running Forecast**
- **Service Disruption Information**
- **Data Exchange for Quality Improvement**

Information provided by other operational stakeholders:

- Consignment Note data
- Path Request ~~and path allocation~~
- Train Preparation
- Train Running Information and Train Running Forecast
- Service Disruption Information
- Shipment Estimated Time of Departure (ETD), Estimated Time of Interchange (ETI), Estimated Time of Arrival (ETA)
- Wagon Movement
- Data Exchange for Quality Improvement

~~ANNEX IX~~

~~List of issues for coordination between infrastructure managers referred to in Article 53~~

~~**Issues for coordination**~~	~~**Provisions to be covered by coordination**~~
~~Strategic capacity planning~~	~~Section 1 of Chapter II, in particular:~~ ~~– Article 10~~ ~~Section 2 of Chapter II, in particular:~~ ~~– Article 11~~ ~~– Article 13~~ ~~– Article 14~~ ~~– Article 15~~ ~~– Article 16~~ ~~– Article 17~~ ~~– Article 18~~ ~~– Article 19~~ ~~– Article 21~~ ~~– Article 22~~ ~~– Article 25~~
~~Scheduling, capacity allocation and rescheduling~~	~~Section 3 of Chapter II, in particular:~~ ~~– Article 27~~ ~~– Article 28~~ ~~– Article 31~~ ~~– Article 32~~ ~~– Article 33~~

	~~– Article 34~~ ~~– Article 35~~ ~~– Article 36~~ ~~– Article 37~~ ~~Section 4 of Chapter II~~ ~~– Article 39~~ ~~– Article 40~~ ~~– Article 41~~
~~Traffic management, disruption management and crisis management~~	~~Chapter III, in particular:~~ ~~– Article 45~~ ~~– Article 46~~ ~~– Article 47~~
~~Performance review~~	~~Chapter IV, in particular:~~ ~~– Article 51~~
~~Deployment of digital services, tools and interfaces; contribution to development of technical specifications~~	~~– Article 9(2)~~ ~~– Article 20(4)~~ ~~– Article 27(4)~~ ~~– Article 29(5), Article 29(6)~~ ~~– Article 42(3), point (c)~~ ~~– Article 45, point (c)~~ ~~– Article 48(2), Article 48(3)~~ ~~– Article 62~~

ANNEX X

Correlation Tables

1. CORRELATION TABLE FOR THE PROVISIONS DELETED IN DIRECTIVE 2012/34/EU

Directive 2012/34/EU	**This Regulation**
Article 2(6)	Article ~~36~~**38**(2)
Article 3, point 20	Article 21 **and Annex II**
Article 3, point 22	~~Article~~**Articles** 36 **and 37**
Article 3, point 23	**Article 4, point 5 and** Article 31
Article 3, point 27	Article 4, point 8
Article 3, point 28	Article 4, point 13
Article 7b(1)	Article 3(1)
Article 7b(2)	Article 3(2)
Article 7b(3)	Article 3(3) and Article 2(3), point b
Article 36	Article 40
Article 38(1)	Article 26(1), second subparagraph and Article 26(6)
Article 38(2)	Article 26(3)
Article 38(3)	Article 26(4)
Article 38(4)	Article 26(~~5~~**7**)
Article 39(1)	Article 11(3)
Article 39(2)	Article ~~27(~~3(**1a**)
Article 40(1)	Article 14~~(2), (3)~~**, Article 28** and Article ~~28~~**53**
Article 40(2)	Article 55(7), Article 57(2), Article 63(1), ~~(4),~~ Article 64(1) and (7)
Article 40(3)	Article 55-(2~~), (5~~) and (~~7~~**5**)
Article 40(4)	Article 57(1)
Article 40(5)	

Article 41(1)	Article 7(1)
Article 41(2)	Article 7 (2)
Article 41(3)	Article 7(3)
Article 42(1)	Article 31(1)
Article 42(2)	Article 31(4)
Article 42(3)	Article 31(5)
Article 42(4)	Article 31(5)~~ and (6)~~
Article 42(5)	Article 31(7) and Annex I, section 5
Article 42(6)	Article 31(8)
Article 42(7)	Article 31(10)
Article 42(8)	Article 31(11)
Article 43(1)	Article 38(1), Article 32(6), (7), (8~~) and~~**),** Article 33(1) and (2)**and Annex I, sections 2, 4, 5, 6 and 7**
Article 43(2)	Article 10(8), Article 11(2), Article 21(9), Article 38(3), and Article 39(9)
Article 43(3)	~~n/a~~
Article 44(1)	Article 26(1)
Article 44(2)	Article 32(7) and ~~32~~(8)
Article 44(3)	Article 31(2)
Article 44(4)	Article 28**and Article 62(5)**
Article 45(1)	Article 32(2)
Article 45(2)	Article ~~32(4)~~**25**
Article 45(3)	Article 32(10)
Article 45(4)	Article 32(11)
Article 46(1)	Article 8(**2a) and (**3~~)~~ **),** Article 20(3) **and** Article ~~32(3~~**36(1**)

Article 46(2)	Article 36(2)
Article 46(3)	Article 36(3)
Article 46(4)	Article 36(4)
Article 46(5)	Article 36(~~5~~**2**)
Article 46(6)	Article ~~36(6)~~**37**
Article 47(1)	Article 21(1) **and Annex II**
Article 47(2)	Article 21(4)
Article 47(3)	Article 21(~~5~~**6**), Article 25(1)
Article 47(4)	Article 8(1~~),~~**) and** (2~~), (4~~) and Article 11(3)
Article 47(5)	Article 8(1) and ~~(4)~~**Article 33**
Article 47(6)	Article 21(6)
Article 48(1)	Article 34(1)
Article 48(2)	Article 18(4)
Article 49(1)	Article 24(1)
Article 49(2)	Article 24(2)
Article 49(3)	Article 24(3)
Article 50(1)	Article 22(1)
Article 50(2)	Article 22(2)
Article 50(3)	Article 22(1)
Article 51(1)	Article 23(1)
Article 51(2)	Article 23(1) and (2)
Article 51(3)	Article 23(4)
Article 51(4)	Article 23(5)
Article 52(1)	Article 12(8)
Article 52(2)	Article 27(6)

Article 53(1)	Article 35(1)
Article 53(2)	Article 10(2), (4) and Article 35(4)
Article 53(3)	Article 9(1)
Article 54(1)	Article 43(3)
Article 54(2)	Article 43(5)
Article 54(3)	Article 43(6)

2. CORRELATION TABLE FOR REGULATION (EU) NO 913/2010

Regulation (EU) No 913/2010	**This Regulation**
Articles 1 to 7	
Article 8	Articles 55(1) to (4), (6), (7) and (8) and Article 56(1)(a) to (c), (f) and (2)
Article 9(1)	Article 14(1), Article 22(3) and (4), Article 23(3) and Article 57
Article 9(1)(a), (c), (d), (e), (2), (3), (4) and (5)	
Article 9(1)(b)	Article 15 and Article 22(3) and (4)
Article 10	
Article 11	Article 55(1) to (4), (6), (7) and (8)
Articles 12-18	
Article 19	Article 49 and Article ~~52~~**65(7) and (8)**
Articles 20 to 25	