

COMMISSION DELEGATED DECISION (EU) 2017/2075
of 4 September 2017
replacing Annex VII to Directive 2012/34/EU of the European Parliament and of the Council
establishing a single European railway area

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area ⁽¹⁾, and in particular Article 43(2) thereof,

Whereas:

- (1) The procedures for capacity allocation should be made transparent, while taking into account the efficiency of the allocation process as well as the operational concerns of all stakeholders concerned with the use and the maintenance of rail infrastructure.
- (2) Applicants for the allocation of infrastructure capacity should be able to submit requests for the incorporation of capacity into the annual working timetable between the deadline for requests to the draft timetable and before the change of the working timetable.
- (3) Once the train paths are allocated, the contractual rights of the applicant would include a right to reject or approve a request for rescheduling made by the infrastructure manager
- (4) Temporary capacity restrictions are necessary to keep the infrastructure and its equipment in good condition and to allow infrastructure development in accordance with market needs.
- (5) Applicants should receive early information on upcoming capacity restrictions allowing them to adapt their operations and transport needs in accordance with restrictions in infrastructure capacity. If information on upcoming capacity restrictions is already published at the beginning of the period for submitting requests for the incorporation of capacity into the annual timetable, there should be less need to reschedule already allocated trains paths.
- (6) Infrastructure managers should not only take into account their own costs when choosing between different alternatives of capacity restrictions, but also the commercial and operational constraints of the applicants concerned and the risks of transport being shifted to less environmentally friendly modes of transport.
- (7) Infrastructure managers should establish, publish and apply transparent criteria as regards the diversion of trains and the allocation of a restricted capacity to different types of traffic. They might do so jointly or individually for their capacity restrictions.
- (8) Infrastructure managers should adapt their network statements and timetabling procedures to ensure timely compliance with the new rules on capacity restrictions as introduced by this Decision.
- (9) As regards train operations crossing more than one network, the infrastructure managers concerned should coordinate to minimise impact of capacity restrictions on the traffic and to synchronise works on a given route or avoid restricting capacity on a diversionary route.
- (10) For reasons of legal clarity and taking into account the number of amendments that need to be made in Annex VII to Directive 2012/34/EU, that Annex should be replaced in its entirety. Moreover, in order to simplify the regulatory framework, a Delegated Decision is the appropriate legal instrument as it imposes clear and detailed rules which do not require transposition by Member States ensuring rapid uniform implementation throughout the Union.

⁽¹⁾ OJ L 343, 14.12.2012, p. 32.

- (11) As a result of the timing of the change of the working timetable in accordance with point (2) of the Annex to this Decision and the lead times for coordination, consultation and publication of capacity restrictions set out in points (8) to (11) of the Annex to this Decision, infrastructure managers will only be able to comply for the first time with the requirements of points (8) to (11) for the change of the working timetable taking effect in December 2019 as regards the second round of publication and December 2020 as regards the first round of publication, with the requirements of point (12) for the change of the working timetable to take effect in December 2018 and with the requirements of points (14) to (17) for the change of the working timetable to take effect in December 2018.
- (12) Directive 2012/34/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex VII to Directive 2012/34/EU is replaced by the text in the Annex to this Decision.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 4 September 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

'ANNEX VII

SCHEDULE FOR THE ALLOCATION PROCESS**(referred to in Article 43)**

- (1) The working timetable shall be established once per calendar year.
- (2) The change of working timetable shall take place at midnight on the second Saturday in December. Where an adjustment is carried out after the winter, in particular to take account, where appropriate, of changes in regional passenger traffic timetables, it shall take place at midnight on the second Saturday in June and at such other intervals between these dates as are required. Infrastructure managers may agree on different dates and in this case they shall inform the Commission if international traffic may be affected.
- (3) The deadline for receipt of requests for capacity to be incorporated into the working timetable shall be no more than 12 months in advance of the change of the working timetable. Requests received after the deadline shall also be considered by the infrastructure manager.
- (4) No later than 11 months before the change of the working timetable, the infrastructure managers shall ensure that provisional international train paths have been established in cooperation with other relevant infrastructure managers. Infrastructure managers shall ensure that as far as possible these are adhered to during the subsequent processes.
- (5) The infrastructure manager shall prepare and publish a draft working timetable at the latest four months after the deadline referred to in point (3).
- (6) The infrastructure manager shall decide on the requests it receives after the deadline referred to in point (3) in accordance with a process published in the network statement.

The infrastructure manager may reschedule an allocated train path if it is necessary to ensure the best possible matching of all path requests and if it is approved by the applicant to which the path had been allocated. The infrastructure manager shall update the draft working timetable no later than one month before the change of the working timetable in order to include all train paths allocated after the deadline referred to in point (3).

- (7) In the case of trains crossing from one network to another which arrive with a presumed delay of not more than 10 hours and, from 14 December 2019, 18 hours, the infrastructure manager of the other network shall not consider the train path cancelled or request application for another train path, including if it decides to allocate a different train path, unless the applicant informs the infrastructure manager that the train will not cross to the other network. The infrastructure manager shall communicate to the applicant the updated or new train path without delay, including, if different, the link between that train path number and the train path number of the cancelled train path.
- (8) As regards temporary restrictions of the capacity 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 seven 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, 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.
- (9) The infrastructure managers concerned shall also create a mechanism whereby they jointly discuss those capacity restrictions, if the impact of the capacity restrictions is not limited to one network, with interested applicants, the associations of infrastructure managers referred to in Article 40(1) and the main operators of service facilities concerned when they are published for the first time, unless the infrastructure managers and the applicants agree that such a mechanism is not needed. The joint discussions shall help prepare timetables, including the provision of diversionary routes.

- (10) When publishing capacity restrictions in accordance with point (8) 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 (11) is required between the first and second publication of capacity restrictions, infrastructure managers 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.
- (11) Before publishing capacity restrictions in accordance with point (8), if the impact of the capacity restrictions is not limited to one network, the infrastructure managers concerned, 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
- (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 a railway line per day is cancelled, re-routed or replaced by other modes of transport for a duration of more than seven consecutive days
- (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 seven consecutive days or less.

The infrastructure managers 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.

- (12) As regards capacity restrictions of a duration of seven consecutive days or less that need not be published in accordance with point (8) 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, 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.
- (13) 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 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 of Annex IV.
- (14) The infrastructure manager may decide not to apply the periods laid down in points (8) to (12), 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.
- (15) The information to be provided by the infrastructure manager when acting in accordance with points (8), (12) or (14) 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, and
- (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) of Annex IV. The infrastructure manager shall keep this information updated.

- (16) As regards the capacity restrictions of a duration of at least 30 consecutive days and affecting more than 50 % of the estimated traffic volume on a railway line, 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 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.

- (17) As regards the capacity restrictions of a duration of more than 30 consecutive days and affecting more than 50 % of the estimated traffic volume on a railway line, 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). The infrastructure manager shall publish in the network statement those criteria together with a preliminary allocation of the remaining capacity to the different types of train services when it acts in accordance with point (8). After the end of the consultation and without prejudice to the obligations of the infrastructure manager as referred to in point (3) of Annex IV, the infrastructure manager, based on the feed-back it received from the applicants, shall provide the railway undertakings concerned with an indicative break-down by type of service of the remaining capacity.'
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