

Public Consultation

Subject: Framework agreements
Beginning: 17/04/2012
Ending: 04/06/2012

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1. Context

1. Reminder of the regulatory framework

The framework agreement comprises a reciprocal contractual undertaking relating to infrastructure capability:

- from whom a railway company or authorised applicant undertakes to order
- and that the infrastructure manager undertakes to provide

for a period exceeding the working timetable.

This type of agreement is governed by the [French] Transport Code and Decree 2003-194, adopting article 17 of EC Directive 2001/14/EC.

The regulatory framework stipulates that:

- the framework agreement *“does not define the train paths in detail”*; thus it does not dispense the holder from requesting train paths for each working timetable;
- the framework agreement *“states the rail infrastructure capacity characteristics, specifically the journey time, the timetable position, the volume and quality of the train paths, corresponding to the requirements of the interested party and to that which the RFF undertakes to provide”*;
- the framework agreement *“may provide for indemnity in the event of non respect of the undertakings”*;
- the framework agreement *“is reached, except in specific cases, for a period of five years, renewable for periods of the same duration as the initial period”*;
- the framework agreement *“does not prevent other interested parties from using the infrastructure train paths”*.

The Authority authorises implementation of the framework agreements made with railway companies that operated the services prior to 1st January 2010.

On the request of the parties the Authority also issues an opinion on the framework agreements made between all parties requesting train paths and the infrastructure manager.

2. The Purpose of Public Consultation

Beyond the regulatory provisions mentioned above, it appears necessary for the Authority to conduct a public consultation in order to throw light on certain subjects that are central to the opinion it will have to give on framework agreements.

Firstly, the Authority notes that at present there is no framework agreement in France, while this is common practice in other European Union countries. Réseau ferré de France (RFF – the French Rail Network) has nevertheless notified the Authority that a number of railway companies and organising authorities wish to have more ready recourse for securing access to certain infrastructure capacity in an environment in the process of stabilisation. Furthermore, the first part of consultation focuses on the value of framework agreements (the player’s perception of the expected benefits, etc.)

In addition, the Authority firstly identified two major types of framework agreements that might be used: those focussing on limited capacity volume aimed at meeting a targeted requirement (a “customised” principle); those concerning large volumes aimed at meeting a significant part of an authorised applicant’s transport plan. The Authority questions the incidence of such framework agreements on the capacity spread and on possible restrictions to access for new operators,

particularly on the most heavily loaded lines. Also whether the consultation aims to collect the direct opinions of the parties concerned on the all of these aspects of reservation and attribution of capacity (parts 2 and 3 of the questionnaire).

Finally, initial observation of framework agreements applying in other European countries shows a great variety of contracts. Furthermore, the Authority questions whether to have available information that throws light on the requirements and motivations expressed by the stakeholders concerning the duration of the framework agreements, pricing, terms for transparency and confidentiality of information and the contractual balance expected.

3. European Comparison Elements

The European countries provide very varied answers reflecting the degree of freedom permitted in EU Directive 2001/14/EC and the peculiarities specific to each network.

The great majority of countries use the elements describing the capacity stated in the contract, such as the type of service, departure-destination points and rolling stock characteristics. However, the degree of infrastructure capacity timetable accuracy that the infrastructure management undertakes to supply varies significantly according to the country. For example, in countries with a high rate such as Germany and Austria, for passenger transport, the routing schedule is restricted to a deviation of less than ten minutes from the desired timetable.

Regarding supervision of the infrastructure covered by the framework agreement contract, the use of upper limits, expressed as a percentage of the total capacity, is widespread. Italy provides for a dual upper limit mechanism (total capacity and all requests by each operator). Germany and Slovenia supervise the capacity under contract for a line, or a segment of a line, for an hour. Yet, Austria sets an upper limit on specific lines only.

The capacity taken into account in a framework agreement when train paths are attributed for the working timetable also differs according to the country. Framework agreements seem to be given a priority that matches the coordination of train path requests in Germany, Austria and the Czech Republic. For such countries as Croatia, Luxemburg and Sweden, capacity requested by framework agreement is only given a priority in the event of saturation.

2. References

1. Regulatory framework

Directive 2001/14/EU:

- 2 f): definition
- 17: framework agreements

Transport Codes:

- [L.2122-6](#): framework agreements
- [L.2122-7](#): framework agreements renewable once only
- [L. 2133-3](#): opinion of the Authority

Decree 2003-194:

- 19: applicants
- 20: framework agreements
- 21: requesting train paths

2. Network reference document for the year 2012 (hereinafter DRR 2012) published by RFF (the French Rail Network) on 6th April 2012 (version 6)

DRR 2012:

- p22 – 2.3 General commercial conditions
- p22 – 2.3.1 Infrastructure capacity framework agreements
- p50 – 4.2.3.1 Planning slots
- p54 – 4.2.3.2 Production of the work slots between December Y-2 and September Y-1
- p62 – 4.5.1 Stabilised work slots
- p64 – 4.5.2 Special work slots
- p68 – 5.2.1 Handling requests for infrastructure capacity

Appendix (pp56-58 of the pdf version):

- 3.3.1: Framework agreement system

3. Other document(s)

Draft framework agreement drawn up by RFF for application under DRR 2012.

3. Public consultation procedures

The opinion of contributors is sought regarding this present document, and the draft framework agreement drawn up by RFF, which may be downloaded from the Authority's site www.regulation-ferroviaire.fr or by direct request.

The replies to the questions below, as well as all contributions that appear appropriate in enlightening the Authority, must be submitted before 4th June 2012, either:

- by email (preferably): consultation.publique@regulation-ferroviaire.fr
- by post to the office: ARAF – Authority de régulation des activités ferroviaires
57 bd Demorieux
CS 81915
72 019 LE MANS cedex 2

The Authority will publish a summary of contributions (except for confidential aspects).

4. Questionnaire

1. The usefulness of framework agreements

1. Do you think that signing framework agreements is favourable to the development of the railway system?
2. If so, please state why.
3. If not, please give reasons. Explain in particular the risks you identify in this type of contract.
4. Do you think that a framework agreement would be beneficial to your business?
5. Do you envisage signing a framework agreement in the near future for your company? In this case would you also state for what type of traffic, on what date and for what duration you would hope to make a framework agreement with RFF.

2. Infrastructure capacity reserved by framework agreements

6. The regulations foresee that a framework agreement *“does not define the train paths in detail”*. What do you think should be the degree of infrastructure capacity precision that is the subject of reciprocal undertakings in a framework agreement?
7. The purpose of a framework agreement is to respond to the commercial requirements of the applicant by reserving capacity on a portion of the network to ensure their requirements are satisfied for several time slots. Nevertheless, the regulations state that the framework agreement shall not prevent other applicants from using the infrastructure. Do you think the infrastructure capacity that is the subject of a framework agreement should have an upper limit? On what terms?
8. Do you think it necessary to identify the terms for an upper limit based on the degree to which the lines are loaded?
9. What are the means, in your opinion, by which the risk of over reservation of capacity can be avoided?

3. Operating relative to infrastructure capacity attribution

10. How do you see the complementarities and specifics of framework agreements in relation to other contracts (contract for using the infrastructure on the one hand, agreement on the quality of the train paths, optional, on the other)? How should these contracts correlate?
11. In your opinion, at what stage in the process of distributing RFF capacity should the undertakings made in framework agreements be taken into account? For example, how should the RFF manage conflicts that arise between the commitments made in framework agreements and the competing requirements made in the context of the annual service timetable?

4. The duration of framework agreements

12. According to you, what is the optimum duration for a framework agreement?
13. From this point of view, should there be a distinction between passenger and freight transport?

14. What types of investment would justify a duration of more than five years?

5. Setting prices under framework agreements

15. Should a framework agreement be accompanied by specific pricing terms? If so, please say what these terms should be.
16. Would a variation in tolls linked to signing a framework agreement seem justified? If so, please explain whether you would be more favourable to a rebate system or to a supplementary tax?

6. Confidentiality of framework agreements

17. A framework agreement has to include information such as the purpose of the traffic concerned (including departure and destination), volume, equipment used, the scheduling system and position (with tolerance) and the indemnity terms. What information relates to business confidentiality in your opinion?
18. By contrast, what information should be published? Under what terms should such information be brought to the notice of the sector?

7. The draft standard framework agreement drawn up by RFF

19. How do you assess the general balance of this draft standard framework agreement?
20. How do you judge the degree of reciprocity of the undertakings?
21. What do you think of article 9 on orders for train paths and the applicable scale of charges?
22. What do you think of the agreement amendment clauses explained in article 11?