

*Courtesy translation – only the Italian text is authentic*

***Annex A to Decision No 187/2020 of 26 November 2020***

**Indications and requirements on  
“Network Statement 2022” presented by the infrastructure manager of  
the national rail network, R.F.I. S.p.A.,  
and on “Network Statement 2021”**

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## Introduction

By note no. RFI.DCO\PEC\P\2020\0001488 of 1 October 2020, registered as received under ref. no. ART 14199/2020, as later supplemented by e-mail (ref. no. ART 14381/2020 of 5 October 2020), Rete Ferroviaria Italiana S.p.A. (hereafter: RFI or GI) transmitted the final draft of the Network Statement 2022 (hereinafter: NS 2022), together with the comments received from the stakeholders at the end of the public consultation and following its related assessments. The NS 2022 presents a structure of the chapters other than the previous versions, as RFI intended to apply a new common standard as defined by the organisation of European Infrastructure Managers “RailNetEurope” (hereafter: “*Network Statement Common Structure and Implementation Guide for Timetable 2022*”).

With this document – whose objective scope refers exclusively to the operation of the national railway infrastructure that is granted to R.F.I. S.p.A. pursuant to the Decree of the Minister of Transport and Navigation No 138T of 31 October 2000, under the conditions laid down in the concession contract, as amended, as well as in the Programme Contract concluded with the State, the Authority provides its indications and requirements, pursuant to Article 14 (1) of Legislative Decree no 112 of 15 July 2015 and of Article 37 of Decree-Law no 201 of 6 December 2011, converted with amendments into Law no 214 of 22 December 2011, with respect to sections 1, 2, 3, 4, 5, 6 and 7 of the a.m. NS 2022.

Concerning each of these sections, for each of the subjects under consideration, reported below are:

1. the Authority’s relevant assessments following the analysis of the draft NS 2022 sent by RFI on 1 October;
2. the ensuing indications and requirements for the Infrastructure Manager of the national rail network.

In providing such indications and requirements, account has been taken of the outcome of the Authority’s activities carried out in the matter of interest over the last year, including in relation to the comments and findings of the IM’s hearing on 23 October 2020; special attention was paid, *inter alia*, to the issues relating to the assessment of the statement of congestion of the railway infrastructure and the penalties charged to railway undertakings (hereinafter: RUs) for exceeding the scheduled stop times at border stations.

The indications and requirements to be applied already from the 2020/2021 timetable are highlighted with blue formatting (in this case, the numbering of sections, subsections and paragraphs is referred to the NS 2021, and shall be understood as referring to the sections, subsections and paragraphs of the NS 2021 which, while possibly presenting a different numbering, relate to the same subjects).

### Main abbreviations used in the document:

Authority	Autorità di regolazione dei trasporti (Transport Regulation Authority);
ANSFISA	<i>Agenzia Nazionale per la Sicurezza delle Ferrovie e delle Infrastrutture Stradali e Autostradali</i> (Rail and Road Safety National Agency) (former ANSF);
ePIR	On-line portal relating to the NS;
ERA	European Union Agency for Railways;
FA	Framework Agreement;
HS/HC	High speed/High capacity;
IM	National railway infrastructure manager;
MAP	Minimum Access Package (art. 13 of Legislative Decree no 112/2015);
MIT	Ministry of Infrastructure and Transport;
NS	Network statement of the national railway infrastructure;
NSCS	Network Statement Common Structure and Implementation Guide for Timetable 2022;
PMR	People with reduced mobility;
PR	Performance Regime;
PSC	Public service contract;
PSO	Public Service Obligations;

Regulation	Implementing Regulation (EU) 2017/2177;
RFI	Rete Ferroviaria Italiana S.p.A.;
RNE	<i>Rail Net Europe</i> ;
RU	Railway undertaking;
TSI	Technical specifications of interoperability.

## 1. General Information

### 1.1 Measures to address the COVID-19 health emergency

#### 1.1.1 Assessment by the Authority

Regulation (EU) 2020/1429 of the European Parliament and of the Council of 7 October 2020 establishing measures for a sustainable rail market in view of the COVID-19 pandemic, and in particular Article 3 thereof, provides that infrastructure managers shall, as appropriate and without delay, amend their network statements so as to display the conditions applied by them in view of the measures taken by the Member State concerned in accordance with Article 2 of the above Regulation. Pursuant to paragraphs 1, 2 and 3 of this Article, the infrastructure manager may provide for the reduction, waiver or deferral of the payment of charges for the minimum access package, for the reduction of the relevant mark-ups and the non-application of the penalties concerning the reservation of infrastructure capacity. Paragraph 4 of the same article provides that *"Member States shall compensate infrastructure managers for the specific financial loss incurred as a result of the application of paragraphs 1, 2 and 3 by 31 December of the year following the year in which the loss was incurred. This compensation is without prejudice to the Member States' obligation under Article 8(4) of Directive 2012/34/EU, to ensure that, over a reasonable period, which shall not exceed the period of five years, the profit and loss account of an infrastructure manager shall remain balanced."*

The measures referred to in the a.m. Article 3 of Regulation (EU) 2020/1429 shall be understood as:

- immediately applicable to the NS 2021 published by RFI, as the Italian Government has enacted the measures referred to in Article 2 of the same Regulation by Article 196 of Legislative Decree no. 34 of 19 May 2020, converted into law, as amended, by Article 1(1) of Law no. 77 of 17 July 2020;
- applicable to the NS 2022 and following NS, where the conditions deriving from any time extension of the COVID-19 health emergency and from any ensuing decisions made by the Government are met.

#### 1.1.2 Indications

**1.1.2.1 The IM is given the indication to include in Section 1 of the NS the reference to Regulation (EU) 2020/1429 and, in particular, to the provision referred to in Article 3, which requires infrastructure managers to amend the NS, as appropriate and without delay, so as to display the conditions applied by them in view of the measures taken by the Member State concerned in accordance with Article 2 of the Regulation.**

#### 1.1.3 Requirements

No requirements are provided for.

## 1.2 Rail Net Europe Information Systems

### 1.2.1 Assessment by the Authority

When reorganising the NS on the basis of RNE's NSCS format, the IM deleted or moved to other paragraphs (1.7.2 "Rail Net Europe" and others) the description of the information systems made available by RNE to the applicants for capacity, that was previously contained in paragraph 1.10.2 on "RNE tools". The section containing the description of such systems does not include any longer a reference to the CIS (*Charging Information System*), although this system is still available. The descriptions of these RNE information systems are a useful source of information for the applicants for capacity and it would therefore be appropriate to maintain at least their references under paragraph 1.7.2 of the NS, without prejudice to the already existing reference in other paragraphs on account of the different purposes of these systems.

### 1.2.2 Indications

**1.2.2.1 The IM is given the indication to maintain in paragraph 1.7.2 of the NS the references to all separate RNE information systems that are made available to the applicants for capacity.**

### 1.2.3 Requirements

No requirements are provided for.

## 2. Characteristics of the infrastructure

### 2.1 Information on the managers of connected regional infrastructure, limitations and network development

#### 2.1.1 Assessment by the Authority

Table 2.1 in paragraph 2.2.2 "Rail networks connected to the national railway infrastructure [former 3.2.2]" is to be updated as it lists some obsolete names of regional rail infrastructure managers (e.g. Rete Toscana S.p.A., instead of La Ferroviaria Italiana S.p.A., Umbria TPL e Mobilità S.p.A., instead of RFI) and, as for Ferrovie Udine Cividale s.r.l., it is not reported it is a member of the interconnected regional railways falling within the scope of Legislative Decree no 112/2015, as defined by MIT Decree of 5 August 2016.

Paragraph 2.4.4 "Tunnel restrictions [former 3.4.4]", in accordance with the provisions of RNE's NSCS, shall include any restrictions provided for the transit of rolling stock through tunnels, including, for example, restrictions on the use of diesel traction. In this paragraph, RFI only refers to the "characteristics of the combined transport line" and therefore only to loading gauge limitations, if any; actually, in the national rail

network, there is at least one limitation on the use of diesel traction, i.e. that provided for in the interconnection of the city of Turin. Considering the evident need for such information, which the IM, for other areas, already makes available in technical and regulatory documentation, and considering that the mere reference to combined transport is not exhaustive in order to enable applicants for capacity to properly and consciously plan their services and organisation, RFI shall modify the provisions under paragraph 2.4, by indicating the types of limitation and the routes where they are provided or, alternatively, the specific technical and regulatory documentation and/or information systems made available.

As for the issue of infrastructure development and the necessary stakeholder involvement, in order to better orientate this development towards enhanced suitability of the infrastructure to the needs of the market for freight and passenger transport services, the Authority points out the possible improvement of these synergies with particular regard to the disposal and/or reconversion of the service facilities of the IM or of some major economic operators. For example, by note RFI-DCO\PEC\P\2020\0001135 of 5 August 2020 (ref. no. ART 11482/2020), RFI informed of the temporary publication in the NS of Piacenza freight terminal and of its availability at the request of an industrial customer. The IM motivates the “*temporariness*” based on the provisions of a “*Memorandum of Understanding of the Iron Logistics Hub*”, that was concluded on 30 November 2019 between RFI, Municipality of Piacenza, Ministry of Transport, Region Emilia-Romagna and FS Sistemi Urbani; according to the Protocol, the area should be declared as non-instrumental and therefore subject to disposal for other general public services. At the hearing of 23 October 2020, RFI underlined that: i) the area made available by RFI does not lie inside the pre-existing freight terminal, but rather constitutes an integration thereof; ii) the publication of this new area, whose availability is limited in time, is intended to ensure that all potential applicants can access and use it for terminal activities; iii) the Memorandum of Understanding provides for the complete relocation of the freight activities of Piacenza station to a new area, *Le Mose*, that is currently not owned by RFI.

While noting that the area made available appears not to be corresponding to the freight terminal area of Piacenza station, the Authority notes that the planned and agreed disposal/reconversion of the same freight terminal has not been subject to any communication to the market by the IM, except for the press news concerning the conclusion of the a.m. memorandum of understanding.

In this respect the relevant legislative and regulatory sources provide as follows:

- Article 13 (8) of Legislative Decree no. 112/2015: “*Where a service facility referred to in paragraph 2 has not been in use for at least two consecutive years and the railway undertakings have expressed an interest in accessing the facility in question on the basis of proven needs, its owner shall make public, including through publicity in the same facility, the operation of the service facility as being for lease or*

*rent, in whole or in part, unless the operator of that service facility proves that an ongoing project prevents its use by a railway undertaking.”*

- Article 15(1) of the Regulation: *“Service facilities listed in point 2 of Annex II to Directive 2012/34/EU which have not been in use for at least two consecutive years shall be subject to expression of interest and lease or rent. Information on unused facilities shall be published in accordance with Article 5”;*
- Paragraph 10.1 of Annex A to ART’s Decision no 130/2019: *“Owners of the service facilities referred to in Article 13 (2) of Legislative Decree no. 112/2015, in which the operator initiated an even partial reconversion process, that was launched before the expression of interest referred to in Article 15 of the Regulation, shall inform the Authority thereof by transmitting the necessary documents so as to allow ART to assess its consistency. The Authority shall carry out its assessment within six weeks of receipt of all relevant information; if the assessment is negative, the Authority shall require the publication of the availability of the facility as being for lease or rent, as a whole or in part”.*

Without prejudice to the specific publicity arrangements provided for in Legislative Decree no. 112/2015, in the Regulation and in ART’s Decision no. 130/2019, since the service facilities owned by RFI are part of the infrastructure supply available to railway undertakings and (even potential) applicants for capacity in general, the Authority considers it necessary that the IM provides information to the market on its facilities that were unused for at least two years (with evidence of any appropriate intentions of disposal/reconversion), as well as on its used facilities for which it intends to start a disposal/reconversion, by using adequate means, such as, at least:

- the technical meeting referred to in paragraph 2.6 *“Infrastructure development [former 3.8]”;*
- the publication on the corporate website.

The IM shall therefore take into account any comments submitted by the participants in the above technical meeting (including by appropriately supplementing its annual report on the outcomes of the meeting), as well as any intentions – as formally expressed by one or more stakeholders or other economic entities – to manage one or more of these service facilities or parts thereof, in accordance with Article 13 (8) of Legislative Decree no. 112/2015 and Article 15 of the Regulation, and shall inform the Authority accordingly.

In order to ensure greater efficiency in the process of analysis of the proposals received at the technical meeting by the IM, it is also considered appropriate that – for each proposal advanced – the interested party indicates whether or not it has already been submitted at previous technical meetings.



## 2.1.2 Indications

The IM is given the indication to verify and correct, where necessary, in Table 2.1 “*Network connecting facilities between the interconnected regional lines and the national rail infrastructure*” the names of the regional infrastructure managers listed therein, and to include the correct reference of the regional manager Ferrovie Udine Cividale s.r.l. that falls within the scope of Legislative Decree no. 112/2015.

- 2.1.2.1 The IM is given the indication to supplement the forms prepared for the presentation at the technical meeting of the proposals for infrastructure development, by including an *ad hoc* field where each applicant may specify whether one or more proposals have already been presented at previous technical meetings.

## 2.1.3 Requirements

- 2.1.3.1 Concerning paragraph 2.4 “*Traffic Restrictions [former 3.4]*”, the IM shall, by 26 February 2021 at the latest, verify and, where appropriate, supplement the information on traffic restrictions, by specifying, for each sub-paragraph, the type of limitation and the routes where such limitations are envisaged, by possibly using the publication of an extraordinary edition of the NS 2022. Alternatively, for each type of limitation, the IM may mention, in the same paragraph 2.4 of the NS 2022 to be published by the start of the timetable 2020-2021, the appropriate references to the specific technical and regulatory documentation and to the information systems available to the applicants for capacity, where the necessary information on traffic restrictions can be found.

- 2.1.3.2 The IM shall supplement paragraph 2.6 “*Infrastructure development [former 3.8]*”, by providing that:

- on the occasion of the call for the technical meeting on the infrastructure development, by 30 April of each year, the following be communicated to the *stakeholders* and published on the corporate website:
  - a list and a summary description of its service facilities or parts thereof that were unused for at least two years (with evidence of those which are provided for disposal/reconversion by the IM);
  - a list and a summary description of its service facilities or parts thereof which, while they are in use, are intended to be disposed of or reconverted by the IM;

- **the IM undertakes to analyse and take into account the comments made by the participants at the technical meeting on the information referred to under the preceding point, as provided by the same IM, and include all of them in the relevant annual report;**
- **in the event that a *stakeholder* or other economic entity, who has become aware of the intention of disposal/reconversion of an IM's facility, formally expresses the intention to take over the management of the service facility or of part thereof, the IM is required to inform the Authority and take into account the proposal in accordance with Article 13 (8) of Legislative Decree no. 112/2015 and Article 15 of the Regulation.**

## **2.2 Level of utilisation of the network**

### **2.2.1 Assessment by the Authority**

With reference to paragraph 2.7.2 "*Level of utilization of the network [ex 3.9.2]*", the Authority notes that the IM has proposed some substantial changes to what the Authority, following the increased traffic on the network and the decline in punctuality of the transport services thereupon, defined in ART's Decision no. 118/2018 and, in particular:

- in order to declare that a route has limited or congested capacity, the IM proposes to make reference to the exceedance of the expected capacity thresholds not at the level of the individual hour, but over three consecutive hours;
- the capacity thresholds given in Table 3.7 "*Capacity values and limited/congested capacity threshold values*"<sup>1</sup>, in the case of lines for which a capacity analysis has been carried out by the IM, shall be replaced by the values defined by the capacity analysis.

The amendment referred to in the second paragraph was not subject to comments during the consultation carried out by the IM on the first draft of the NS 2022 and the Authority considers it is acceptable, provided that the lines in question are included in the above table "*Capacity values and limited/congested capacity threshold values*" showing the limit values provided for by the IM, by analogy to what is already envisaged for certain specific lines, such as Florence-Rome HS line, Milan interconnection and Naples interconnection; further, it is considered necessary that the ensuing update of the Annex "*Levels of utilisation of the*

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<sup>1</sup> The numbering of the table is incorrect as it relates to the NS 2021 structure.

*infrastructure: limited capacity infrastructure and congested infrastructure” shall be made according to the planned annual update schedule.*

On the other hand, the amendment referred to in the first paragraph has produced various and extensive remarks during the consultation (as reported in the *“Accompanying report to the final draft NS 2022)*, including, in particular, those listed below:

- 1) *“the relation between the timing of publication of the Annex “Levels of utilisation of the infrastructure: limited capacity infrastructure and congested infrastructure” concerning the timetable following that in force and the actual final document to be taken as reference for the calculation of the penalties for the same timetable (following that in force) is not clear.”;*
- 2) *“the publication of the Annex to the ePIR, in editable xls format, no later than 30 September, or at the end of the coordination procedure;“;*
- 3) *“It is therefore called for a timely and regular update of this document, as clearly a section on the infrastructure that is declared congested and/or with limited capacity at a given time of the year might not be so later and viceversa (one example above all is given by the recent health emergency, which led to the drastic decrease in passenger traffic throughout the network, where, therefore, the congestion of the lines occurs in much less frequent cases than those indicated by RFI before the start of the timetable”.*
- 4) *“It is also requested that the report on path cancellation penalties be published no later than the 15<sup>th</sup> day of the month following the month of reference, since the publication of such information after 6 months, as happened recently, can in no way be accepted.”;*
- 5) *“A clarification concerning the definition of congested line based on the congestion of consecutive time slots. Does this definition determine congestion only for those time slots or throughout the day?”;*
- 6) *“The increase from 1 to 3 consecutive time slots of the threshold beyond which ‘the IM states the congestion of the section concerned in advance of the procedures provided for in paragraph 4.6.1 (Statement of congestion)’ does not ensure a correct prior analysis of available capacity; this being a fundamental analysis to solve congestion issues.”;*
- 7) *“With reference to the provisions of the IM in the accompanying report to the first draft NS 2022 on the rescheduling of the services following the capacity analysis, i.e. that “the rescheduling measure is in fact constituted by an action of shifting to the previous or following time slot, within the limit of 60 minutes. The shift can take place progressively from one slot to another, with a redistribution of the load, as by definition the section is not congested at a daily level”, it is evident that this action (i) is not regulated in the NS and (ii) shall be necessarily clarified, bearing in mind, inter alia, that the intended*

*applicable shift can strongly affect the profitability of the section, depending on the time slot in which it is applied. This provision is therefore severely penalising for RUs in terms of both commercial attractiveness and industrial sustainability”;*

- 8) *“The proposal for a “periodic” shift that is extended to at least three consecutive hours only serves to extend the relevant timeframe to assess the density of utilisation of the network, without affecting the substance of the event. This means that the tolerance threshold is modified, but no action is taken as to the actual density of network utilization. In other words, rather than addressing the conditions that determine insufficient availability of capacity compared to the requests for use, the IM simply interprets the rationale behind the instrument by merely extending the time segmentation.”.*

With regard to the proposal to make reference – in order to state the congestion of a section – to the three-hour period instead of one hour, at the hearing on last October 23<sup>rd</sup>, RFI clarified this would enable to pursue:

- limitation of cases where congestion is linked to only one hour, even though there is congestion for the hours next to degrees of lower utilisation, thus allowing the IM to apply timetable solutions (moving the section to adjacent hours) in order to solve the criticality,
- limitation of the number of cases where penalties are provided for cancellation due to sections with limited/congested capacity;
- limitation of the number of cases in which, in the operational context, the identification of the trains affected by penalties (identification by the individual undertaking of the RFI operation, of the trains using a certain line in the time slot in which this line is declared to be congested/with limited capacity).

However, it is considered that this proposal does not guarantee either simple application or ease of interpretation by the applicants for capacity, of the data provided in the Annex to the NS containing the level of utilisation of the network. Moreover, with regard to the possibility, supported by the IM, that the shifting of one or several paths from one time slot to the next may guarantee that the values of used capacity remain below the expected limits for both limited capacity and congestion, it is actually noted that this possibility of path-shifting is already considered both in the phase of harmonisation and in the phase of coordination; despite this, the IM, in the 2019-2020 draft timetable, has not succeeded, even due to the need to satisfy the legitimate commercial expectations of the applicants for capacity, to ensure capacity allocation to fully satisfy the applicants<sup>2</sup> and bring the level of hourly utilisation below the expected limits. In addition to the above-mentioned reasons, the IM’s proposal is not acceptable also considering that the current regulatory framework

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<sup>2</sup> The railway undertaking Trenitalia has in fact lodged a complaint (ref. no. ART 1962/2020), on alleged discriminatory behaviour by the IM on the occasion of the allocation of capacity for the 2019-2020 timetable.

had the effect of both ensuring the surfacing of critical points and sections that had existed for some time on the network and nudging the IM to define more rational rules of capacity utilisation that were aimed at maximising its use (e.g. the rules adopted for the stations of Milan Centrale and Venice Santa Lucia in the NS 2021).

The Authority further considers it appropriate to maintain in paragraph 2.7.2 the explicit indication that the Annex “*Levels of utilisation of the infrastructure: limited capacity infrastructure and congested infrastructure*” referring to a given service timetable, be the reference for the calculation of the cancellation penalties for the following timetable (so as to ensure that applicants for capacity are aware of the routes identified as having limited or congested capacity before the deadline for submitting path requests within the framework of the annual capacity allocation process); lastly, the IM should evaluate the anticipation of the publication of this Annex on 31 January each year rather than on 28 February, so as to make this information earlier available to the applicants for capacity.

### **2.2.2 Indications**

**2.2.2.1** The IM is given the indication to anticipate the publication of the Annex “*Levels of utilisation of the infrastructure: limited capacity infrastructure and congested infrastructure*” on 31 January each year, rather than on the currently applicable date of 28 February, and to update at the same time the provision under paragraph 2.7.2 “*Level of utilization of the infrastructure [former 3.9.2]*”.

### **2.2.3 Requirements**

**2.2.3.1** The IM shall maintain, for paragraph 2.7.2 “*Level of utilization of the infrastructure [former 3.9.2]*”, the wording already adopted in paragraph 3.9.2 of the NS 2021, and include the following specifications: a) that for lines that have been subject to a specific capacity analysis over the last three years, the commercial capacity values taken as reference be derived from the results of those capacity analyses that are specifically performed by the IM; b) that the Annex “*Levels of utilisation of the infrastructure: limited capacity infrastructure and congested infrastructure*”, that is published following the path allocation for a given timetable, be taken as reference by the IM, during the following timetable, for the calculation of the penalties for non-utilisation of the allocated paths as referred to in paragraph 5.6.4 of the NS.

**2.2.3.2** If it intends to adopt commercial capacity values for a line as resulting from specific capacity analyses conducted by the IM over the last three years, the IM shall include that line, with the relevant capacity values and the corresponding thresholds of limited and

congested capacity, in the table *“Capacity values and limited/congested capacity threshold values”* of paragraph 2.7.2 *“Level of utilization of the infrastructure [former 3.9.2]”*. The level of commercial capacity for the concerned paths shall be updated also in the annex *“Levels of utilisation of the infrastructure: limited capacity infrastructure and congested infrastructure”*.

### 3. Conditions for access to infrastructure

#### 3.1 Contract with applicants for capacity other than a railway undertaking

##### 3.1.1 Assessment by the Authority

In the NS 2022, under paragraph 3.3.4 *“General Terms and Conditions of Contract [new]”*, the IM has expressly provided for the possibility, for non-RU applicants, to participate in the annual capacity allocation process; for the purpose of the actual utilisation of the capacity by these entities, the IM has provided that *“the paths and services delivered with the final draft timetable by the IM to non-RU applicants will be attached to the infrastructure access contract of the RU indicated by the latter to carry out the transport.”* The IM did not, however, draw up a model contract for the allocation of paths and services by non-RU applicants. The Authority also considers it appropriate to point out that the applicant for capacity other than a railway undertaking (hereinafter: non-RU applicant), in order to be able to participate in the annual capacity allocation process under the same conditions as RU applicants, shall be able to use the application for the management of capacity requests used by the IM (ASTRO-IF) upon issue of the necessary login details; access to this system and the inclusion through it of the requested paths would actually represent the process of proper formalisation to the IM of the non-RU applicant’s intentions in terms of utilization of infrastructure capacity (even if the IM has to apply penalties), as no other objective evidence of the participation of non-RU applicants in the annual capacity allocation process is available. Moreover, the Authority notes that non-RU applicants may also not be holding a Multiannual Framework Agreement for the reservation of infrastructure capacity. Therefore, in order to ensure a more regular annual allocation process, at least in the case where non-RU applicants are not already holding a Framework Agreement, and on the basis of the comments submitted during the consultation on the first draft NS 2022, the IM should establish a simple model contract providing for the following:

- acceptance of the rules provided for in the NS, including those related to penalties as referred to in paragraph 5.6.3.1;
- access to ASTRO-IF information system for participation in the annual capacity allocation process;

- in accordance with paragraph 3.2.2.2 *“Requests for train paths and rail-related services, for the purpose of entering into an access contract [former 2.2.2.2]”* of the NS, explicit obligation to appoint the RU in charge at least 30 days before the actual performance of the service;
- explicit provision that any replacement of the RU, that may be decided by the non-RU applicant during the timetable, shall take place through the conclusion, by another RU in charge, of another infrastructure access contract within 30 days of the takeover, subject to forfeiture of the rights acquired with the acceptance of the final timetable and the possible application of penalties on the non-RU applicant.

The IM shall attend to verify the need for any consistent changes to the Framework Agreement and Infrastructure Access Contract models.

### **3.1.2 Indications**

No indications are provided.

### **3.1.3 Requirements**

**3.1.3.1** With regard to the possibility, for non-RU applicants to participate in the annual capacity allocation process, the IM shall include, as an annex to Section 3 of a special edition of the NS 2022 to be published no later than 31 March 2021, a model contract between the IM and non-RU applicant for annual capacity (to be used if the non-RU applicant for capacity is not already holding a Framework Agreement), providing at least for the following: (i) acceptance of the rules set out in the NS, including the rules related to the penalties referred to in paragraph 5.6.3.1; (ii) access to ASTRO-IF for participation in the annual capacity allocation process; (iii) explicit obligation to appoint the RU in charge at least 30 days before the actual performance of the service, in accordance with paragraph 3.2.2.2 *“Requests for train paths and rail-related services, for the purpose of entering into an access contract [former 2.2.2.2]”* of the NS; (iv) explicit provision that any replacement of the RU, that may be decided by the non-RU applicant during the timetable, shall be made through the conclusion, by another RU in charge of the service, of an additional infrastructure access contract within 30 days before the expected replacement, subject to forfeiture of the rights acquired with the acceptance of the final timetable and the possible imposition of penalties on the non-RU applicant.

## **3.2 Verification of train-line compatibility for the use of authorised vehicles. Performance of test runs.**

### **3.2.1 Assessment by the Authority**

Paragraph 1 of Article 23 of Legislative Decree 57/2019 on "Implementation of 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 (recast)" provides, *inter alia*, that: "Before a railway undertaking uses a vehicle in the area of use specified in its authorisation for placing on the market, it shall check: [...] (b) that the vehicle is compatible with the route on the basis of the infrastructure register, the relevant TSIs or, where such a register does not exist or is incomplete, any relevant information to be provided by the infrastructure manager free of charge within fifteen days, unless the infrastructure manager and the railway undertaking agree on a different deadline, in any case not exceeding thirty days;". Pursuant to paragraph 3.4.1. "Train-line compatibility for the use of authorised vehicles", for the purpose of the aforementioned verification of the vehicle compatibility with the line, the IM shall make the infrastructure register available to the RUs. According to the provisions of the above-mentioned Legislative Decree no. 57/2019, the RUs carry out the compatibility checks independently, but the IM, as a transitional measure, has planned to maintain the previous verification and authorisation system on its own initiative (issue of railworthiness certificate or checks on train-line compatibility) with costs to be borne by the RUs. The Authority considers it appropriate for the IM to specify in the NS that such transitional arrangements have been provided for, as stated by the latter at the hearing of 23 October, on the basis of *ad hoc* ANSF provisions and not, therefore, on the basis of the IM's own decisions. The same paragraph shall also include the fees charged by the IM to the RUs in respect of the IM's preliminary activities for issuing the railworthiness certificate, for the purpose of the checks of the train-line compatibility/rolling stock railworthiness; the table of fees, based on the Operating Provision no. 27 of 18 December 2013 issued by RFI, is not immediately identifiable on the IM's website.

With regard to new paragraph 3.4.5 "Test runs", on account of the recent legislative developments, the IM should indicate which rules and regulations are referred to for the type approval process regarding the rolling stock (including on-board software), and specify any internal provisions identified for this purpose. It is also considered appropriate that such documentation be also published in the IM's website (including appropriate internet links in the relevant parts of the NS).

### **3.2.2 Indications**

**3.2.2.1 With reference to the expected use of a transitional procedure for the verification of railworthiness and/or train-line compatibility as referred to in paragraph 3.4.1. "Train-**



*line compatibility for the use of authorised vehicles”* of the NS<sup>3</sup>, the IM is given the indication to specify, in the same paragraph 3.4.1, the ANSF provisions that have set out such transitional procedure.

**3.2.2.2** The IM is given the indication to include in paragraph 3.4.5 of the NS the references to rules and regulations (including any internal provisions of the IM) relating to the type approval process concerning rolling stock or on-board software. The same paragraph shall include the link to the IM’s website where such documentation is available.

### **3.2.3** Requirements

**3.2.3.1** With regard to the preliminary activities to be carried out, as a transitional measure, by the IM in favour of the RUs for the purpose of verifying the rolling stock compatibility and/or railworthiness, the IM shall include, in paragraph 3.4.1 *“Train-line compatibility for the use of authorised vehicles”* of the NS, the table of fees for such preliminary activities, based on RFI’s Operating Provision No 27 of 18 December 2013.

## **4. Capacity allocation**

### **4.1** Notification of new passenger services

#### **4.1.1** Assessment by the Authority

In accordance with the provisions of the Authority’s Decision no. 156/2020 of 15 September 2020 “Conclusion of proceedings initiated by Decision no. 86/2020. Approval of “Methodology for the economic equilibrium test of public service contracts pursuant to Article 12 of Legislative Decree no. 112/2015 and Article 14 of Commission Implementing Regulation (EU) 2018/1795” and, in particular, paragraph 3.1 of Annex A to the Decision - where it is provided that *“Within one month of publication of the notification on the Authority’s website, the railway infrastructure manager concerned shall notify to the Authority and the applicant entity the reasoned outcome of the assessment of the general technical and operational consistency of the new service. This is carried out – according to the procedures referred to in the Network Statement – exclusively with regard to the technical and operational features of the infrastructure concerned, without considering its current and prospective levels of allocated capacity, by indicating any technical changes that are necessary for the notified service to be scheduled into operation.”*, the sub-paragraph “New passenger services – Notification

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<sup>3</sup>Instead of the provisions of article 23 of Legislative Decree no. 57/2019.

requirements”, under paragraph 4.2 “Description of process”, should be supplemented accordingly and the IM, besides clearly specifying the 18-month deadline referred to in Article 24 of Legislative Decree no. 112/2015, should define and publicize the necessary arrangements for assessing the general technical and operational compatibility of the new services at issue.

It is understood that, in the capacity allocation process, the IM will take appropriate account of the clarifications made in recital (13) of Implementing Regulation (EU) 2016/545, on the procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity, whereby *“it is important to maximise the flexibility available to the infrastructure manager with regard to the allocation of infrastructure capacity, but this should be consistent with satisfying the applicant’s reasonable requirements”*, including – of course – the legitimate needs of *“new market entrants”* or pf already operating entities, whose proposals of new rail passenger services have passed the economic equilibrium test of the relevant public service contracts.

#### **4.1.2 Indications**

No indications are provided.

#### **4.1.3 Requirements**

**4.1.3.1** The IM shall replace the text of the sub-paragraph *“New passenger services – Notification requirements”* under paragraph 4.2 *“Description of process”*, with the following drafting: *“If an applicant intends to carry out a new passenger rail service, it shall notify the Infrastructure Manager and ART of its intention within the time limit of at least 18 months prior to the scheduled start of the service as referred to in Article 24 of Legislative Decree no. 112/2015.*

*In accordance with the provisions of Regulation (EU) 2018/1795, the applicants are required to provide the information referred to in Article 4 thereof by using the standard form available on ART’s website, for the exercise of the functions within its remit pursuant to the “Methodology for the economic equilibrium test of public service contracts pursuant to Article 12 of Legislative Decree no. 112/2015 and Article 14 of Commission Implementing Regulation (EU) 2018/1795”, approved by ART’s Decision no. 156/2020 of 15 September 2020.*

*Within one month of the publication of this notification on ART’s website, the IM shall inform the Authority and the applicant of the reasoned outcome of the assessment of the general technical and operational compatibility of the new service. This assessment shall*

*be carried out in accordance with the procedures defined in the Network Statement and also made available on the IM's website; these shall refer exclusively to the technical and operating characteristics of the infrastructure concerned, without taking into account the current and prospective levels of allocated capacity, and shall include an indication by the IM of any technical changes that are necessary for the notified service to be scheduled in operation."*

- 4.1.3.2** The IM shall specify, in the first useful update of the NS 2022, the methodology for the analysis of the general technical and operational compatibility that will be applied by the IM for the assessment of the new rail transport services referred to under requirement **4.1.3.1**.

## **4.2 Information provided by the infrastructure manager before the transport services in respect of capacity reductions and coordination between Framework Agreements.**

### **4.2.1 Assessment by the Authority**

With reference to paragraph 4.3.2 "*Information to be provided by the IM before and during the transport services, in respect of capacity reductions (update December 2020) [former 2.3.3.5]*", the IM has made the following substantial changes to the provisions set out in the NS 2021:

- in paragraph 5, the IM plans not to include the changes in path timetables as one of the effects of planned capacity reductions;
- in paragraph 6, the IM provides that, in preparing the service programmes, immediate priority is given to the paths covered by the existing Framework Agreements.

As regards the first point, the Authority notes that these changes are not commented on in the accompanying report to the first draft NS 2022 and, only following comments made by interested the stakeholders, the IM has stated its reasons as follows: "*The assessment of changes in the capacity is carried out in accordance with the principles set out in Annex VII of Directive 2012/34/EU, as amended by the Commission Delegated Decision (EU) 2075/2017 (as provided for at the beginning of paragraph 4.3). **The change of timetables is not an element of capacity reduction** and is therefore treated according to the procedures of the other paragraphs in the section, by ensuring maximum attention to the communication of the necessary path changes.*" (emphasis added).

Delegated Decision (EU) 2075/2017 provides in paragraph 8 of Annex VII as follows: "*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 [...]" ; it should, therefore, be pointed out that the effect of capacity restrictions also include speed limitation, which is assumed to involve a change in train timetables (in terms of increasing travel time with ensuing impact on the commercial service) and, potentially, a reduction in the number of train paths on the routes concerned; on the basis of these considerations, it is therefore considered that the Delegated Decision – in fact – also takes into account the possibility that capacity restrictions may lead also to changes in train timetables, although it does not include such a change in the timetables as one of the effects to be taken into account to reach the percentage threshold of the concerned traffic; for this reason, the choice made by RFI to remove this piece of data from the information made available to RUs is not acceptable.

With regard to the second paragraph, according to the Authority it is necessary to point out that the NS, until the 2021 edition, has provided for the application of the priority criteria referred to in paragraph 4.4.5.2 "*Train path priority criteria*" in the event of non-agreement between the IM and the RU for the definition of service programmes in the case of planned temporary capacity restrictions; on the other hand, the proposed amendment under the NS 2022 would apparently change the process aimed at building the transport service programme in the context of capacity restrictions, by introducing the use of priority rules before ascertaining the non-agreement between the IM and the RU. This proposed change, in the Authority's view, is not acceptable as it is applicable only after appropriate consultation with the stakeholders; at its hearing on 23 October, the IM confirmed it did not intend to make any changes to the process at issue, and pointed out that priority criteria should be applied only in the absence of shared solutions.

#### **4.2.2 Indications**

No indications are provided.

#### **4.2.3 Requirements**

**4.2.3.1** The IM shall maintain, under point 5 of paragraph 4.3.2 "*Information to be provided by the IM before and during the transport services, in respect of capacity reductions (updated in December 2020) [former 2.3.3.5]*" of the NS, , also the changes in timetables among the information of interest for applicants.

**4.2.3.2** The IM shall delete from point 6 of paragraph 4.3.2 "*Information to be provided by the IM before and during the transport services, in respect of capacity reductions*" of the NS the following sentence: "*by ensuring priority to the paths provided for in the existing FA and*".

### **4.3 Transport of dangerous goods**

#### **4.3.1 Assessment by the Authority**

The IM has proposed to include the following provision under paragraph 4.7 on the transport of dangerous goods: *“Where the limits set by the IM or ensuing legislative provisions are exceeded at the time of the allocation of capacity, the paths exceeding this threshold shall be scheduled on alternative routes or, in the absence of adequate capacity, there shall be provided limitations on the performance of such transport.”*

The Authority notes that this limitation impacts on available capacity and on capacity allocation rules by identifying criteria that have not so far been adequately made public by RFI with the NS and on which no provisions or requirements appear to be available when interfacing with RUs; furthermore, no explicit legislative and/or regulatory reference that has imposed such limitations is mentioned in the NS. The European Commission itself and, in particular, the Directorate General for Mobility and Transport, by a note of 25 September 2020 (ref. no. ART 14002/2020) expressed some concerns, including – with reference to the issues within the Authority’s remit – the failure to explain such limitations in the NS 2020 and NS 2021.

For this reason, according to the Authority it is necessary for RFI to supplement the NS:

- by explicitly mentioning at least the references to laws and regulations (including internal) underlying these limitations;
- by including in the ePIR, in due time with respect to the deadline set for the request for capacity for the timetable 2021-2022, and also with reference to the NS 2021, a technical annex containing the daily/monthly/annual volumes of dangerous goods that can be transported for each section/line of the relevant rail network.

#### **4.3.2 Indications**

No indications are provided.

#### **4.3.3 Requirements**

**4.3.3.1** The IM shall supplement paragraph 4.7 *“Transport of dangerous goods”* of the NS 2022 with the references to the laws and regulations underlying the limitations of capacity imposed by the IM on the transport of dangerous goods.

**4.3.3.2** The IM shall publish, by 31 January each year, as a technical annex to the ePIR, a table containing the daily/monthly/annual quantities of dangerous goods that can be transported for each section/line of the network. The IM shall update paragraph 4.7 of the NS accordingly.

**4.3.3.3 The IM shall make the necessary amendments and additions to the NS 2021 and the relevant annexes, in accordance with the requirements under 4.3.3.1 and 4.3.3.2.**

**4.4 “Redesign of the international timetabling process” project (TTR)**

**4.4.1 Assessment by the Authority**

Paragraph 4.9.3.3 “*TTR Pilot Projects*” is not updated with respect to RFI’s e-mail communication of 1 October 2020 (ref. no. ART 17051/2020), concerning the completion of the pilot project on the Munich-Verona route on the Brenner corridor. In consideration of the absence of TTR pilot projects on the national rail network, the IM should review and update this paragraph, by including a link to RNE’s website with the information on existing pilot projects on the RFI’s network.

As regards international freight traffic and, in particular, the capacity allocated through the rail freight corridors established by Regulation (EU) 913/2010 (hereinafter also: RFC), the IM should review and update the web portal of the Integrated Service Platform managed by the IM (PIC-Web) by:

- making available for each international freight train, as for international passenger trains, the information on the foreign place of origin/destination;
- providing a special query to identify the international freight trains allocated by the RFCs by explicitly indicating the RFC of reference.

**4.4.2 Indications**

**4.4.2.1 The IM is given the following indication: (i) to update paragraph 4.9.3.3 “*TTR pilot projects*”, by taking into account the current situation of pilot projects involving the national rail network and (ii) to include a link to the website page of RNE association where the references of the existing pilot projects are available.**

**4.4.3 Requirements**

**4.4.3.1 The IM shall supplement the PIC-Web application by 30 June 2021 at the latest: (i) by making available, for each international freight train, information on the foreign place of origin/destination; (ii) by providing for a special query to identify the international freight trains allocated by RFCs, including the explicit indication of the RFC of reference.**

## 5. Services and charges

### 5.1 Charging system for services not included in the Minimum Access Package

#### 5.1.1 Assessment by the Authority

Section 5.2 of the NS provides that, while with reference to the Minimum Access Package (MAP), in accordance with the provisions of Measure 4.1 of the Authority's Decision no. 96/2015, the charges for the timetable 2021-2022 are those of the timetable 2020-2021, as increased by the planned rate of inflation, for the services other than those of the Minimum Access Package "*the amount of the charges that are applicable for the timetable 2021-2022 may be indicated only after completion of the activity of verification of compliance that the Authority will carry out on the charging proposal for the regulatory period 2022-2026*". According to the Authority this statement is incorrect, since point 6 of Decision no. 130/2019 replaced the last paragraph of measure 41 of ART's Decision no. 96/2015, providing that the procedure for verification of compliance of the charges with the Authority's principles and criteria, as set out in measure 4 of the above-mentioned Decision no. 96/2015, is also applicable to extra-MAP services provided by the national IM in its capacity as service facility operator. Consequently, also for the charges for these services, the application of a provisional scheme is provided for the first year of the regulatory period together with a notional item to be applied in the following years to offset any differences between provisional and final scheme, as specified on pages 6 and 7 of the explanatory report to Decision no. 42/2019, whereby the regulatory act was submitted to consultation and later approved by Decision no. 130/2019.

#### 5.1.2 Indications

No indications are provided.

#### 5.1.3 Requirements

- 5.1.3.1 The IM shall correct paragraph 5.2 "Charging system" and, consequently, the relevant paragraphs of the NS including the charges for extra-MAP services, in line with the provisions under point 6 of ART's Decision no. 130/2019 on the transitional scheme for extra-MAP charges.**

### 5.2 Real-time traffic data made available by the infrastructure manager

#### 5.2.1 Assessment by the Authority

At the hearing of last October 23<sup>rd</sup>, the Authority requested to be provided with the information on modalities and RUs receiving the information on timetables/delays and on main connections (including trains of other railway operators) supplied by RFI in real time; in order to improve the rail traffic information flow for service users and assess the completeness of the information that each user is entitled to receive on board (in

accordance with Article 8 (2) of Regulation (EC) No 1371/2007 and Annex II, Part II thereto), RFI highlighted that information kits are made available, through the Integrated Service Platform, in support of the applicants for capacity, so as to provide real-time information on the delays only for the trains falling within its competence; this choice is aimed at preventing any competitors from storing data on the actual train performance and therefore carrying out specific analyses to obtain sensitive information. Based on the interpretation of ART's Decision no. 106/2018, RFI provides that real-time data of all RUs are made available to an applicant PSO/RU to comply with the a.m. Decision.

The Authority notes, however, that, as RUs are required to provide passengers during the journey with at least the information set out in Annex II, Part II, pursuant to Article 8 (2) of the above Regulation (EC) No 1371/2007, the IM shall comply with the provisions under paragraph 3.1.1 of the European Commission's *"Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations"*: the information provided on board by each RU shall also concern all other RUs; (ii) *"Whilst the responsibility of providing passengers with information on delays, cancellations and connecting services lies with railway undertakings, there is also therefore an obligation on infrastructure managers to provide railway undertakings with all relevant real-time information."* The Authority therefore considers it necessary for the IM to make available to each RU in the passenger segment, in a non-discriminatory manner, real-time data relating to trains operated by other railway undertakings in the passenger segment, in order to allow each RU in the passenger segment to provide the passenger during the journey with at least the information set out in Annex II, Part II, of Regulation (EC) No 1371/2007.

### **5.2.2 Indications**

No indications are provided.

### **5.2.3 Requirements**

**5.2.3.1** The IM shall make available to railway undertakings, for the passenger segment, by means of appropriate PIC-Web information system and by updating the relevant paragraph 5.3.1 of the NS, in a non-discriminatory manner, real-time data on trains of other railway undertakings, in order to allow all railway undertakings to provide their passengers during the journey with at least the information set out in Annex II, Part II of Regulation (EC) No 1371/2007, as clarified under paragraph 3.1.1 of the Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations.



### **5.3 Access charges for regional railway connecting stations and charges for traction current**

#### **5.3.1 Assessment by the Authority**

The IM shall restore in paragraph 5.3.2.5 the cost of the access charge for the regional railway connecting stations.

Concerning the supply of traction current, EN50463 standard requires infrastructure managers to bill electricity on the basis of actual consumption, while Commission Implementing Regulation (EU) 2018/868 of 13 June 2018 amending Regulation (EU) No 1301/2014 and Regulation (EU) No 1302/2014 sets the time limit of 1 January 2022 as regards the provisions on energy measuring and data collecting systems. Therefore, the IM shall introduce, in the relevant paragraphs of the NS, a specific reference to the on-board availability of energy measurement and calculation systems (which shall be a statutory obligation as from January 2022) and, in particular, to the possibility – for the IM – of billing consumed energy on the basis of actual consumption (through actual cost allocators) or of the Virtual Metering system (in the case of unequipped rolling stock or failure of the metering system).

Further, the IM shall report to the Authority on the modalities of calculation of the consumption of electricity resulting from both the operation of trains and from the use of other extra-MAP services, such as parking, for the purpose of standardising the management of the charges paid by the RU to the IM for the consumption of electricity.

#### **5.3.2 Indications**

No indications are provided.

#### **5.3.3 Requirements**

- 5.3.3.1** The IM shall maintain in paragraph 5.3.2.5 of the NS the cost of the access charge for regional network connecting stations, as already provided for in the NS 2021.
- 5.3.3.2** The IM shall introduce, in the relevant paragraphs of the NS, a specific reference to the billing of electricity on the basis of actual measurements made through cost allocators on board the rolling stock or through the so-called Virtual Metering system (in the case of unequipped rolling stock or failure of the metering system).
- 5.3.3.3** The IM shall transmit, by 31 March 2021 at the latest, a report on the relevant technical and operational modalities of survey/collection/analysis/synthesis/reporting of electricity consumption data as collected by the equipped rolling stock, both during the transport services and during the use of extra-MAP services involving electricity consumption (e.g. parking).

## **5.4 Assistance to Persons with Reduced Mobility (PRM) as referred to in Regulation (EC) No 1371/2007**

### **5.4.1 Assessment by the Authority**

As indicated in the Authority's opinion delivered to ANSF (ref. no. ART 5882/2020), the supply and operation of personal-assistance devices at stations and stops of passenger transport services, shall be assessed, agreed, justified and formalised through appropriate agreements between the station manager and the railway undertakings; these shall be defined in strict compliance with the applicable TSI PRM (TSI PMR 2008 or TSI PMR 2014), by ensuring the full accessibility of PMR to rail transport and by implementing, basically, the provisions under Regulation (EC) No 1371/2007. By Decision no. 151/2019, the Authority required the IM to draw up a time schedule for the conclusion of appropriate agreements as referred to in the above-mentioned TSI PRM. Pending the completion of the formalisation process of such agreements between the IM and the RUs, as provided for in requirement 5.5.3.1 (b) of Decision no. 151/2020 – which shall be concluded by the start of the timetable relating to the NS 2022 – paragraph 5.4.6 of the NS 2022 shall be supplemented by highlighting that in the stations that are open to passenger services falling under the scope of TSI PMR (TSI 2008 and TSI 2014), the provision of assistance services to persons with reduced mobility (PRM), as referred to under Regulation (EC) no. 1371/2007, is ensured in accordance with the agreements between the IM and the RU for the provision and operation of boarding assistance devices for PRM, the provision of assistance and of alternative transport services.

### **5.4.2 Indications**

No indications are provided.

### **5.4.3 Requirements**

**5.4.3.1** The IM shall supplement paragraph 5.4.6 *"Assistance provided to disabled persons and persons with reduced mobility (PRM), in accordance with Regulation (EC) No. 1371/2007"* of the NS 2022 as follows: *"In the stations and stops that are open to passenger services falling under the scope of TSI PRM (TSI 2008 and TSI 2014), the provision of assistance services to Persons with Reduced Mobility (PRM), as referred to in Regulation (EC) No 1371/2007, is ensured in accordance with the agreements between the IM and the RU for the provision and operation of boarding assistance devices for PRM, the provision of assistance and of alternative transport services."*

## 5.5 Penalties in the event of excessive stop times at border stations

### 5.5.1 Assessment by the Authority

Paragraph 5.6.6 *“Penalties due by the RU in the event of excessive stop times at foreign network connecting stations [new]”* describes the rules under which the IM may impose penalties on the RUs responsible for exceeding the scheduled stop times at border stations. These penalties shall be proportional to the value of the train path which has exceeded the scheduled stop times at the border station and to which the IM has attributed responsibility thereof. At the hearing of last October 23<sup>rd</sup>, the IM informed that the identified penalty is imposed exclusively on RUs operating paths in Italy and not on RUs that only stop at border stations without purchasing paths in Italy; this decision was justified on the grounds of problems in the relations between the IM and foreign RUs, which led RFI to always impose penalties on Italian RUs and thus charge the same RUs with the burden of recovering from foreign RUs the penalty amount paid to the IM.

The Authority considers that any RU accessing the national rail network, even if only limited to border stations, is required to conclude and honour a contract for the use of the infrastructure and is already obliged to abide by the same rules that the RUs operating on the rest of the national network are required to comply with. In this regard, having noted that the *“Standard Form of Access Contract relating to Network Connecting Stations”* (Annex 1b to Section 3 of the NS) provides, under Article 8, that *“IM and RU shall be held jointly responsible and accountable, in accordance with the provisions in the NS, for any delays and any other events causing the network to operate below standard”*, it is quite clear that the RU accessing a border station without continuing within/coming from the national rail network is also required to fully comply with the obligations provided for under the NS and therefore also be subjected to penalties according to the rules established for all RUs. Furthermore, with respect to any difficulties in the collection of penalties by the IM, the relevant rules of the NS, including the refusal of access to the infrastructure by the IM, could be applied as well.

Therefore, what has been highlighted by RFI substantiates potential discrimination against the RUs operating on the Italian network, while favouring, on the other hand, those which, by accessing only a border station, do not comply with the existing rules of the NS. For this reason, the IM shall:

- clearly express, under paragraph 5.6.6 of the NS, that the penalties of border stations may be imposed on all RUs accessing them;
- where a path purchased by the same foreign undertaking in Italy, on the basis of which to calculate the penalty, is not available, introduce a specific method of calculation of the penalty to be borne by the undertaking operating exclusively on the foreign side for longer stops in arrival and departure compared to the scheduled stop; in this case, reference shall be made to the value of the path purchased in Italy that is related to the origin/continuation of the connected train.

In view of the above, the IM shall also submit to the Authority a detailed report on the performance of the contract with the RUs accessing only border stations, highlighting the extent and details of any penalties imposed on them, as well as evidence of the delays that are attributed to such RUs and the relevant economic relations under the *Performance regime*.

### **5.5.2 Indications**

No indications are provided.

### **5.5.3 Requirements**

- 5.5.3.1** The IM shall clarify, under paragraph 5.6.6 *“Penalties due by the RU in the event of excessive stop times at foreign network connecting stations [new]”* of the NS, that the penalties of border stations are applicable to all RUs accessing border stations.
- 5.5.3.2** For longer stops at border stations of trains in arrival and departure compared to the scheduled stop, that are attributable to the responsibility of the RUs operating exclusively on the foreign side (for which no path purchased by the same RU in Italy is available, that is related to the foreign-side train and on the basis of which to calculate the penalty), the IM shall refer to the value of the path purchased in Italy that is attributable to the origin/continuation of the connected train.
- 5.5.3.3** The IM shall forward to the Authority, no later than 31 March 2021, a detailed report on the performance of the contract with each of the RUs that access only border stations, highlighting the extent and details of any penalties imposed on them, as well as the delays that are attributed to such RUs and the relevant economic relations under the *Performance regime*.

## **5.6 Guarantee scheme of minimum quality standards for the services provided and charge increase for financing of ANSFISA.**

With regard to the guarantee system of minimum quality standards of the services provided (SLA) adopted by RFI, through the “Methodological document for the determination of a guarantee system of minimum quality standards of the services provided and related penalties”, in compliance with measure 4.2 of Annex A to ART’s Decision no. 130/2019, paragraph 5.10 of the NS underlines – in addition to the need to access another document on the RFI website that is not attached to the NS – that SLAs have been drafted only for some of the services provided by the IM and, in particular: Passenger Stations, Clearing of infrastructure with equipped

emergency cars, Traction current, Services for exceptional transport, Marshalling operations, Assistance to passengers with reduced mobility (PRM), Fast Track, Supply of additional information, Access to GSM-R telecommunications network.

The Authority notes that the IM has generally intended not to provide for SLAs for the only access to certain service facilities, such as those relating to stops or maintenance centres; while wishing to agree on this criterion, it does not appear to be consistent with the exclusion of certain services, as noted below:

- 1) as regards the NS 2021 horizon, no SLA is provided for marshalling services in border stations. No SLA is available in these stations where marshalling services are, directly or indirectly, made available by RFI; this is not consistent with the provisions of measures 4.2 and 12 of Annex A to ART's Decision no. 130/2019, partly because it is exclusively justified with the short period of maintenance of the service;
- 2) no SLA is provided also with regard to the parking service, although this service corresponds (technically) to the traction current supply service, which is instead covered by a SLA;
- 3) also for other services, such as water supply, access to washing facilities, access to the fixed wastewater disposal system, pre-heating/climatisation and REC, no SLAs have been provided, although these services require specific functionality of particular devices over time, which may well be covered by specific SLAs.

Paragraph 5.9 "*Reporting, billing and payment arrangements [former 6.7]*" provides that the charge for the MAP is calculated in accordance with the Authority's Decisions and with Article 15 (2) (b) of Legislative Decree no. 50 of 14 May 2019, but it does not specify the content of this latter legislative provision. This provides that "*[...] The functioning of ANSFISA shall also be provided for within the limits of the following resources: [...] (b) 1% increase in the rail network access charges paid by railway undertakings to infrastructure managers, [...]*". Therefore, the IM, for the sake of transparency, should expressly clarify this provision under the relevant paragraph.

### **5.6.1 Indications**

**5.6.1.1** The IM that is given the indication to clarify under paragraph 5.9 "*Reporting, billing and payment arrangements [former 6.7]*" of the NS that the charge for the MAP, that is calculated in accordance with the relevant Decisions of the Authority, be subject to 1% increase for financing of ANSFISA, according to the provisions of Article 15 (2) (b) of Legislative Decree no. 50 of 14 May 2019.

## 5.6.2 Requirements

**5.6.2.1** The IM shall supplement the aforementioned “Methodological document” concerning the definition of the guarantee system of minimum quality standards of the services provided, as set out in measure 4.2 of Annex A to ART’s Decision no. 130/2019, providing for the following minimum quality standards for at least the following services: parking, water supply, train washing facilities, fixed wastewater disposal system, preheating/climatisation, REC. This methodological document shall be attached to the special edition of NS 2022 to be published by 30 June 2021.

**5.6.2.2** The IM shall enclose with the NS 2021, by providing for an extraordinary edition to be published by 29 January 2021, the aforementioned “Methodological document” concerning the definition of the guarantee system of minimum quality standards of the services provided, as referred to in measure 4.2 of Annex A to the Authority’s Decision no. 130/2019. This document shall be supplemented with the minimum quality standards of marshalling services in border stations.

## 6. Performance of the contract

### 6.1 **Operating procedures for passenger announcements in the case of snow/ice emergency conditions**

The Authority noted the description of the resources that are made available by the IM in case of snow/ice emergency conditions has been deleted from the operating procedure for passenger announcements in the case of snow/ice emergency conditions (Annex 1 to Section 6 of the NS). The IM justified the choice at the hearing on last October 23<sup>rd</sup>, by pointing out that this information is already available in other annexes to the NS and that they might not be updated. However, the quality and outline of the available information, covering the entire national network, is not considered to be superfluous in relation to the information needs of the applicants for capacity.

#### 6.1.1 Indications

No indications are provided.

#### 6.1.2 Requirements

**6.1.2.1** In Annex 1 to Section 6 on the operating procedure for passenger announcements in the case of snow/ice emergency conditions, the IM shall maintain and keep updated the information concerning the resources made available, as well as the summary description

of the planned activities in relation to the associated warning level in order to ensure adequate and timely emergency management.

## 7. Service facilities

### 7.1 Passenger stations

#### 7.1.1 Assessment by the Authority

Information on any obligation to present the travel pass to access passenger platforms (existing turnstiles) – that is currently available in graphical form via a special layer in the ePIR and which should be mentioned under paragraph 7.3.2.3 of the NS – should also be made available in single information sheets of the passenger service stations (so-called *infoboxes*).

#### 7.1.2 Indications

No indications are provided.

#### 7.1.3 Requirements

**7.1.3.1** The IM shall include the list of information available in the ePIR as mentioned under paragraph 7.3.2.3 "Characteristics of the facilities" of the NS, that is related to passenger stations, whether or not there is a requirement for presenting the travel pass to access platforms (existing turnstiles); the IM shall also include in the same paragraph an explicit reference to the corresponding layer as available in the ePIR.

**7.1.3.2** The IM shall supplement and update, by 30 June 2021, the information sheets (so-called *infoboxes*) that are available in the ePIR relating to the characteristics of passenger stations, by adding the information on existing turnstiles for access to the tracks upon presentation of the travel pass.

### 7.2 Areas for the provision of (automatic and non-automatic) ticket services, reception/assistance and information desks

#### 7.2.1 Assessment by the Authority

Paragraph 11 (4) of Annex A to ART's Decision no. 130/2019, laying down that the areas requested by railway undertakings to provide reception and assistance services to their customers are included in the areas subject to regulation pursuant to Article 13 (2) (a) of Legislative Decree no. 112/2015, provides for supplementing the information provided by RFI with reference to such areas that, as communicated by the IM during the preliminary inquiries, are available in 12 stations managed by RFI. Therefore, the paragraph indicating the applicable charges for the provision of areas in the stations shall also include the applicable charges for these

premises. In addition, it is necessary to indicate the applicable charges at the stations falling under Platinum category, according to the classification adopted by the IM under the Service Charter and reproduced in the NS. In fact, since 2018, as a result of the merger by incorporation of Centostazioni S.p.A. into RFI, the latter has taken over the commercial management of certain passenger stations falling under the above-mentioned category.

Also the provisions concerning the station plan (paragraph 11.6 of Annex A to ART's Decision no. 130/2019) are justified by the need to plan the use, within the stations, of the areas of interest for undertakings operating rail passenger services, and to inform the parties concerned about the planning choices taken by station managers, with an advance at least equal to that provided for in the NS by Article 14 (5) of Legislative Decree no. 112/2015, so as to bring out any critical issues in due time (cf. explanatory report to ART's Decision no. 42/2019, pp. 12-13). It is therefore necessary to highlight, by supplementing paragraph 9 (or rather, paragraph 1) of sub-paragraph 7.3.2.6, that the information on the areas and spaces set aside for ticket machines/information desks for 2022 is contained in the station plans, and that these plans are published, in line with the provisions of Measure 11 (6) of Annex A to Decision no. 130/2019, in the ePIR for the stations where RFI is also the commercial operator, and on the websites of commercial operators of the station concerned in all other cases, respectively.

A similar supplement shall be made to the provision under sub-paragraph 7.3.2.5 *“Rights and obligations of the IM and companies operating in railway passenger transport services [part of 5.3.1.1]”*, according to which *“[f]or each station, RFI shall post in its ePIR portal the location of the suitable premises that, at the date of posting, are set aside for staffed ticket offices and/or passenger reception/assistance”*. Here it is further necessary to delete the parenthesis *“at the time of publication”*. In order to standardize the structure of the information provided with respect to self-service ticket machines and information desks, the above-mentioned provision should be moved to paragraph 7.3.2.6, at the beginning of the description of the procedure for allocating spaces for non-automatic ticket machines, reception, assistance, etc.

## **7.2.2**    **Indications**

No indications are provided.

## **7.2.3**    **Requirements**

**7.2.3.1**    The IM shall also publish, in the paragraph of the NS which lists the charges for the provision of *“suitable locations for ticketing services and other functional structures for rail operations”*, the charges applied for the provision of locations for passenger reception



and assistance, with reference to the stations where the IM is the commercial operator. In the same paragraph, the charges applied to stations falling under the Platinum category should be indicated as well.

**7.2.3.2** The IM shall supplement and coordinate the provisions concerning station spaces for ticketing services (self-service ticket machines and staff-operated ticket offices), reception/assistance and information desks, with appropriate references to the station plans that are published pursuant to measure 11 (6) of Annex A to Decision no. 130/2019, by amending paragraphs 7.3.2.5 and 7.3.2.6 as described above.

### **7.3 Charges for wastewater disposal services**

#### **7.3.1 Assessment by the Authority**

Paragraph 7.3.11.4 “Charge [new]” refers to paragraph 5.2 as regards the charges for wastewater disposal services; this paragraph provides, in general, that: “Regarding the charges for services other than the MAP, the value of the fees for the 2021-22 timetable can only be set out following the completion of the compliance verification to be carried out by the Authority on the charging proposal submitted by RFI for the regulatory period 2022-2026. It is further specified that the definition of the new charging proposal of the services other than the MAP may involve a reassessment of the arrangements for the supply or provision of the same services.”. Without prejudice to the foregoing considerations in Section 5 of this Annex A concerning paragraph 5.2 of the NS, pending the transmission by the IM – to be carried out by 30 November 2020 as communicated at the hearing of last October 23<sup>rd</sup> – of a methodological report for the determination of the service charge, it is considered necessary that the charges provided for this service be set out by the IM, with the notice that they are still under examination by the Authority for the necessary verification procedure.

#### **7.3.2 Indications**

No indications are provided.

#### **7.3.3 Requirements**

**7.3.3.1** The IM shall set out in paragraph 7.3.11.4 “Charge [new]” of the NS the charges for wastewater disposal service, by highlighting that they are still under the Authority’s examination for the necessary verification procedure.