

*courtesy translation – only the Italian text is authentic*

Decision No 173/2021

**Indications and requirements concerning the “Network Statement 2023” submitted by the infrastructure manager of the national rail network, R.F.I. S.p.A., and the “Network Statement 2022”**

The Authority, at its meeting of 6 December 2021

**HAVING REGARD** to Article 37 of Decree-Law No 201 of 6 December 2011, converted, with amendments, into Law No 214 of 22 December 2011, establishing the Transport Regulation Authority (hereinafter: Authority) within the framework of the regulation of public utility services pursuant to Law No 481 of 14 November 1995, and, in particular, to paragraph 2 (a), pursuant to which the Authority “ensures, according to methods that encourage competition, production efficiency and cost containment for users, businesses and consumers, as well as equitable and non-discriminatory access to rail [...]infrastructure”;

**HAVING REGARD** to Legislative decree No 112 of 15 July 2015 “Implementation of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (Recast)”, and in particular:

- Article 14 (1), whereby “The infrastructure manager shall after consultation with the regions, autonomous provinces and other interested parties, develop and publish a network statement, ensure that it is periodically updated and introduce appropriate amendments and additions, on the basis of any indications and requirements submitted by the regulatory body, which may also cover the specific arrangements for the above-mentioned consultation”;
- Article 37 (1), which provides that the regulatory body is the Transport Regulation Authority;
- Article 37 (3), which provides that the Authority, without prejudice to the responsibilities of the Competition Authority, has, in particular, the power to monitor the competitive situation on rail service markets and monitors that the network statement does not contain discriminatory provisions or does not give the infrastructure manager discretionary powers that can be used to discriminate against applicants;

**HAVING REGARD** to Decree No 139 of 23 November 2018 “Implementation of Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016

*amending Directive 2012/34/EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure”;*

**HAVING REGARD** to 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;

**HAVING REGARD** to Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services;

**HAVING REGARD** to Commission Implementing Regulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteria for the application of the economic equilibrium test pursuant to Article 11 of Directive 2012/34/EU of the European Parliament and of the Council;

**HAVING REGARD** to Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers’ rights and obligations;

**HAVING REGARD** to the Authority’s Decision No 70/2014 of 31 October 2014 published on the Authority’s institutional website on 5 November 2014 on *“Regulation of equitable and non-discriminatory access to railway infrastructure and initiation of a proceeding to define the criteria for setting the charges for use of the railway infrastructure”;*

**HAVING REGARD** to Decision No 76/2014 of 27 November 2014 laying down *“Indications and requirements on the Network Statement 2015, submitted by the infrastructure manager of the national railway network, R.F.I. S.p.A.”;*

**HAVING REGARD** to Decision No 104/2015 of 4 December 2015 laying down *“Indications and requirements on the Network Statement - Year 2017 – applicable from 11 December 2016”, submitted by the infrastructure manager of the national railway network, R.F.I. S.p.A., and on the Network Statement currently in force”;*

**HAVING REGARD** to the Authority’s Decision No 140/2016 of 30 November 2016 laying down *“Indications and requirements on the Network Statement 2018”, submitted by the infrastructure manager of the national railway network, R.F.I. S.p.A., and on the current “Network Statement 2017”. Indications concerning the preparation of the “Network Statement 2019”;*

**HAVING REGARD** to Decision No 140/2017 of 30 November 2017 laying down *“Indications and requirements concerning the “Network Statement 2019”, submitted by the infrastructure manager of the national railway network, R.F.I. S.p.A., the “Network Statement 2018”, and the preparation of the “Network Statement 2020”;*

**HAVING REGARD** to the Authority’s Decision No 118/2018 of 29 November 2018 laying down *“Indications and requirements concerning the Network Statement 2020”;*

*submitted by the infrastructure manager of the national railway network, R.F.I. S.p.A., the “Network Statement 2019”, and the preparation of the “Network Statement 2021”;*

- HAVING REGARD** to Decision No 130/2019 of 30 September 2019 on *“Conclusion of the proceeding initiated by Decision No 98/2018 — “Measures concerning access to service facilities and rail-related services”;*
- HAVING REGARD** to Decision No 151/2019 of 21 November 2019 on *“Indications and requirements concerning the Network Statement 2021”, submitted by the infrastructure manager of the national railway network, R.F.I. S.p.A., the “Network Statement 2020”, and the preparation of the “Network Statement 2022”;*
- HAVING REGARD** to the Authority’s Decision No 156/2020 of 15 September 2020 concerning the approval of 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”;*
- HAVING REGARD** to Decision No 187/2020 of 26 November 2020 on *“Indications and requirements concerning the “Network Statement 2022” submitted by the infrastructure manager of the national rail network, R.F.I. S.p.A., and the “Network Statement 2021”;*
- HAVING REGARD** to the Authority’s Decision No 173/2021 of 6 December 2021 on *“Indications and requirements concerning the “Network Statement 2023”, submitted by the infrastructure manager of the national railway network, R.F.I. S.p.A., and the “Network Statement 2022”;*
- HAVING REGARD** to the note of 30 September 2021, registered as received under ART ref. no. 15162/2021, whereby Rete Ferroviaria Italiana S.p.A. (hereinafter: RFI) submitted the final draft of the *“Network Statement 2023”* (hereafter NS 2023) which regulates the capacity allocation process on the national rail network to be implemented in 2022, as well as the infrastructure access contracts with reference to the working timetable in force from 11 December 2022 to 9 December 2023, together with a summary of the comments received from interested parties following the consultation phase launched by RFI on 1 July 2021, and its ensuing assessments;
- HAVING REGARD** to note ref. no. 16174/2021 of 15 October 2021, whereby the Authority summoned RFI to a hearing in order to obtain clarifications and information on the above-mentioned final draft of the NS 2023;
- HAVING REGARD** to the minutes of the above-mentioned hearing, held on 20 October 2021, registered as received under ART ref. no. 17868/2021;

**HAVING CONSIDERED** that, following the analysis carried out by the competent offices, some aspects and issues justify the adoption of specific indications and requirements, relating, in particular, to the following: TTR project, transport of dangerous goods, accessibility for persons with reduced mobility; correct attribution of causes of delay for international transport services; capacity allocation at border stations; timing for submission of applicable working timetable requests, renewal of Framework Agreements, tariff issues.

**HAVING CONSIDERED** accordingly, to provide to RFI, pursuant to Legislative Decree No 112/2015 and Legislative Decree No 201/2011, indications and requirements on the NS 2023, whose objective scope refers exclusively to the national railway infrastructure managed under a concession agreement by RFI S.p.A., pursuant to Decree No 138T of 31 October 2000 of the Minister for Transport and Navigation;

**HAVING CONSIDERED** that, since certain indications and requirements are aimed at optimising the transparency and effectiveness of the information of the NS, and include improvements for the applicants for capacity, they should be also applied with reference to the working timetable in force from 12 December 2021 to 10 December 2022, and therefore require the updating of the current “Network Statement 2022”;

**HAVING REGARD** to the notes whereby, pursuant to Measure 4 referred to in Annex 1 to Decision No 96/2015, RFI has transmitted:

- the tariff proposal for the Minimum Access Package for the national railway infrastructure (hereinafter: MAP) with reference to the regulatory period 2022-2026, together with the relevant documentation (ART ref. no. 8851/2021 of 31 May 2021);
- the tariff proposal for services other than the Minimum Access Package (hereinafter: extra-MAP services) with reference to the regulatory period 2022-2026 (ART ref. no. 9765/2021 of 18 June 2021);

**HAVING REGARD** to the Authority’s Decision No 114/2021 of 5 August 2021 laying down “*Proposal drawn up by Rete Ferroviaria Italiana S.p.A. for the 2022-2026 charging system for the Minimum Access Package for the national railway infrastructure, as well as for services other than the Minimum Access Package provided by RFI – Compliance with the regulatory model approved by Decision No 96/2015, as amended*”, and in particular:

- point 5 (a), under which, with regard to the MAP, RFI is required to apply the provisions of point 2 (B) of Measure 4 of Annex 1 to Decision No 96/2015, with reference to the “provisional scheme”, temporarily adopting, both for 2022 and 2023, the tariff levels applied in 2021, increased annually by the planned inflation rate, as resulting from the economic and financial planning

documents as approved and published by the national government on the date of submission of the tariff proposal under ART ref. no. 8851/2021;

- point 6 (b), under which, with regard to extra-MAP services, RFI is required to make by 30 September 2021 a tariff proposal for the year 2023 only, *“on whose compliance with the principles and criteria laid down in Decision No 96/2015 the Authority will deliver its decision, in time for the publication of the NS 2023”*;

**HAVING REGARD** to the note whereby RFI forwarded, *inter alia* pursuant to point 6 (b) of Decision No 114/2021, the tariff proposal for extra-MAP services, with reference to the year 2023 (ART ref. no. 15159/2021 of 30 September 2021);

**HAVING CONSIDERED** that the above tariff proposal has been subject to specific and separate inquiries and RFI, following the request for information and clarifications made by the offices by note ref. no. 17330/2021 of 29 October 2021, demanded, by note ref. no. 17769/2021 of 5 November 2021, and obtained, the extension of the deadline for feedback to 15 November 2021;

**HAVING CONSIDERED** that, following the hearing of RFI held on 19 November 2021, the need arose for further clarification and integration of the documentation supporting the tariff proposal, as set out in the minutes under ref. no. 17868/2021;

**HAVING REGARD** to the Authority’s Decision No 172/2021 of 6 December 2021 laying down *“Proposal drawn up by Rete Ferroviaria Italiana S.p.A. for the 2023 charging system for services other than the Minimum Access Package provided by RFI - verification of compliance with the regulatory model approved by Decision No 96/2015, as amended and supplemented”*, whereby specific indications and requirements concerning the tariffs of extra-MAP services were issued to RFI, with reference to the NS 2023;

**HAVING CONSIDERED** that RFI carries out the activities of capacity allocation, pertaining to the essential functions referred to in Article 3 (1) (b-septies) of Legislative Decree No 112/2015, in accordance with the rules set out in the NS in compliance with Article 26 (1) of Legislative Decree No 112/2015, where it is provided as follows: *“The infrastructure manager shall perform the capacity-allocation processes. In particular, the infrastructure manager shall ensure that infrastructure capacity is allocated in an equitable, transparent, and non-discriminatory manner and in accordance with EU law, while complying with the criteria established by the regulatory body and set out in the network statement.”*;

**HAVING CONSIDERED** that the Authority has already taken measures, with the aforementioned Decision No 70/2014 and, in particular, with the measures referred to in Chapter 2 of the Annex thereto, providing adequate criteria for capacity allocation procedures, with particular reference to the following: tolerance threshold to be applied when harmonising requests for capacity (measure 2.6.2), involvement of the railway

undertakings affected by path alterations before the harmonisation phase of requests is concluded (measure 2.6.3), operational criteria for the priority management of the different paths in the capacity allocation process (measure 2.6.4) and information to be made available to the railway undertakings concerned in the process of coordination of the requests for capacity (measure 2.6.5);

**HAVING DEEMED** that, in the context of the functions of monitoring competition in the rail services markets referred to in Article 37 (3) of Legislative Decree No 112/2015, also in view of the approaching end of the current regulatory period 2016-2022 and the initiation of the following, it is appropriate to provide an adequate analysis of the suitability of the rules underlying the exercise of the essential function of train path allocation, after extensive involvement of stakeholders, so as to identify market trends in terms of any varying or additional demand for infrastructure capacity and rail transport services, as well as information on the perceived quality levels for train paths made available by the IM;

**HAVING DEEMED** that this extensive involvement can be in an initial phase efficiently guaranteed by the IM through a dedicated consultation procedure, which should also be considered preparatory to the definition of the first draft NS 2024 and the ensuing consultation, as it is related to a topic which is by its nature regulated in the NS;

upon proposal of the Secretary-General, in view of the case records

#### **HAS ADOPTED THE FOLLOWING DECISION**

1. approval of the indications and requirements concerning the “Network Statement 2023”, submitted by the infrastructure manager of the national railway infrastructure Rete Ferroviaria Italiana S.p.A. (hereinafter: RFI), as set out in Annex A to this Decision, which forms an integral and substantial part thereof;
2. the indications and requirements set out in Annex A shall be transposed by RFI in the “Network Statement 2023” by the date of its publication;
3. the indications listed in Annex A, only with regard to those under headings 1.1.2.1, 3.1.2.1, 3.2.2.1, 7.1.2.1, and the requirements set out in that Annex, only with regard to headings 3.1.3.1, 3.1.3.3, 3.1.3.4, 3.1.3.5, 3.3.3.1, 3.3.3.2, 4.6.3.1, 4.6.3.2, 5.3.3.1, 7.1.3.1, shall be transposed by RFI in the “Network Statement 2022” no later than 11 December 2021;
4. RFI shall also:
  - (i) launch within the first two months of 2022, and conclude within the two months following the launch date, a specific public consultation, aimed at collecting stakeholders’ comments and proposals on any changes and additions to the regulations underlying the exercise of the essential function of train path allocation which is specified in the existing NS, in accordance with the principle of efficient capacity management;

- (ii) publish, in the appropriate, easily accessible section of its corporate website, within 30 days of the conclusion of the consultation referred to under (i), the disclosable comments that have been received, and forward to the Authority, within the same deadline, any comments subject to confidentiality;
  - (iii) draw up, in the first draft NS 2024 to be submitted for consultation in July 2022, proposals to amend the relevant parts of the NS, as deemed appropriate following the assessment of the outcome of the consultation referred to under (i) above.
5. this decision is communicated to RFI by certified email.

Turin, 6 December 2021

The President  
Nicola Zaccheo

(digitally signed pursuant to  
Legislative Decree no 82/2005 as amended)