

04 September 2026

Subject: Joint feedback on the draft *Guidelines for modulation of penalties*

ALLRAIL, ERFA, FTE and UIRR welcome the opportunity to provide feedback on the draft ***Guidelines for the Modulation of Penalties*** at this early stage of the drafting process.

The Capacity Regulation introduces reciprocal penalties for infrastructure managers and applicants. As these penalties may have a direct financial impact on railway undertakings and other applicants, it is essential that the penalties will be **fair, transparent, proportionate, customer-oriented and implemented consistently** across Europe.

Having reviewed the draft guidelines from a market perspective, we would like to highlight the following key concerns and recommendations. More detailed comments and supporting explanations will be submitted separately through the consultation template (see annex).

1. Clear definition of “significant change”

A clear and objective definition of “significant change” is currently missing, although it is the fundamental condition for triggering penalties under Article 42 of the Capacity Regulation. This concept must be defined in a reciprocal manner and duly consider the impact on the customer. Our experience in related discussions, including work on Temporary Capacity Restrictions, raises concerns that the approach currently pursued by infrastructure managers is neither fully reciprocal nor sufficiently customer-oriented.

2. Preference for a continuous penalty model

The proposed waterfall approach to penalties is not preferred by railway undertakings. A continuous penalty curve would better reflect the actual impact of changes on applicants by progressively increasing penalties as the operating day approaches, while avoiding abrupt threshold effects. Such an approach would create a stronger incentive for all parties to communicate changes as early as possible, rather than delaying the communication until a specific threshold date is reached.

3. Justification of timeline thresholds

The draft refers to timeline thresholds derived from Annex I. However, the rationale behind the selected thresholds is not explained. Greater transparency is needed to ensure that stakeholders can assess whether these timelines appropriately reflect operational realities and commercial impacts.

4. Transparent and harmonised modulation factors

The proposed categories alone (A-F) do not provide sufficient transparency. The actual modulation factors should be clearly defined and subject to consultation at European level.

5. Quality-based assessment of alternative capacity

The quality of alternative capacity should be assessed on the basis of its actual suitability for the affected service. We believe that the calculation of factor Q should be revised and linked to clearly defined quality criteria. Different operational needs of passenger, freight and night train services should also be appropriately reflected.

6. Appropriate time stamp for infrastructure manager-related penalties

For infrastructure manager-related penalties, the relevant time stamp should be linked to the allocation of an alternative train path rather than the initial notification that a change may occur. This will better reflect the moment at which applicants can assess the practical consequences of the change and provide their customers with the final times and conditions of the transport.

7. Joint simulation before implementation

Before implementation, the proposed modulation mechanism should be tested through a joint simulation involving infrastructure managers and applicants. Such an exercise would help assess the practicality, fairness and effectiveness of the proposed thresholds, timelines and modulation factors using realistic operational scenarios and provide an evidence-based foundation for the final design of the system.

In conclusion, we strongly encourage that the views of the market are duly considered in the further development of these guidelines. A balanced and customer-oriented penalty system is essential to support the objectives of the Capacity Regulation and to ensure that the railway system serves the needs of its end customers while creating appropriate incentives for all parties.

We remain available for further discussions and would welcome the opportunity to contribute to the continued development of the guidelines.