

# Office of Rail Transport

<https://utk.gov.pl/en/market-regulation-and-l/access-to-railway-infra/6653,Access-to-railway-infrastructure.html>  
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The applicants can submit to the infrastructure managers requests for infrastructure capacity. In accordance with the *Railways Act 2003* 'the applicant' means a railway undertaking or an international economic interest grouping of railway undertakings or other persons or legal entities with interest in procuring infrastructure capacity, in particular competent authorities under Regulation (EC) No 1370/2007, shippers, freight forwarders and combined transport operators.

On the basis of received requests the infrastructure manger allocates infrastructure capacity. If the infrastructure manger refuses to consider the request for infrastructure capacity or refuses to allocate the infrastructure capacity, the applicant can submit complaint to the President of UTK. Acting on complaint, the President of UTK can issue a decision stating that the refusal by the infrastructure manager is valid and does not require any changes to be introduced or it should be modified or withdrawn. The infrastructure manager is bound to modify their decision or to withdraw the refusal in accordance with the decision of the President of UTK.

The applicant is allowed to submit requests for infrastructure capacity only if it concludes a contract on capacity allocation with the infrastructure manger beforehand. This contract defines in particular:

- 1) the rights and obligations of the infrastructure manager and that of the applicant in relation to the allocated infrastructure capacity;
- 2) the manner and time limits to submit to the infrastructure manager the information about a railway undertaking entitled to use infrastructure capacity which will be allocated to the applicant.

The infrastructure manger can set out in the contract requirements for financial guarantees to secure future payments. These requirements should be appropriate, transparent and non-discriminatory.

When it relates to regular passenger services, the infrastructure manager concludes the contract on capacity allocation to the extent covered by the applicant's contract on provision of PSO services or with statement provided by competent authority on their intention to include the services into PSO contract or with decision on granting open access rights.

Within the scope of rail transport regulation, the President of UTK supervises the process of conclusion of capacity allocation contracts. If the applicant and the infrastructure manager are

not able to reach agreement on the contract's provisions, the President of UTK issues a decision on capacity allocation which replaces the capacity allocation contract. The proceedings on the conclusion of capacity allocation contracts are conducted before the President of UTK and can be instituted on the applicant's request. The applicant's submission to start the proceedings should include a draft contract on capacity allocation and current positions of the parties of the dispute, indicating also parts of contract under discussion. The President of UTK issues a decision on capacity allocation which defines the provisions of the contract which were agreed upon by the parties and decides on the sections of the contract on which agreement was not reached. The decision expires when the contract on capacity allocation is concluded by the parties.

On applicant's request the infrastructure manager can conclude a contract on capacity reservation for a period exceeding one working timetable period. This framework agreement should define capacity parameters within which train paths will be allocated. A framework agreement does not specify a particular train path. On applicant's request a framework agreement may be made available to them by the infrastructure manager when observing commercial confidentiality.

A framework agreement can be concluded:

- for up to 5 years and can be renewed for consecutive 5-year periods,
- for more than 5 years and require a detailed reasoning from a railway undertaking based on its existing, long-term commercial agreements or any previous or future investments,
- for 15 years in exceptional and justified circumstances when services are provided on infrastructure which requires long-term investments,
- for more than 15 years only in extraordinary circumstances, and in particular when services are provided on infrastructure which requires large-scale long-term investments and when such investments are covered by contractual arrangements, including any long-term depreciation scheme.

In relation to framework agreements the President of UTK has also the power to approve such contracts. According to the *Railways Act 2003*, a framework agreement can be concluded when the President of UTK approves its draft. The draft framework agreement is submitted by the infrastructure manager to the President of UTK for approval. The President of UTK can either approve the framework agreement or refuse to approve the agreement if it fails to comply with the conditions specified above.

The capacity allocated to one applicant cannot be transferred to another. The capacity allocated to an applicant which is not a railway undertaking cannot be used to run other kind of services than it was specified in the request for capacity allocation. An applicant can name different railway undertakings which will be entitled to use capacity allocated on the basis of submitted requests. An applicant which is a railway undertaking cannot name other railway undertaking to use capacity allocated to them.

The infrastructure manager presents a railway undertaking named by the applicant and in the time frame agreed with the applicant a draft contract on the use of allocated capacity. The railway undertaking is entitled to use the capacity allocated to the applicant after it concludes with the infrastructure manager a contract on the use of allocated capacity. The contract defines the rights and obligations of the infrastructure manager and of the railway undertaking in relation to allocated capacity as well as the manner and conditions of its use. The infrastructure manager can define in the contract requirements for financial guarantees to secure future payments. These requirements should be appropriate, transparent and non-discriminatory. The contract is concluded for a period not longer than one working timetable period.