

Rail Delivery Group



Title	Access to Service Facilities Implementing Act Consultation Response
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Summary	<p>This consultation response analyses the European Commission’s proposed Implementing Act on Access to Service Facilities.</p> <p>RDG welcomes measures by the Commission to open the rail market in Europe and has been supportive of the First Railway Package Recast. However, any new regulations to open depots and service facilities should be proportionate and consider the progress made by mature liberalised markets.</p>
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Access to Service Facilities

1 About Rail Delivery Group

Rail plays an ever more crucial role in Britain, with long-term growth in passengers and freight. The purpose of the Rail Delivery Group (RDG) is to enable Network Rail and passenger and freight operating companies to succeed by delivering better services for their customers. This ultimately benefits taxpayers and the economy.

Our work is focused on four transformational portfolios to: enable improvements in today's railway, transform customer experience, inform industry reform to enable excellence, and plan for tomorrow's railway. This activity is supported by communications and engagement with stakeholders, and improvements in how the RDG is organised and operates. While the RDG works for all its members, it also provides support and gives a voice to freight and passenger operators. We also work in partnership with the rail supply chain.

2 British experience

The rail industry in Great Britain (GB) was liberalised in the mid 1990s introducing a separated infrastructure Manager (IM), private freight operators, passenger operators running under a franchise system (Public Service Obligation (PSO)) and passenger operators accessing the market via open access agreements. Facilities such as stations and light maintenance depots also come under the Railways Act Regulation. The Office for Rail and Road (ORR) regulates around 100 light maintenance depots in Britain and the access to over 2,500 stations. In addition, the railway has a large number of privately owned facilities accessible by rail to which access must be provided. In a system with a multiplicity of actors the need for clear processes for how to apply for access to a service facility, a strong regulator and an appeals process is very important.

Network Rail, the main IM, owns the freehold to the majority of stations which are then leased to franchised train operating companies. As part of the general arrangements made to access the network, a new or open access operator may apply for access to a station. It is very rare for applications for station access to be refused if timetable capacity has been made available. Some stations, often those at airports, are privately owned but subject to the same regulation.

Although there are sometimes commercial sensitivities it is important in this kind of system that there are good incentives for a private facility owner to allow an applicant to access their depot. Not only can the service facility owner (SFO) charge for access giving a commercial incentive, but the presence of a strong, independent regulator also gives a procedural incentive to accommodate access.

The First Railway Package Recast (2012/34/EU), as a directive, was adopted into UK domestic law via the Railways (Access, Management and Licensing of Railway Undertakings Regulations) 2016. RDG believes in an open, competitive rail sector where the independent Infrastructure Manager (IM) is able to operate and develop the network in the interests of all its railway undertaking (RU) customers and, ultimately, passengers and freight users. In this

context, RDG welcomed the Recast and has actively supported its passage through the legislative process.

3 Summary position

RDG welcomes measures by the Commission to open the rail market in Europe and has been supportive of the First Railway Package Recast. However, any new regulations to open depots and service facilities should be proportionate and consider the progress made by mature liberalised markets.

It is very important to legislate clearly for those who do not want to *de facto* open their markets, even where *de jure* this may be the case. However, this requirement to put more detailed measures in place can have a negative impact on mature, liberalised markets which have found pragmatic and proportionate ways to work.

With this overarching principle in mind, RDG have made detailed proposed amendments to the text below. These comments fall into six areas.

1. Alignment with the rules for the production of the Network Statement (Recital 14)
2. Applicability to station facilities (various)
3. Scope of exemptions (Article 2)
4. Commercial confidentiality (various)
5. Transition periods (Article 19)
6. Use of the word 'ensure' (various)

RDG is particularly concerned about the contents of **Recital 7** and the disproportionate burden it would place on the rail industry. Recital 7 requires the service facility statements proposed in this Implementing Act to be subject to the rules in the Recast proposed for the Network Statement.

In Great Britain, there are over 2500 stations and more than 100 depots and is a largely domestic network, with international services contained on a short and discrete part of the infrastructure as a whole. The requirement to publish the service facility statements in at least two languages would be disproportionately costly with no clear benefit. Importing this level of cost into the rail industry makes it less competitive and less able to attract passengers from other, less sustainable, modes.

In Britain, we have operators from around Europe and rest of the world accessing the market including from Germany, Italy, France, Netherlands, Sweden, Belgium, Hong Kong and Japan. None of the actors in this market have been deterred by documents being provided in English only.

Furthermore, a publication and consultation process for this volume of documents would also be burdensome. Unlike a network statement which is consulted by a small number of infrastructure managers in any single Member State, the high number of facility owners and managers would make a consultation process chaotic. RDG suggests this requirement is removed.

Whilst RDG agrees with the spirit of the proposals, there are some difficulties with regards to **stations** and station capacity. This is because the capacity to arrive at a platform is usually managed by the infrastructure manager or capacity allocation body, who in Britain is often different to the facility operator. RDG has suggested an additional article to address situations where the capacity allocation or infrastructure manager provides a complementary role to the service facility operator.

Article 2 provides exemptions to the Implementing Act. Whilst RDG agrees with the principle of not over-regulating, our members with aspirations to enter other markets would be concerned if these exemptions were used too widely to avoid implementing the spirit of these measures. Critically, new entrants in historically closed markets may find it hard to access markets if they are forced to contest exemptions through the regulator.

Any exemptions need to be consistently applied across Member States and competing service facilities should be subject to the same legislative requirements to avoid distorting the market. Currently, the criteria proposed for consideration by regulatory bodies is highly subjective, rising the likelihood of inconsistent application across Member States. Should exemptions be required, clear objective framework should be established so that regulatory bodies in different Member States make consistent decisions.

RDG has made some proposed changes to protect **commercial confidentiality**. Whilst it is absolutely critical for facility owners to be transparent and open, it is also important to have commercial freedom. If the principles of charging, for example, are transparent this should suffice in providing transparency without distorting the market.

Article 19 provides information on transition periods. Preparation of the network statement for the working timetable starting on December 2019 has already started and is about to be concluded, the transition period laid down in the draft proposal is not realistic. A deadline for the December 2020 network statement would be more workable.

Finally, RDG has proposed amendments to the text where the word '**ensure**' has been used. Ensure means guarantee and in many cases where this is used, a guarantee of an outcome would be impossible. Wording consistent with the objective of the Commission has been suggested throughout.

4 Proposed amendments

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to regard to Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area¹, and in particular Article 13(9) thereof,

Whereas:

- (1) The basic rules of Directive 2012/34/EU concerning access to service facilities and use of services supplied in those facilities, such as provisions on access rights, core

¹ OJ L 343, 14.12.2012, p. 32.

procedural rules on handling of requests and requirements on publication of information apply to all service facilities. Directive 2012/34/EU also lays down different rules for different types of services provided in service facilities. These distinctions should also be reflected within this Regulation.

Taking into account the purpose and scope of Directive 2012/34/EU, the provisions on access to services provided in service facilities should cover only services that are related to the provision of railway transport services.

- (2) In order to avoid disproportionate burdens for operators of service facilities with minor importance, it seems appropriate to provide a possibility for regulatory bodies to exempt service facility operators from specific provisions of this Regulation, when the regulatory body considers that the facility is without strategic importance for the functioning of the market and the exemption would not have detrimental effects on the competitive situation in the railway transport services market. Where the relevant service facilities market is characterised by a large variety of operators providing comparable services in competition and a regulatory body considers that specific provisions of this Regulation could negatively impact the functioning of the service facilities market, the regulatory body should also be entitled to grant such exemptions.

Operators of service facilities that have been exempted from the application of provisions of this Regulation however should remain subject to the rules on access to service facilities and use of rail related services laid down in Directive 2012/34/EU.

- (3) Regulation (EU) 2017/352 of the European Parliament and of the Council² establishes a framework for the provision of port services and common rules on the financial transparency of ports. This Regulation which lays down the details of the procedure and criteria to be followed by operators of service facilities and applicants should also apply to maritime and inland port facilities which are linked to rail activities.
- (4) Transparency on access conditions to service facilities and use of rail related services and **charges** charging principles are ~~is~~ a pre-requisite for enabling all applicants to access service facilities and services supplied in those facilities on a non-discriminatory basis. Hidden discounts that are negotiated individually with each applicant without following the same principles would undermine the principle of non-discriminatory access to the service facilities and rail related services. Information on discount schemes provided in the service facility description should, however, take account of commercial confidentiality requirements.
- (5) Directive 2012/34/EU requires operators of service facilities to provide non-discriminatory access to service facilities and services supplied in those facilities. That Directive applies in cases of self-supply of services as well as in cases of services being supplied by an operator of a service facility. Where necessary to correct market distortion or undesirable developments in the market, the regulatory body should be able to request that the operator of a service facility opens the facility for self-supply, provided that this is legally and technically feasible, does not endanger the safety of the operations and is in line with the principle of optimum effective use of capacity.
- (6) Where it is necessary to pass through a private branch line or siding to access a service facility, the operator of the service facility should provide information about the private branch line and siding. Such information should enable the applicant to understand whom to turn to in order to request access to this line in accordance with Article 10 of Directive 2012/34/EU.

² Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (OJ L 57, 3.3.2017, p. 1).

- ~~(7) Information on access to service facilities and use of rail related services constitutes an integral part of the network statement, even if provided through a link to a web portal included in the network statement. It should therefore meet the requirements laid down in Article 27 of Directive 2012/34/EU, including in terms of consultation and language requirements for its publication.~~
- (8) Infrastructure managers should facilitate collection of information on service facilities **by providing and may provide** a template in an easily accessible place such as their web portal.
- (9) Different entities may be in charge of deciding on access conditions for a service facility, allocating capacity in the service facility and supplying rail related services in the facility. In such cases, all entities concerned are to be considered operators of a service facility within the meaning of Directive 2012/34/EU. In addition, each of them should meet the requirements of this Regulation for the part it is responsible for. If a facility is owned, managed and operated by several entities, only the entities responsible for providing the information and deciding on requests for access to the service facility and use of rail-related services should be considered as the operators of the service facility.
- (10) Current practice shows that in many cases applicants such as shippers and freight forwarders request access to service facilities. However, the railway undertaking appointed by the applicant often does not have a contractual relationship with the operator of the service facility. Therefore, it should be clarified that not only railway undertakings but also other applicants should have a right to request access to service facilities under the conditions set out in this Regulation, where national law provides for such a possibility. Operators of service facilities should be bound by this Regulation regardless of whether they are in a contractual relationship with a railway undertaking or with another applicant entitled to request capacity in service facilities in accordance with national law.
- (11) Train paths and capacity in service facilities are often allocated by different entities. It is therefore important that these entities communicate with one another to make sure that scheduled train paths and scheduled slots in service facilities match so as to guarantee smooth and efficient train operations. The same should apply to situations where an applicant requests rail related services in a facility which are provided by different providers. For services not directly linked to infrastructure capacity, such alignment would not be required.
- (12) The requirement to make available **indicative real-time capacity** information on available service facility capacity **upon request** on a common web portal could be met by providing information on whether the facility is full, has limited remaining capacity or has sufficient remaining capacity to accommodate any type of request. Maximum operational capacity may be lower than maximum theoretical capacity. This is because appropriate **buffers additional time** may be needed to **ensure facilitate** reliable services in situations such as the delayed arrival of a train in the facility or operational disruptions. The indication of capacity should refer to the available operational capacity.
- (13) Operators of service facilities should not **force oblige** applicants to purchase services offered in a facility, which the applicant does not need. This principle should, however, not imply that the applicant can force the operator of a facility to accept self-supply where the operator is offering the respective service at conditions that are in compliance with Directive 2012/34/EU and this Regulation.
- (14) When an operator of a service facility receives a request that is in conflict with another request or capacity already allocated, the operator of the service facility should as a

first step verify whether it would be possible to accommodate the additional request by proposing a different slot, modifying the allocated slot (if the applicant concerned agrees to this), or by taking measures that make it possible to increase the capacity of the facility. The operator should not be obliged to take measures such as changing opening hours or measures that would require investment to increase a facility's capacity. ~~However, where an applicant offers to cover costs of investment, the operator of a service facility should consider this option.~~

- (15) Where the coordination procedure has not **allowed been able** to reconcile conflicting requests, the operator of a service facility can apply priority criteria to decide between conflicting requests. These criteria should be non-discriminatory and transparent and be published in the service facility description, which is subject to review by the regulatory body.
- (16) Viability is made up of different elements, including in particular *physical and technical characteristics* such as location of a facility, access by road, rail, waterway or public transport, gauge clearance, length of track and electrifications; *operational characteristics* such as opening hours, capacity in and around the facility, driver training requirements, scope and type of services offered; *attractiveness and competitiveness of transport services* such as routing, connections to other modes of transport, and transportation time; and *economic aspects* such as impact on operational costs and the profitability of the envisaged services.
- (17) Building a service facility requires significant investments and the network character of railways implies that there are limitations on where facilities can be constructed, as a result, many service facilities cannot easily be duplicated. For this reason it is of great importance **to ensure** that existing facilities are optimally used. Optimum effective use could be incentivised through measures such as charges for capacity that was reserved but not used. Where better use of the facility would only be achievable at a cost that would outweigh the potential benefits, the operator of a facility should be free to decide on whether to implement such measures.
- (18) In order to make the best use of existing facilities, the operation of facilities that have not been in use for at least two years should be publicised for lease or rent when a railway undertaking expresses interest in using such a facility. Any economic entity interested in operating that facility should be able to participate in the tender procedures and submit an offer to take over the operation of the facility. However, a tender procedure does not have to be launched if a formal process to withdraw the dedication of the site to railway purposes is ongoing and the facility is being redeveloped for purposes other than use as a service facility.
- (19) Ticketing services in passenger stations are ancillary services which may be requested by railway undertakings in order to facilitate the purchase of train tickets by the passengers. However, operators of service facilities should not be obliged to offer or install ticketing services such as staffed ticket offices or machines in stations where they do not exist.
- (20) This Regulation lays down a set of new rules for operators of service facilities. Those operators need time to adapt existing internal procedures in order to ensure full compliance with all the requirements of this Regulation. Therefore the Regulation should only apply from [18 months after its publication]. Given that the network statement has to be published four months before the deadline for submission of requests for train paths, the provisions concerning the service facility description should already apply from [...] in time for the working timetable starting in December **2019 2020**.

- (21) The measures provided for in this Regulation are in accordance with the opinion of the Single European Rail Area Committee,
- (22) **At stations the responsibility for allowing a service to call at a station may be provided by the capacity allocation body and access to facilities at the station may be provided by the service facility operator. Provisions in this regulation should be read accordingly.**

Justification: (7) The language and consultation requirements are disproportionate.

In Great Britain there are over 2000 stations and more than 100 depots. If these descriptions have to be in two languages the cost of translation would be considerable and there is no discernible benefit in doing this particularly on a largely domestic network. Importing this level of cost into the rail industry makes it less competitive and less able to attract passengers from other, less sustainable, modes.

A consultation process for this volume of documents would also be burdensome. Unlike a network statement which is consulted by a small number of infrastructure managers in any single Member State, the high number of facility owners and managers would make a consultation process chaotic, at least in the first instance.

Furthermore, the Network Statement is reissued each year. Undertaking this exercise for facilities would be disproportionate.

(12) 'Indicative' rather than 'real-time', and 'upon request' should be used so that the wording aligns with the Article. 'Additional time' should be used instead of 'buffers' as the latter has a different operational meaning.

(14) This recital should be more clearly in line with Article 10.

Other: some other minor amendments have been made to recitals in order for them to align with RDG's comments below.

(22) see comments regarding proposed new Article 3a.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the details of the procedure and criteria to be followed by operators of service facilities and applicants as regards access to the services to be supplied in the service facilities listed in points 2, 3 and 4 of Annex II to Directive 2012/34/EU.

Article 2

Exemptions

1. Operators of service facilities referred to in paragraph 2 may request to be exempted from the application of all or some of the provisions of this Regulation, with the exception of Article 4. Such requests shall be submitted to the regulatory body and duly substantiated.
2. Regulatory bodies may exempt:
 - (a) operators of service facilities that do not themselves provide rail transport services and that operate the following service facilities or provide the following services:

~~(i) service facilities or services which do not have any strategic importance for the functioning of the rail transport services market, in particular as regards the level of use of the facility, the type and volume of traffic potentially impacted and the type of services offered in the facility;~~

(ii) service facilities or services which are operated or provided in a competitive market environment with a large variety of competitors providing comparable services and where application of this Regulation could negatively impact the functioning of the service facility market;

~~(b) operators of service facilities that in addition to operating service facilities provide rail transport services if the services provided in those facilities are insignificant in comparison with their other business operations.~~

3. When the criteria for granting an exemption referred to in paragraph 2 are no longer fulfilled, the regulatory body shall revoke the exemption.
4. The regulatory body shall review and may revoke an exemption if following a complaint regarding access to the service facility concerned it considers that the exemption has a negative impact on the railway transport services market.

Justification: RDG has concerns that the exemptions may be used too widely and are unclear. New entrants may find it hard to access markets if they are forced to contest exemptions through the regulator. More specifically RDG has the following concerns:

(a)(i) The strategic importance of a facility may be different for different markets or operators. It is also unclear whether the strategic importance is localised or national.

(b) It is unclear how 'insignificant' will be defined.

Recital 2 could be amended accordingly.

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (1) 'basic service' means a service supplied in any of the service facilities listed in point 2 of Annex II to Directive 2012/34/EU;
- (2) 'rail-related service' means a basic, additional or ancillary service listed in points 2, 3 and 4 of Annex II to Directive 2012/34/EU, including self-supplied services;
- (3) 'service facility description' means a document which lays down detailed information necessary for access to service facilities and rail-related services;
- (4) 'service facility capacity' means the potential to use a service facility and supply a service over a given period of time, taking into account the opening hours and the time needed to access and leave the facility;
- (5) 'coordination procedure' means a procedure through which the operator of a service facility and applicants attempt to resolve situations in which needs for access to a service facility or rail-related services concern the same service facility capacity and are in conflict;
- (6) 'linked service facilities' means service facilities which are adjacent to one another and require passage through one to reach the other;

- (7) 'controlling entity' means a body or firm, which exercises direct or indirect control over an operator of a service facility and is also active and holds a dominant position in national railway transport services markets for which the facility is used;
- (8) 'self-supply of services' means a situation where a railway undertaking performs itself a rail-related service on the premises of a service facility operator, provided that access to and the use of the facility by that railway undertaking is legally and technically feasible and the operator of the service facility concerned offers such possibility;
- (9) 'reconversion' means a process by which the purpose of the service facility is changed to other use than for railway services;
- (10) 'ad hoc request' means a request for access to a service facility or use of rail-related services that is linked to an ad hoc path request for an individual train path referred to in Article 48(1) of Directive 2012/34/EU or a request for access to a service facility submitted after the expiry of the deadline for submitting requests set out by the operator of that facility and due to unforeseen circumstances;
- (11) 'freight terminal' means installations where services of loading, unloading and transhipment of goods from and to trains are supplied.

Article 3a

Passenger Stations

For the purposes of this regulation it shall be noted that for service facilities that are passenger stations the responsibility for allowing a service to call at a station may be provided by the capacity allocation body and access to facilities at the station may be provided by the service facility operator. As such responsibilities outlined in this regulation may be allocated accordingly.

Justification: The capacity to arrive at a platform is usually managed by the infrastructure manager or capacity allocation body, who may be different to the facility operator. There should be the flexibility in this regulation to divide responsibilities accordingly.

Article 4

Service facility description

1. Operators of service facilities shall establish a service facility description for the service facilities and services they are responsible for.
2. The service facility description shall include at least the following information:
 - (a) the list of all installations in which services listed in points 2, 3 and 4 of Annex II to Directive 2012/34/EU are supplied, including information on their locations and opening hours;
 - (b) key contact details of the operator of the service facility;
 - (c) a description of the technical characteristics of the service facility, such as sidings or shunting and marshalling tracks, technical equipment for loading and unloading, for washing, for maintenance and available storage capacity;

- (d) a description of all rail-related services listed in points 2, 3 and 4 of Annex II to Directive 2012/34/EU, which are supplied in the facility, and of their type (basic, additional or ancillary);
- (e) the possibility for self-supply of rail-related services and conditions applying thereto;
- (f) information on procedures for requesting access to the service facility or services supplied in the facility or both, including deadlines for submitting requests, deadlines for acknowledgement of receipt of requests and time limits for handling those requests;
- (g) in service facilities operated by more than one operator or where rail-related services are provided by more than one operator, an indication as to whether separate requests for access to the facilities and for those services need to be submitted;
- (h) information on the minimum content and format of a request for access to service facilities and use of rail-related services, or a template for such a request;
- (i) in the case of service facilities operated and rail-related services provided by operators under direct or indirect control of a controlling entity, model access contracts and general terms and conditions;
- (j) where relevant, information on the terms of use of the operator's IT systems, if applicants are required to use such systems, and the rules concerning the protection of sensitive and commercial data;
- (k) a description of the coordination procedure referred to in Article 10 and priority criteria referred to in Article 11;
- (l) ~~information on changes in~~ **the process for notifying changes to** technical characteristics and temporary capacity restrictions of the service facility, which could have a major impact on the facility's operation, including planned works;
- (m) ~~charges~~ **charging principles** for getting access to service facilities and charges for use of each rail-related service supplied **whilst respecting commercial confidentiality requirements**;
- (n) any discount schemes offered to applicants supplied **whilst respecting commercial confidentiality requirements**;
- (o) in the case of services provided by only one supplier:
 - (i) for calculating charges: the methodology, rules and, where applicable, scales;
 - (ii) the charging principles;
 - (iii) ~~information on to~~ **the process for notifying** changes in charges already decided upon or such changes foreseen in the next five years, if available;
- (p) information on private branch lines and sidings that are not part of the railway infrastructure, but are needed to get access to service facilities which are essential for the provision of transport services.

Justification: (l) and (o)(iii) If this information is defined as dynamic information then this will be burdensome and potentially impossible to keep up to date. If the facility operator has a process for notifying any users or applicants of changes then this should suffice.

(m) and (o) It is important that operators of a service have some commercial freedom to negotiate a price. If the principles of charging are transparent this should suffice.

Article 5

Publication of service facility description

1. Operators of service facilities shall make publicly available the service facility description free of charge, in one of the following ways:
 - (a) by publishing it on their web portal or a common web portal and providing the infrastructure managers with a link to be included in the network statement;
 - (b) by providing the infrastructure managers with the relevant and ready-to-be-published information to be included in the network statement.

Where the infrastructure manager to whose network the facility is connected is exempted from the obligation to publish a network statement in accordance with Article 2(3) or (4) of Directive 2012/34/EU, the operator of a service facility shall provide the relevant and ready-to-be-published information to the main infrastructure manager.

2. Infrastructure managers shall specify in the network statement or on their web portal the deadline to submit information or provide the link to be published in the network statement, with a view to its publication by the date referred to in Article 27(4) of Directive 2012/34/EU.

Infrastructure managers shall provide a common template to be developed by the railway sector in cooperation with regulatory bodies by [December 2017] that operators of service facilities may use to submit the information.

3. Operators of service facilities shall keep the service facility description up to date. They shall in due time inform the applicants having already expressed an interest in accessing or using one or more services in the service facility about any changes in the facility description.
4. In the case of service facilities operated by more than one service facility operator or where services are supplied by more than one supplier, those operators or suppliers shall coordinate with each other in order to:
 - (i) make available in one place their service facility descriptions; or
 - (ii) indicate in their service facility descriptions all service facility operators supplying rail-related services in the same facility.

If this coordination is not successful, the regulatory body may designate one of the service facility operators to comply with the requirement laid down in the first subparagraph. Any relevant costs shall be split among all service facility operators concerned.

5. The obligation referred to in paragraph 1 shall be proportionate to the size, technical characteristics and importance of the service facility concerned.

Article 6

Additional information

1. The regulatory body may request from operators of service facilities referred to in Article 31(7) and (8) of Directive 2012/34/EU information on the nature and method

of allocation of costs taken into account when calculating the charges for access to the service facility and supply of rail-related services.

2. The regulatory body may require operators of service facilities to justify why they qualify a rail-related service as basic, additional or ancillary.
3. Upon request of an applicant operators of service facilities listed in points 2(a) to (g) of Annex II to Directive 2012/34/EU shall provide indicative information on available service facility capacity.
4. Wherever technically possible with reasonable economic efforts, operators of service facilities shall make the information referred to in paragraph 3 of this Article and information referred to in Article 4(2)(l) available on a real-time basis through the use of a common web portal.

Article 7

Cooperation Coordination of an allocation of service facility capacity and its use

1. Applicants shall submit their requests for access to service facilities and use of rail-related services in accordance with the deadlines set by operators of service facilities. Where relevant, operators of service facilities listed in point 2 of Annex II to Directive 2012/34/EU shall give due consideration to timelines and priority criteria set out by infrastructure managers for the scheduling process when determining these deadlines.
2. Operators of service facilities listed in point 2 of Annex II to Directive 2012/34/EU and infrastructure managers shall ~~cooperate~~ **coordinate** with the aim of ensuring that the allocation of capacity on infrastructure and in service facilities is **synchronised aligned** where necessary **but not where this causes suboptimal use of the network**. The applicants concerned shall be involved in this **cooperation coordination**. The obligation of **cooperation coordination** shall also apply to operators of linked service facilities.

Where an applicant is seeking supply of additional or ancillary services listed in points 3 and 4 of Annex II to Directive 2012/34/EU offered in the facility, the applicant may request participation of all operators of service facilities providing these services in the **cooperation coordination**.

As long as the scheduling process conducted by the infrastructure manager is pending, requests for access to service facilities and use of rail-related services shall not be rejected on grounds that a requested train path has not yet been allocated. However, operators of service facilities listed in point 2 of Annex II to Directive 2012/34/EU and infrastructure managers concerned shall seek alignment of their respective decisions.

3. Where relevant, operators of service facilities, infrastructure managers and applicants shall ~~cooperate~~ **coordinate** to **ensure support** efficient operation of trains from and to service facilities. In the case of trains using rail freight terminals, this **cooperation coordination** shall include the exchange of information on train tracking and tracing and, where available, the estimated time of arrival and departure in the event of delays and disturbances.
4. Upon request of the regulatory body operators of service facilities shall demonstrate in writing that they have fulfilled the **cooperation coordination** requirements in accordance with this Article.

Justification: RDG prefers the work coordination as cooperation could have anti-competitive connotations.

(2) The running of the network, particularly where there are congested or a high-density of services, should not be negatively impacted by this work.

Article 8

Requests for access to service facilities and use of rail-related services

1. Requests for access to service facilities and use of rail-related services may be made by railway undertakings and, where provided for under national law or by a service facility operator, by other applicants.
2. Applicants shall indicate in their requests the service facility or the services the access to which they request, or both. Operators of service facilities shall not make the supply of a service subject to mandatory purchase of other services which are not related to the service requested.
3. The operator of a service facility shall acknowledge receipt of a request without undue delay. When the request does not contain all the information required in accordance with the service facility description and necessary to take a decision, the operator of a service facility concerned shall inform the applicant thereof and shall set a **reasonable** deadline for submitting the missing information. If such information is not submitted within that deadline, the request may be rejected.

Justification: Adds clarity that the deadline should not be unrealistic so as to deter the applicant.

Article 9

Response to requests

1. After receipt of all necessary information, the operator of a service facility shall respond to requests for access to and supply of services in service facilities listed in point 2 of Annex II to Directive 2012/34/EU within the reasonable time limit set by the regulatory body in accordance with Article 13(4) of Directive 2012/34/EU. Those time limits shall be extended by the additional time granted to the applicant to submit missing information pursuant to Article 8(3).
2. Where the operator of a service facility has responded with an offer of access to the service facility, that offer shall remain valid for a reasonable period of time which it specifies and which shall take account of the business needs of the applicant. In the case of offers related to competitive tenders for public service contracts to be concluded in accordance with Regulation (EC) No 1370/2007 of the European Parliament and the Council³ those offers shall remain valid for at least one week after the adoption of the decision on the award of the public service contract.
3. Regulatory bodies shall set the time limits to respond to requests submitted by applicants as provided for in Article 13(4) of Directive 2012/34/EU prior to the

³ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

consultation on the network statement in order to ensure compliance with Article 27(4) of Directive 2012/34/EU.

4. For ad hoc requests concerning access to service facilities listed in points (a) to (d) and (f) to (i) of point 2 of Annex II, the time limits shall be aligned with the time limits set out in Article 48(1) of Directive 2012/34/EU.

For service facilities listed in point (e) of point 2 of Annex II, the time limit shall start once the technical compatibility of the rolling stock with those facilities and the equipment has been assessed and the applicant was informed thereof.

5. Operators of service facilities providing additional and ancillary services listed in points 3 and 4 of Annex II to Directive 2012/34/EU shall respond to requests for such services within a reasonable time limit set by the regulatory body or, where such a time limit has not been set, without undue delay. Where an applicant submits ad hoc requests for several rail-related services supplied in one service facility and it indicates that only their simultaneous allocation is of use, all service facility operators concerned, including suppliers of additional and ancillary services listed in points 3 and 4 of Annex II, shall respond to those requests within the reasonable time limit referred to in paragraph 4.
6. The regulatory body may, with the agreement of the applicant concerned, extend the time limits referred to in paragraphs 3, 4 and 5.

Article 10

Coordination procedure

1. Where an operator of a service facility listed in point 2 of Annex II to Directive 2012/34/EU receives a request for access to the service facility that is in conflict with another request or concerns service facility capacity already allocated, it shall attempt, through coordination with the applicants concerned, to **ensure support** the best possible matching of all requests. This coordination shall also involve suppliers of additional and ancillary services listed in points 3 and 4 of Annex II to Directive 2012/34/EU where such services are offered in the facility and requested by an applicant.
2. Operators of service facilities listed in point 2 of Annex II to Directive 2012/34/EU shall not reject requests for access to their service facility nor indicate to the applicant viable alternatives, when capacity that matches the needs of the applicant is available in their service facility or is expected to become available during **or following** the coordination procedure.
3. Operators of service facilities shall consider different options enabling them to accommodate conflicting requests for access to the service facility or supply of service in the service facility. Those options shall, when necessary, encompass measures to maximise the capacity available in the facility, without additional investment in resources or facilities. Such measures may include:
 - (a) proposing alternative timing;
 - (b) changing opening hours or shift patterns;
 - (c) allowing access to the facility for self-supply of services.
- ~~4. Applicants or operators of the service facilities may request the regulatory body to participate as an observer in the coordination procedure.~~

Justification: (4) The regulatory body should not be requested to participate as it could fetter its discretion in the event it was asked, at a later date, to hear a complaint or appeal.

Article 11

Priority criteria

Operators of the service facility may determine priority criteria to allocate capacity in the case of conflicting requests for access to service facilities and use of rail-related services, where such requests cannot be accommodated after the coordination procedure.

Such priority criteria shall be non-discriminatory and objective. They shall take into account the purpose of the facility, the purpose and nature of the railway transport services concerned and the objective of securing an efficient use of available capacity.

The priority criteria may also take into account the following aspects:

- (a) the volume of capacity requested;
- (b) the intention and ability to use the capacity requested, including previous failure, if any, to use all or part of allocated capacity and the reasons for that failure;
- (c) already allocated train paths.

(d) existing customers and existing contracts

Justification: Existing customers and existing contracts should be considered as part of the criteria. If existing customers or contracts are not adequately considered in any priority criteria, then there is a risk that an applicant's traffic could substitute existing customers' traffic. Such a scenario would undermine confidence in rail freight and make it difficult for businesses to make the necessary investments to move their logistics chains to rail.

The Commission may also want to consider criteria suggested by IRG such as:

- *Timely coordination, e.g. with approved train paths / circulation of the service;*
- *best use in respect of the designated purpose of the service facility (e.g. a loading siding should be primarily used for loading and not for storage);*
- *operational criteria of the service facility (e.g. frequency and volume of use);*
- *consideration of existing contractual arrangements;*
- *investments made by the user of the service facility;*
- *impact on revenues of service facility operators;*
- *ability of service facility operators providing railway services to plan the future of their businesses with reasonable degree of assurance;*
- *impact on applicants (or potential applicants) at service facility;*

Article 12

Viable alternatives

1. Where a request for access to service facilities and use of rail-related services cannot be accommodated after the coordination procedure, the operator of a service facility listed in point 2 of Annex II to Directive 2012/34/EU shall inform the applicant

concerned and the regulatory body, upon its request, without undue delay. Member States may require to inform the regulatory body even in the absence of its request.

2. The operator of a service facility listed in point 2 of Annex II to Directive 2012/34/EU and the applicant shall, if a request cannot be accommodated, jointly assess whether there are viable alternatives allowing to operate the freight or passenger service concerned on the same or alternative routes under economically acceptable conditions.
3. For the purpose of paragraph 2 the operator of the service facility shall indicate possible alternatives, including, where relevant, in other Member States, on the basis of other service facility descriptions and information provided by the applicant. When proposing possible alternatives, at least the following criteria shall be taken into account, to the extent that those can **reasonably** be assessed by the operator of the service facility:
 - (a) operational characteristics of the alternative service facility;
 - (b) physical and technical characteristics of the alternative service facility;
 - (c) impact on attractiveness and competitiveness of the railway transport service envisaged by the applicant;
 - (d) estimated additional cost for the applicant.

The operator of a service facility shall respect the commercial confidentiality of information provided by the applicant.

4. Where information on the capacity of the proposed alternative is not publicly available, the applicant shall verify it.

The applicant shall assess whether using the proposed alternative would allow it to operate the envisaged transport service under economically acceptable conditions. It shall inform the operator of the service facility about the outcome of its assessment within a jointly agreed deadline.
5. If the applicant refuses the proposed alternatives, the service facility operator shall indicate the alternatives which it considers to be viable. In such a case the applicant may complain to the regulatory body in accordance with Article 56 of Directive 2012/34/EU. **The regulatory body should consider the rights of access over connecting infrastructure.**
6. The applicant may request the operator of a service facility not to indicate the viable alternatives and not to proceed to the joint assessment.

Justification: (3) The items listed in (3)(a) to (d) are very difficult for the operator of the service facility to assess. In particular, there will be commercial sensitivities around estimating additional costs for the applicant.

(5) For completeness.

Article 13 Refusal of access

1. Where the operator of the service facility listed in point 2 of Annex II to Directive 2012/34/EU and the applicant conclude that no viable alternative exists, and it is not possible to accommodate the request for capacity following the coordination

procedure, the operator of a service facility may refuse the request. The applicant may complain to the regulatory body in accordance with Article 13(5) of Directive 2012/34/EU.

2. Where the operator of the service facility and the applicant have jointly identified viable alternatives, the operator of the service facility may refuse the request.
3. Operators of a service facility referred to in Article 13(3) of Directive 2012/34/EU shall justify in writing why the request could not be accommodated following the coordination procedure and why, on the basis of the information available, they consider that **the any** proposed alternative meets the applicant's requirements and is viable.
4. An operator of a service facility refusing a request shall demonstrate to the regulatory body and to the applicant, upon their request, the reasons for the refusal, including the alternatives examined and the outcome of the coordination procedure.
5. In the cases referred to in Article 12(6) the operator of a service facility may refuse the request without complying with the requirements laid down in paragraphs 3 and 4 of this Article.
6. Where the applicant **repeatedly failed more than twice** to pay for capacity already allocated and used, the operator of a service facility may refuse further access to the facility and any new request for access.

Justification: Repeatedly is too vague. There should be a clear limit to the burden that is place on facility operators.

Article 14

Complaints

Where the applicant complains to the regulatory body pursuant to Article 13(5) of Directive 2012/34/EU, that body shall take account of the impact of its potential decision granting an appropriate part of the capacity to the applicant on at least the following elements, where these are relevant:

- (a) the viability of the business models of other users of the service facility possibly affected;
- (b) overall volume of service facility capacity already allocated to other users possibly affected;
- (c) investments made into the facility by other users **and the facility owner** possibly affected;
- (d) availability of viable alternatives to accommodate needs of other users possibly affected, including alternatives in other Member States in case of international train services;
- (e) the viability of the business model of the operator of the service facility.
- (f) **The priority criteria referenced in Article 11.**

Justification: A similar list as suggested in Article 11 may be used.

Article 15

Optimum effective use of service facilities

1. Regulatory bodies may request operators of service facilities under direct or indirect control of a controlling entity to take necessary measures to promote optimum effective use of the capacity available in their facility. Such measures shall be transparent and non-discriminatory.

Those measures may include financial penalties to be paid by applicants that fail to use allocated capacity. They may also include an obligation upon operators of service facilities to require the surrender of capacity if applicants ~~repeatedly and intentionally~~ fail to use it or cause disturbances to the operation of the service facilities or **on another applicant**.
2. Information on the measures referred to in paragraph 1 shall be provided in the service facility description.
3. Applicants shall inform operators of service facilities of their intention not to use all or part of the allocated capacity without undue delay.
4. Where the capacity of a service facility listed in point 2 of Annex II to Directive 2012/34/EU is nearly exhausted and the operator of such facility has received a request which could not be accommodated following the coordination procedure or anticipates such a request, it shall assess whether the capacity of its service facility is used in an optimum effective way. This assessment may include periodical review of agreements concluded with applicants. A summary of the assessment shall be kept by the operator of the service facility for at least two years.

Justification: Repeatedly is vague. Furthermore, failure to use may not be intentional, but instead due to poor management but have an equal impact on the service operator.

Article 16

Unused facilities

1. 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 **after this Regulation enters into force** shall be subject to expression of interest and lease or rent.
2. The two-year period referred to in paragraph 1 shall start on the day following the day on which a rail-related service was supplied in the service facility concerned for the last time.
3. A railway undertaking interested in using a service facility listed in point 2 of Annex II to Directive 2012/34/EU which has not been in use for at least two consecutive years shall express its interest in writing to the operator of the facility concerned and inform the regulatory body thereof. Such an expression of interest shall demonstrate the needs of the railway undertaking concerned. The operator of the service facility may decide to resume operations in a way that satisfies the railway undertaking's demonstrated needs.
4. Where the owner of a service facility does not operate that facility, the operator of that facility shall inform the owner about the expression of interest within 10 days following its receipt. The owner of the facility shall publicise that the facility is available for lease or rent, as a whole or in part.

5. Before such publication is made, the owner of the service facility may allow the operator of the service facility to submit its observations on that publication within four weeks. The operator may object to that publication by submitting documents proving that there is an ongoing process of reconversion, launched before the expression of interest.

Details of unused facilities should be published within the service facility statement to raise visibility of the unused facilities.

6. The regulatory body shall be informed by the owner about the reconversion process and may request the operator to provide it with the documents concerning that process with a view to assessing its viability.

If the assessment is unsatisfactory the regulatory body shall require the publication of the operation of the facility as being for lease or rent, as a whole or in part.
7. Without prejudice to applicable public procurement rules, the owner of a service facility listed in point 2 of Annex II to Directive 2012/34/EU shall publicise on its web portal a notice on the lease or rent of the service facility concerned and shall inform thereof the regulatory body and the infrastructure manager to whose network the facility is connected. The publication shall include all information necessary to enable interested undertakings to submit an offer to take over operation of the facility, as a whole or in part. This information shall include in particular:
 - (a) the details of the selection procedure which shall be transparent and non-discriminatory and take into account the objective of ensuring an optimum effective use of the capacity of the facility;
 - (b) the selection criteria;
 - (c) characteristics of the technical equipment of the service facility;
 - (d) the address and time limit for submission of tenders which shall be at least 30 days from publication of the notice.
8. The infrastructure manager concerned shall also publish on its web portal the information referred to in paragraph 7.
9. Without prejudice to applicable public procurement rules, the owner of a service facility listed in point 2 of Annex II to Directive 2012/34/EU shall select the successful candidate and make a reasonable offer without undue delay.
10. Member States may apply existing procedures for the regulatory control of decommissioning of service facilities. In this case the regulatory body may grant exemptions, where necessary, from the application of the provisions of this Article.

Justification: (1) The addition avoids accidental retro-activity by making it clear that the two years starts after entry into force.

Article 17

Ticketing services in passenger stations

In accordance with Article 13(8) of Directive 2012/34/EU railway undertakings may request operators of service facilities to supply ticketing services in passenger stations, including ticket vending services provided at staffed ticket offices and the use of ticket selling machines installed in passenger stations. Those operators shall not be obliged to supply these ticketing services or install such services, where they do not exist. However, where they decide to offer

to others such services, they shall supply them upon request to railway undertakings in a non-discriminatory manner.

Article 18

Review

By [5 years after date of application], the Commission shall assess the application of this Regulation and based on the outcome of that assessment review it, if necessary.

Article 19

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [18 months after date of publication].

However, Article 3 shall apply from [in time for the preparation of the working timetable starting on December ~~2019~~ **2020**].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

Justification: preparation of the network statement for the working timetable starting on December 2019 has already started and is about to be concluded, the transition period laid down in the draft proposal is not realistic. A deadline for the December 2020 network statement would be more workable.