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Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2177

of 22 November 2017

on access to service facilities and rail-related services

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area[(1)], 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 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 all or some of the provisions of this Regulation with the exception of certain provisions concerning the obligation to publish a service facility description, when the regulatory body considers that the facility is without strategic importance for the functioning of the market. Where the relevant service facilities market is characterised by a variety of operators providing comparable services in competition or 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. This could for example be the case if a railway undertaking is providing services to another railway undertaking in order to assist that undertaking in remote locations as part of a cooperation which is necessary due to the economic cost it would otherwise incur.
Regulatory bodies should assess requests for exemptions individually, on a case by case basis. If following a complaint regarding access to the service facility or rail related service concerned, the regulatory body considers that circumstances have changed in a way so that an exemption previously granted has a negative impact on the railway

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transport services market, the regulatory body should review and might revoke an exemption.

Regulatory bodies should ensure consistent application of exemptions in all Member States; they should develop common principles for the application of the provisions regarding exemptions by the date of application of Article 2. In accordance with Article 57(8) of Directive 2012/34/EU, if needed, the Commission might adopt measures setting out such principles.

Operators of service facilities that have been exempted from the application of provisions of this Regulation remain subject to all other 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 Council[(2)] 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.

Directive (EU) 2016/798 of the European Parliament and of the Council[(3)] defines obligations of the entity in charge of maintenance. This Regulation should be without prejudice to the provisions of that Directive.

(4) Transparency on conditions for access to service facilities and rail related services and information on charges 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 the principles of 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 and does not endanger the safety of the operations.

(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 who to contact in order to request access to this line in accordance with Article 10 of Directive 2012/34/EU.

(7) Infrastructure managers should facilitate collection of information on service facilities and alleviate the administrative burden of service facility operators by providing a template in an easily accessible place such as their web portal. This template should be developed by the railway sector and regulatory bodies, in consultation with operators

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of service facilities. Operators of service facilities are under an obligation to supply all relevant information to the infrastructure managers in accordance with Article 31(10) and point 6 of Annex IV to Directive 2012/34/EU. The main infrastructure manager, to which the service facility description is to be provided in case the infrastructure manager to whose network the facility concerned is connected is exempted from the obligation to publish the network statement, should be the one determined by the Member State for the purpose of participating in the network referred to in Article 7f of Directive 2012/34/EU.

(8) 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 for which it is responsible. If a facility is owned, managed and operated by several entities, only the entities effectively 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.

(9) 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 theconditions set out in this Regulation, where national law provides for such a possibility. Operators of such 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.

(10) 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 are consistent so as to enable 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 cooperation would not be required.

(11) Exchange of data between entities ordering transport services, railway undertakings and terminals on tracking and tracing and estimated time of arrival and departure should contribute to better service quality and cost-effectiveness in the logistics chain.

(12) The requirement to make available indicative real-time information on available service facility capacity 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. For services such as maintenance, for which a vehicle has to be removed from service for an extended period, such information may not be needed. Maximum operational capacity may be lower than

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maximum theoretical capacity. This is because appropriate additional time may be needed to enable 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 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 on the premises of the operator where the operator is offering the respective service in a way that complies 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 guarantees to cover costs of investment or additional operational costs incurred, the operator of a service facility should consider this option.

(15) Where the coordination procedure has not enabled reconciliation of 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) The term viable alternative embraces various 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. Where requests for access to a facility could not be accommodated following the coordination procedure and the facility is close to congestion, regulatory bodies should be able to request operators of service facilities to put in place measure to optimise the use of the facility. The operator of the service facility should identify suitable measures to achieve this objective. These could include for example financial penalties to be paid by applicants that fail to make use of access rights granted or a request to applicants to renounce on rights of access to a service facility or rail related services if they have repeatedly and intentionally failed to make use of such rights or have caused disturbances to the operation of the service facilities or to another applicant.

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(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 on the basis of demonstrated needs. 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) 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 1 June 2019. This means that the service facility description required in accordance with Article 4 or a link to the relevant information will only have to be prepared and included for the first time in the network statement for the working timetable starting in December 2020.

(20) The measures provided for in this Regulation are in accordance with the opinion of the Single European Rail Area Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the details of the procedure and criteria to be followed for 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.

Where the provisions of this Regulation refer to applicants, they shall be understood as referring to railway undertakings. Where national law entitles applicants other than railway undertakings to request access to service facilities and rail related services, the relevant provisions of this Regulation shall also apply to those applicants in accordance with national law.

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 Articles 4(2)(a) to (d) and (m) and 5.

Operators of service facilities that exist solely for use by heritage railway operators for their own purposes may request to be exempted from the application of all the provisions of this Regulation.

Such requests shall be submitted to the regulatory body and be duly substantiated.