

## DISCUSSION PAPER ON ACCESS TO SERVICE FACILITIES AND RAIL RELATED SERVICES

*Disclaimer: This discussion paper does not prejudice the existing or future positions of the European Commission and its services on the topics covered in this document.*

*Footnotes contained in this document provide explanations; they are not as such meant to be part of the final text.*

### *Article 1*

#### **Subject matter**

This Regulation sets out the details of the procedure and criteria to be followed by operators of service facilities and applicants as regards access to service facilities and rail related services.<sup>1,2</sup>

### *Article 2*

#### **Definitions**

For the purposes of this Regulation the definitions provided for in Article 3 of Directive 2012/34/EU shall apply.

The following definitions shall also apply:

(1) ‘service facility description’ means a document which sets out in detail the general rules, deadlines, procedures and criteria for charging and allocation of service facility capacity and other information required to enable applications for access to and use of service facilities and rail related services; it can either be part of the network statement of the infrastructure manager or published on a common web-portal or on the website of the service facility operator, provided that the network statement contains a link to the relevant web-portal/website.

(2) ‘basic service’ means all services related to the operation of rail transport activities, which are supplied in service facilities referred to in point 2 of Annex II of Directive 2012/34/EU, with the exception of services referred to in points 3 and 4;

[(3) ‘additional service’ means a service referred to in point 3 of Annex II of Directive 2012/34/EU;]<sup>3</sup>

[(4) ‘ancillary service’ means a service referred to in point 4 of Annex II of Directive 2012/34/EU;]<sup>4</sup>

(5) ‘rail related service’ means a basic service, additional service or ancillary service covered by points 2 to 4 of Annex II of Directive 2012/34/EU;

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<sup>1</sup> This regulation is without prejudice to the provisions of Article 2(3) of Directive 2012/34/EU, which enable Member States to exempt certain networks/infrastructure from the application of Article 7, 8, 13 (including application of this draft implementing regulation) and Chapter IV of the Directive.

<sup>2</sup> A recital might be added to clarify that the Regulation also applies to operators of service facilities who do not have contractual relations with railway undertakings but only with shippers/freight forwarders that then designate railway undertakings to operate the relevant transport services.

<sup>3</sup> May be deleted to avoid repetition of provisions of the Directive at the level of the implementing act.

<sup>4</sup> May be deleted to avoid repetition of provisions of the Directive at the level of the implementing act.

(6) 'service facility capacity' means the potential to use a service facility over a given period of time (slot);

(7) 'facility coordination process' means a process through which the operator of a service facility and applicants will attempt to resolve situations in which there are conflicting applications for access to a service facility and/or rail related services;

(8) 'adjoining service facilities' means service facilities which are adjacent to one another;

(9) 'controlling entity' means a body or firm within the meaning of Article 13(3) of Directive 2012/34/EU, 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;

(10) 'self-supply of services' means a situation where a rail related service is not supplied by an operator of a service facility but where a railway undertaking is performing itself the rail related service on the premises of a service facility operator [*provided that access to and/or independent use of the facility is legally and technically feasible*]<sup>5</sup>;

(11) 'reconversion' means a formal process by which the land on which the service facility is situated is being reconverted/transformed for another purpose;

(12) 'facility owner' means a body or firm owning a majority of shares of a facility;

(13) 'ad hoc request' means a request for access to a service facility that relates to an ad-hoc path request for an individual train path in the meaning of Article 48(1) of Directive 2012/34/EU.

### Article 3

#### **Publication of information on conditions for access to service facilities and the supply of services**

(1) Operators of service facilities shall, after consultation with the interested parties, make publicly available at least the following information on conditions for access to their service facilities and the supply of services in their facilities:

1. the list of all installations they are responsible for, in which services referred to in points 2 to 4 of Annex II of Directive 2012/34/EU are supplied, including information on their locations (address) and standard opening hours;
2. key contact details, including the operator's phone numbers and e-mail addresses;
3. a description of the facility including its technical characteristics such as number, length and accessibility of platforms, sidings or shunting/marshalling tracks, technical equipment for loading/unloading, washing or maintenance, available storage capacity;
4. an individual description of all rail related services which are supplied in the facility, and information on their qualification as basic, additional or ancillary services.

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<sup>5</sup> The clarification in square brackets might be deleted in the definition and instead be inserted at the level of the specific provisions referring to self-supply.

5. The possibility for and conditions applying to self-supply of rail related services, where legally and technically feasible<sup>6</sup>;
6. information on procedures for requesting access to the facility and/or services supplied in the facility, including in particular deadlines for submitting requests, *[and where relevant]* acknowledgement of receipt of requests and timescales for handling of requests; in service facilities with more than one operator, the service facility description shall specify whether separate requests for access to the facility and/or for (various) rail related services need to be submitted;
7. information on the minimum content and format of a request or a template for requests for access to the facility and/or rail related services;
8. all other relevant documents for the access and use of the service facility and/or supply of a rail related service; in case of service facilities operated and rail related services provided by operators referred to in Article 13(3) of Directive 2012/34/EU, this shall include model access contracts and general terms and conditions; where relevant, operators of service facilities shall also provide information on the terms of use of the operator's IT-systems for access to and use of the facility and the rules concerning the protection of sensitive and commercial data;
9. description of the facility coordination process referred to in Article 8, including priority criteria referred to in Article 9;<sup>7</sup>
10. charges for gaining access to the facility and for each rail related service supplied therein, and discount schemes offered to applicants, including information on their objectives;
11. information on charging principles enabling an applicant to understand how the charges for access to the facility and rail related services are determined and may evolve, while respecting commercial confidentiality requirements; in case of facilities operated and services provided by operators referred to in Article 13(3) of Directive 2012/34/EU this shall include the methodology, rules and where applicable scales used for calculating charges;
12. information on access to private branch lines and sidings that are not part of the railway infrastructure as defined in Annex I of Directive 2012/34/EU, but are needed to get access to service facilities referred to in point 2 of Annex II of the Directive.<sup>8</sup>

(2) The operator of a service facility shall make available the information listed in paragraph 1, either by publishing its own service facility description or by providing the infrastructure manager with the relevant, comprehensive [and ready to be published] information to be included in the network statement. Operators of service facilities may also decide to make available the information referred to in paragraph 1 on a common web portal.<sup>9</sup>

Where the operator of a service facility decides to publish its own service facility description, it shall make it available free of charge on its web portal and provide the relevant infrastructure manager with the link to be included in the network statement. This also applies when the operator of a

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<sup>6</sup> This may include a decision of the regulatory body in accordance with Article 56(9) of Directive 2012/34/EU.

<sup>7</sup> Requirement to publish information on changes to capacity was moved to Article 6.

<sup>8</sup> wording aligned with Article 10 of Directive 2012/34/EU. A recital making reference to recital 12 of Directive 2012/34/EU might also be added, if relevant for clarifying the meaning of this provision.

<sup>9</sup> For freight facilities, a common webportal could be e.g. railfreightlocations.eu.

service facility has decided to publish the information on a common web portal.<sup>10</sup> 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 service facility operator shall provide the information to the main infrastructure manager.

In view of its publication by the date referred to in Article 27(4) of Directive 2012/34/EU, infrastructure managers shall inform operators of services facilities in the network statement or on their webpage about the deadline for receipt of the information to be published in the network statement. Infrastructure managers shall facilitate the collection of the relevant information<sup>11</sup> by providing a common template [*option 1: to be developed by IMs + RBs; option 2: to be attached to the Regulation*] that operators of service facilities can use for submission of the relevant information.<sup>12</sup>

(3) The information referred to in paragraph 1 shall be published in at least two languages of the Union and shall be kept up to date. Operators of service facilities shall inform railway undertakings having already subscribed to one or more services in the service facility without delay about any changes in charges for accessing the service facility and supply of rail related services, works preventing a railway undertaking from accessing a facility or the termination of supply of a rail related service.

(4) Notwithstanding paragraphs 1 to 3 and Article 27 and Annex IV of Directive 2012/34/EU, where rail related services in one service facility are supplied by more than one service facility operator, the service facility operators supplying services in the facility concerned shall coordinate to (also) make available information on all services provided in that facility in one single place or to indicate in the service facility description all other service facility operators supplying services in the same facility.

(5) In addition to the information provided for in paragraph 1, the regulatory body may request from the operator of a service facility referred to in Article 31(7) and (8) of Directive 2012/34/EU<sup>13</sup> information on the nature and method of allocation of costs taken into account for the calculation of the charges for access to the service facility and supply of rail related services.

(6) Without prejudice to Article 56 of Directive 2012/34/EU, the regulatory body may require the operator of a service facility to provide a justification on the qualification of individual rail related services as basic, additional or ancillary services.

#### *Article 4*

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<sup>10</sup> The information on a website referred to in the network statement constitutes an integral part of the network statement in the meaning of Article 27 and Annex IV of Directive 2012/34/EU and is thus subject to control by the regulatory body in accordance with Article 56(1)(a) of Directive 2012/34/EU.

<sup>11</sup> It is clear from Article 31(10) and point 6 of Annex IV of Directive 2012/34/EU that the SFO is under an obligation to supply information to the IM.

<sup>12</sup> The template can be published on the website of the IM or in another easily accessible place; there is no requirement to send it to each service facility operator.

<sup>13</sup> Article 31(7) sets charging rules for operators of service facilities referred to in point 2 of Annex II of Directive 2012/34/EU. Article 31(8) sets charging rules for additional and ancillary services offered by only one supplier referred to in point 3 or 4 of Annex II of Directive 2012/34/EU.

## **Applicants**

(1) Requests for capacity in service facilities and supply of rail related services may be made by applicants in accordance with the provisions of this Regulation.<sup>14</sup> Applicants shall appoint a railway undertaking to conclude an agreement on use of the service facility capacity with the service facility operator.

(2) Member States may further extend the scope of entities entitled to request capacity in service facilities.

## *Article 5*

### **Principles for allocation and use of service facility capacity**

(1) Operators of service facilities referred to in point 2 of Annex II of Directive 2012/34/EU shall coordinate with infrastructure managers in order to ensure an efficient and aligned/harmonized allocation and use of capacity on infrastructure and in service facilities; railway undertakings concerned shall be involved in this coordination. The obligation of coordination shall also apply to operators of adjoining service facilities.

Where an applicant is seeking supply of additional or ancillary services offered in the facility by a supplier other than the service facility operator referred to in the first sentence, the applicant may request involvement of the supplier concerned in the coordination.

(2) As long as the allocation process of the infrastructure manager is pending, requests for service facility capacity shall not be rejected on grounds that a corresponding train path has not yet been allocated. In such case, the operator of a service facility concerned referred to in point 2 of Annex II of Directive 2012/34/EU shall coordinate with the infrastructure manager in order to seek alignment of the allocation decisions.

(3) Where applicable, operators of service facilities referred to in point 2 of Annex II of Directive 2012/34/EU shall coordinate with infrastructure managers with respect to priority rules of the annual scheduling.

(4) Operators of service facilities, infrastructure managers and railway undertakings shall coordinate on a regular basis to ensure efficient operation of trains from and to service facilities. This coordination shall include exchange of operational information such as in particular the estimated time of arrival and departure in order to reduce delays and information on disturbances.

(5) Operators of service facilities shall be able to demonstrate to the regulatory body that they have performed the coordination activities in accordance with this Article.

## *Article 6*

### **Information on available service facility capacity**

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<sup>14</sup> If relevant, this provisions could be limited to applicants established in a Member State.

(1) The operator of a service facility referred to in points 2(a) to (g) of Annex II of Directive 2012/34/EU shall publish indicative information on available spare service facility capacity on a regular basis. Wherever possible, such information shall be made available on a real time basis through the use of a common web portal. Information on changes/temporary restrictions of the service facility which could impact on the capability or capacity of the facility, including in particular planned works, shall also be published.

(2) Regulatory bodies may exempt service facilities which do not have any strategic importance for the functioning of the rail market from the application of paragraph 1.

#### *Article 7*

##### **Requests for access to a service facility and rail related services**

(1) Applicants shall indicate in their application the services they are requesting; the operator of a service facility shall not oblige applicants to purchase services it does not need.

(2) The operator of a service facility shall acknowledge receipt of a request for access to the facility and/or supply of a rail related service without undue delay. For service facilities and rail related services used on a self-service basis, this provision shall apply to the request for conclusion of a framework contract to use the facilities.

(3) When the request does not contain all the relevant information needed in order to take a decision, the operator of a service facility concerned shall inform the applicant without undue delay and set an appropriate deadline for submission of the missing information. If the missing information is not submitted within the given deadline, the request may be rejected.

(4) After receipt of all necessary information, operators of service facilities shall decide on requests for access to and supply of services in a service facility referred to in point 2 of Annex II of Directive 2012/34/EU<sup>15</sup> within the timeframe defined by the regulatory body in accordance with Article 13(4) of Directive 2012/34/EU.

Regulatory bodies shall define the timeframes prior to the publication of the network statement in accordance with Article 27(4) of Directive 2012/34/EU in order to ensure transparency and predictability for applicants.

For ad-hoc requests<sup>16</sup>, this timeframe shall be aligned with the timeframe set out in Article 48(1) of Directive 2012/34/EU. For other requests concerning the ongoing timetabling period, the timeframe shall not exceed 10 working days following the receipt of all relevant information.

Different deadlines may be set for different types of service facilities and/or services. Upon request of an operator of a service facility and if duly justified, the regulatory body may grant exemptions from these deadlines in individual cases.

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<sup>15</sup> These deadlines also apply to refusals of requests in accordance with Article 9.

<sup>16</sup> A definition of 'ad-hoc request' can be found in Article 2.

(5) Requests for additional and ancillary services referred to in points 3 and 4 of Annex II of Directive 2012/34/EU shall be answered without undue delay. Where an applicant submits an ad-hoc request for different rail related services supplied in one service facility or such a request concerning the ongoing timetabling period, and it indicates that only their simultaneous allocation is of use, all service facility operators concerned, including suppliers of additional and ancillary services referred to in points 3 and 4 of Annex II, shall decide within the maximum timeframe defined in accordance with paragraph 4.

## *Article 8*

### **Facility coordination process**

(1) Where an operator of a service facility referred to in point 2 of Annex II of Directive 2012/34/EU receives conflicting requests for service facility capacity, it shall attempt, through consultation with the relevant applicants (facility coordination process), to ensure the best possible matching of all requests. Where relevant, this coordination shall also involve suppliers of additional and ancillary services referred to in points 3 and 4 of Annex II of Directive 2012/34/EU.

The principles governing the consultation and facility coordination process shall be set out in the service facility description and shall aim at meeting all requests as far as possible and [thereby] ensuring an optimum effective use of available capacity in the facility.

(2) Operators of service facilities referred to in point 2 of Annex II of the Directive shall not reject requests for access to their service facility or refer the applicant to a viable alternative, when capacity that matches the needs of the applicant is available in the facility or may be expected to become available during the facility coordination process. For service facilities and services used on a self-supply basis, this shall apply to the request for conclusion of a (framework) contract to use the facility.

(3) In the context of the facility coordination process, different options that could allow resolving the conflict shall be considered. These shall also encompass measures to maximise the capacity available in the facility, where this is possible without investment in resources or facilities. Such measures may include

- proposing alternative timing that might allow to accommodate the different conflicting requests;<sup>17</sup>
- modification of opening hours or amendments to shift patterns;<sup>18</sup>
- allowing access to the facility for self-supply of services, where technically and legally feasible and provided that compliance with relevant applicable legislation can be ensured;
- proposing services that can be supplied in the facility and others that may be supplied elsewhere.

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<sup>17</sup> For discussion: when such measures would require additional investment in resources or facilities, and the applicant indicates willingness to covers this investment, such options may/should nevertheless be considered.

<sup>18</sup> For discussion: when such measures would be legally feasible but require additional investment in resources or facilities, and the applicant indicates willingness to cover this investment, such options may/should nevertheless be considered.

(3) Without prejudice to Article 56 of Directive 2012/34/EU, an applicant and the operator of the service facility may request participation of the regulatory body as observer in the facility coordination process.

#### *Article 9*

##### **Refusal of access**

(1) Where after consultation and coordination in accordance with Article 8 a request for access to a service facility and for rail related services supplied in these facilities cannot be satisfied, the operator of the service facility referred to in point 2 of Annex II shall inform the applicant concerned and, upon request, the regulatory body without undue delay. Member States may require mandatory information of the regulatory body even in the absence of a request.

(2) Following this information, the operator of a service facility referred to in point 2 of Annex II of Directive 2012/34/EU and the applicant shall jointly assess whether there are viable alternatives allowing to operate the freight or passenger service concerned.

To this end the operator of the service facility shall identify possible alternatives and assess, on the basis of information provided by the applicant and published in accordance with Article 3, the viability taking into account in particular the following criteria :

- substitutability of operational requirements such as available capacity on the access route and in the alternative installation, opening hours, scope/types of services offered (including additional and ancillary services)

- substitutability of physical and technical requirements of the facility, such as location, gauge clearance, length of tracks, electrification, road and rail access, signalling system

- estimated additional cost for the railway undertaking concerned resulting from access to the alternative facility instead of using the initially envisaged facility, such as track access charges and charges for access to and use of the alternative facility

- for freight services: impact on freight service concerned in terms of envisaged transshipment options, transportation time and envisaged delivery time and distance

- for passenger services: impact on attractiveness of services for travellers in terms of routing, travelling time, accessibility, connections with other rail passenger services or other modes of transport.

In this context, the operator of a service facility shall respect the commercial confidentiality of information provided to it by the applicant.

The operator of the service facility shall inform the applicant about the outcome of its assessment; the applicant shall consequently assess whether using the proposed alternative would allow to operate the envisaged service under economically acceptable conditions.



*[Operators of a service facility and applicants may request information required to enable them to assess the viability of an alternative from the operator of a facility offering a potential viable alternative. The operator of a facility offering a potential viable alternative shall provide the relevant information without undue delay.]*

(3) In a case where, following this assessment, the operator of the service facility and the applicant conclude that no viable alternative exists<sup>19</sup>, and it is not possible to accommodate the request for capacity following the procedure set out in Article 8, the operator of a service facility may reject the request. The applicant concerned may complain against the decision to the regulatory body in accordance with Article 13(5) of Directive 2012/34/EU.

In case of various conflicting requests for which no alternatives could be identified in accordance with the procedure set out in paragraph 2, the operator of the service facility may apply priority criteria to allocate remaining available capacity. Such priority criteria shall be published in the service facility description and be subject to review by the regulatory bodies. In determining the priority criteria, the operator of a service facility shall take into account in particular the following aspects:

- purpose of the facility
- (un)availability of alternatives
- securing optimum use of available capacity
- level of use requested and intention and ability to use the capacity requested, including previous failure, if any, to use allocated capacity and the reasons for that failure
- necessary consequence of an agreed train path.

(4) In a case where it is not possible to accommodate a request for capacity following the procedure set out in Article 8, but the operator of the service facility and the applicant have jointly identified viable alternatives in accordance with the procedure set out in paragraph 2, the operator of the service facility may reject the request.<sup>20</sup>

(5) Notwithstanding paragraphs (3) to (5) an operator of a service facility referred to in Article 13(3) of Directive 2012/34/EU, which after having performed the facility coordination process in accordance with Article 8, is not in a position to accommodate the request of an applicant, shall identify alternatives, assess their viability on the basis of the criteria set out in paragraph 2 and indicate them to the applicant. The service facility operator shall justify in writing why the request could not be accommodated and why, on the basis of the information available, he considers that the proposed alternative meets the applicant's requirements and is thus viable within the meaning of Articles 3(10) and 13(4) of Directive 2012/34/EU and the provisions of this Regulation. If the applicant concerned does not consider the alternatives proposed to be viable, he may complain to the regulatory body in accordance with Article 56 of Directive 2012/34/EU.

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<sup>19</sup> In particular for stations and for (certain facilities in) ports it may sometimes be impossible to identify viable alternatives.

<sup>20</sup> In such a case, Article 13(5) of Directive 2012/34/EU does not apply. However, the applicant may complain to the regulatory body in accordance with Article 56(1) of Directive 2012/34/EU if he considers that he has been unfairly treated or discriminated against by the operator of a service facility.

(6) An operator of a service facility rejecting a request for service facility capacity shall be able to demonstrate to the regulatory body and the applicant the needs preventing him from attributing the requested capacity to the applicant and the options examined in view of trying to accommodate the applicant's request.

Preventive reservation of service facility capacity for own use by the operator of the facility shall not be considered as demonstrated needs within the meaning of Article 13(5) of Directive 2012/34/EU, unless the facility operator can demonstrate to the satisfaction of the regulatory body that he will be in a position to start using the capacity reserved within two months at the latest or a longer period approved by the regulatory body. During that period, the service facility capacity concerned shall nevertheless be made available to other applicants requesting ad-hoc capacity.

(7) Where, after receipt of the information referred to in paragraph 2, an applicant, whose request cannot be accommodated following the procedure described in Article 8, informs the operator of a service facility on its own initiative and in writing that it does not wish the operator of the service facility to identify and indicate viable alternatives, the operator of a service facility shall not be subject to the provisions of paragraphs 2 to 5.

#### *Article 10*

##### **Regulatory intervention**

When a regulatory body decides in accordance with Article 13(5) of Directive 2012/34/EU that an appropriate part of capacity shall be granted to the applicant whose request could not be accommodated after a facility coordination procedure, the regulatory body shall, where relevant, take account in particular the following aspects:

- impact on the viability of the business models of other applicants possibly affected by the decision;
- overall amount of service facility capacity already attributed to other undertaking(s) possibly affected by the decision;
- investments made into the facility by undertaking(s) possibly affected by the decision, with the exception of investments covered by public funds;
- viable alternatives available to accommodate needs of other undertaking(s) possibly affected by the decision, including in case of international services alternatives in other Member States through which the service concerned is running;
- impact on the viability of the business model of the operator of the service facility.

#### *Article 11*

##### **Single point of contact for requests**

In service facilities where services referred to in point 2 to 4 of Annex II of Directive 2012/34/EU are provided either by a supplier, which is not responsible for handling requests for access to the facility, or by more than one service provider, a single point of contact for applicants to request information on access to the service facility and/or rail related services shall be established. Information on the contact point shall be published in the service facility description. The single point of contact shall contribute to ensuring the optimum effective use of capacity available in the facility.

## *Article 12*

### **Measures to ensure optimum effective use of service facility capacity**

(1) Operators of service facilities referred to in Article 13(3) shall put in place measures to encourage optimum effective use of the capacity available in their facility. Such measures shall be transparent and non-discriminatory; they may include penalty payments or an obligation to surrender capacity in case of disruption or repeated failure to use capacity reserved, unless the reasons are beyond the control of the applicant.<sup>21</sup> Information on the measures shall be provided in the service facility description.

(2) Applicants shall inform the operator of a service facility of any permanent intention not to use all or part of the allocated service facility capacity without undue delay.

(3) Where a service facility operator referred to in point 2 of Annex II encounters capacity constraints and has had a request expressed as per Article 7 or anticipates such a request, it shall put in place mechanisms enabling him to assess on a regular basis whether the capacity available is efficiently used. This may include periodical review of agreements concluded with applicants for the purpose of considering the service facility capacity. A summary of the assessment shall be kept.

## *Article 13*

### **Publication of unused facilities for lease or rent<sup>22</sup>**

(1) The timeline for calculating the two year period referred to in Article 13(6) of Directive 2012/34/EU shall start on the day following the last day of supply of a rail related service in the service facility or the parts of the service facility concerned.

The two year period shall not be interrupted by occasional use of the facility by the operator of the facility for the purpose of self-supply if according to the service facility description the facility is not open for use by other applicants during these times.

(2) An applicant interested in using a facility referred to in Article 13(6) of Directive 2012/34/EU shall express its interest in writing to the operator of the facility concerned and inform the regulatory

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<sup>21</sup> An incentive could e.g. be a charge levied for capacity reserved but not used due to circumstances within the sphere of control of the applicant.

<sup>22</sup> This provision is limited to facilities referred to in point 2 of Annex II; references to Article 13(6) of the Directive are intended to make this clear.

body; a request for access to the facility shall be considered as expression of interest. The expression of interest shall contain information on the needs of the railway undertaking.

Where the owner of a facility does not ensure the operation of the facility, the operator of a facility shall inform the owner of the facility about the expression of interest within 10 days.

Where, upon receipt of the expression of interest the operator of the service facility decides to resume operations within a timeframe and to an extent that satisfies the railway undertaking's demonstrated needs, the owner of the facility shall not be obliged to publicise the facility for lease or rent.

(3) Before publishing the facility for lease or rent, the owner of the facility may allow the operator of the facility to submit his observations on the envisaged publication for lease or rent within an appropriate delay not exceeding four weeks. The operator may object to the publication for lease or rent by submitting documents proving that the land on which the facility is located is in a formal process of reconversion<sup>23</sup>, which has been launched before the expression of interest in using the facility and which involves planning and construction works aimed at removing the current function of the facility.

The regulatory body may assess the documents concerning the reconversion process.

(4) [Without prejudice to applicable procurement rules], the owner of a service facility shall publicise a notice concerning the lease or rent of the facility on its webpage in at least two official languages of the Union and shall inform the infrastructure manager to whose network the facility is connected and the regulatory body. The publication shall include all information necessary to enable interested candidate to submit an offer for taking over the operation of the facility. This shall include in particular information on the technical equipment of the service facility, the award criteria as well as the address and time limit for submission of tenders. The infrastructure manager concerned shall also publish this information on its web portal. The minimum time limit for receipt of tenders shall be 30 days from publication of the notice.

(5) [Without prejudice to applicable procurement rules], the owner of a service facility shall select the new operator of the facility in a transparent and non-discriminatory selection process on the basis of appropriate criteria defined in the publication. The owner of the facility shall aim at identifying offers that are suited to ensure an optimum effective use of the capacity of the facility and shall make a reasonable offer without undue delay.

#### *Article 14*

##### **Ticketing services in passenger stations**

Ticketing services in passenger stations within the meaning of point 4(d) of Annex II of Directive 2012/34/EU shall comprise ticket vending services provided at staffed ticket offices and/or use of ticket selling machines installed in passenger stations.

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<sup>23</sup> A definition of 'reconversion' has been inserted in Article 2.

## *Article 15*

### **Accounting**

Without prejudice to Article 13(3) of Directive 2012/34/EU, any operator of a service facility shall keep its accounts in a way that allows the regulatory body to control whether the operator of a service facility has complied with the charging rules set out in Article 31(7) and (8) of Directive 2012/34/EU and enables the operator of the service facility to demonstrate, where applicable, that the service charges invoiced comply with the methodology, rules and scales in accordance with Article 31(2) of Directive 2012/34/EU.<sup>24</sup>

## *Article 16*

### **Independence requirements for service facility operators**

(1) Without prejudice to Article 13(3), third subparagraph of Directive 2012/34/EU<sup>25</sup>, decision-making and organisational independence required for operators of service facilities referred to in Article 13(3), first subparagraph of Directive 2012/34/EU shall be ensured through measures including at least the following:

(a) operation of service facilities shall be ensured by a distinct division;

(b) where information systems are common to the controlling entity and the service facility operator, access to sensitive information relating to service facility access requests, conditions for access and charging shall be restricted to authorised staff of the division responsible for operating the service facility; sensitive information relating to service facility access requests, conditions for access and charging shall not be passed on to the controlling entity;

(c) the controlling entity shall not exercise a decisive influence on decisions concerning service facility access requests, conditions for access and charging;

(d) the managers of the division in charge of taking decisions on service facility access requests, conditions for access and charging shall not be affected by any conflicts of interest and shall not receive bonuses related to the performance of the controlling undertaking;

(2) Regulatory bodies shall assess whether the measures put in place are sufficient to guarantee organisational and decision-making independence of operators of service facilities referred to in Article 13(3) of Directive 2012/34/EU. If this is not the case, the regulatory body may decide on additional measures necessary to ensure organisational and decision-making independence.

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<sup>24</sup> This may require separation of accounts per type of facility and/or type of service.

<sup>25</sup> This is to clarify that when a service facility (operator) is under the direct or indirect control of an infrastructure manager, organisational and decision-making independence may be considered to be demonstrated by fulfilment of the independence requirements for infrastructure managers set out in Article 7 of Directive 2012/34/EU.

*Article 17*

**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*.

Articles 3 and 6 shall apply from [...] in time for the working timetable starting on 8 December 2018.

Article 17 shall apply from 25 December 2018.<sup>26</sup>

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

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<sup>26</sup> Aligned with deadline for transposition of provisions concerning independence of infrastructure managers under the 4<sup>th</sup> railway package.