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Conditions of access to service facilities (Art. 13 of Directive 2012/34/EU and EC implementing regulation)

Supply to all railway undertakings, in a non-discriminatory manner, the minimum access package

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Supply, in a non-discriminatory manner, to all railway undertakings access, including track access to the facilities and to the services supplied in these facilities.

The service shall be given on REQUEST

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Transparency of control structures

Direct or indirect control by an infrastructure manager/applicant/railway with active and dominant position in national railway transport services markets = usually the **incumbent state-owned railways**

The operator **must be independent of this body** or firm **in organisational and decision-making terms.**

However, no requirement to establish a separate legal entity for service facilities; organisation of distinct divisions within a **single legal entity permissible.**

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Possible forms of organisation structure

1. **Operation** of service facilities by a **distinct division** with its own dedicated staff;
2. **Separate information system** from the controlling entity;
3. **Confidential information** approved by **regulatory body**, not shared with controlling entity;
4. **No decisive influence** by controlling entity on the day-to-day management;
5. **Division managers** not affected by conflicts, no bonuses related to the performance of the controlling undertaking;

Regulatory bodies assess
If not satisfactory, additional measures for full organisational and decision-making independence.

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The OSF: infrastructure manager or under the direct or indirect control of infrastructure manager

Requirements:

1. **Independence of essential functions,**
2. **Offer of equitable and non-discriminatory access to infrastructure,**
3. **No provision of any rail transport services,**
4. **Proof of achieved separation requirement (regardless of organisational structures).**

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Separate accounts



The OSF and the body or firm shall have **separate accounts**, including separate balance sheets and profit and loss accounts.

Separate accounts for **each type of service facility** and category of service provided.

Checking by Regulatory Body.

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Art. 13.4 REQUESTs



REQUESTs by railway undertakings for access to and supply of services in service facility

Answer within **reasonable time** limit set by **Regulatory Body**

Refusal

Only if viable alternatives (for operating freight or passengers on the same/alternative routes) under economically acceptable conditions

Operator (OSF)

No obligations to make investments in resources/facilities to accommodate all requests by railway undertakings.

Decision of refusal

Justification in written form, including viable alternatives in other facilities

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Viable alternative



Aspects to be taken into account

1. substitutability of operational requirements
2. substitutability of physical and technical requirements of the facility
3. additional cost for the railway undertaking concerned resulting from access to the alternative facility instead of using the initially envisaged facility
4. **for freight services**: impact on freight service concerned in terms of envisaged transshipment options, transportation time and envisaged delivery time
5. **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.

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13.5 Conflicts between different REQUESTs



If no viable alternative and no accommodation of all REQUESTs for capacity for the relevant facility on the basis of demonstrated needs,

the applicant may **complain to the regulatory body** that ensures that an appropriate part of the capacity is granted to that applicant.

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13.6 Use it or lease it



Not in use for **at least two consecutive years**, interest by railway undertakings for access to this facility expressed to the operator on the basis of demonstrated needs.

Obligation by its owner to **publicise the operation for lease** or rent as a rail service facility, as a whole or in part.

No obligation, if the operator of that service facility demonstrates that an **ongoing process of reconversion** prevents its use by any railway undertaking.

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Service Facility Description



1. Public information on conditions for access to operators' services facilities and the supply of services in their facilities
2. 12 obligatory items to be included in the statement
3. In case of more than one service provider, coordination in **one single place**.

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1. Its own service facility statement
2. By the infrastructure manager with the relevant information to be included in the network statement
3. Its own web portal, BUT with the relevant link to be included in the network statement,
4. At least two languages of the Union
5. Up to date

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1. Cooperation with infrastructure managers.
2. Pending allocation process of the infrastructure manager.
3. Regulatory bodies.
4. Coordinate on a **daily basis**.
5. Record keeping of cooperation activities.

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1. Acknowledgment of receipt of a REQUEST in due time.
2. Incomplete REQUEST.
3. Timeframes defined by **regulatory bodies**.
4. Deadlines for **ad-hoc request**: maximum 5 working days
5. Different deadlines for different types of service facilities and/or rail related services.
6. Exemptions in individual cases granted by **regulatory body** permissible.

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1. Consultation with the relevant applicants and a facility coordination process, according to the principles set out in **service facility description**.
2. Principle – to maximise the capacity available in the facility without investment in resources or facilities

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1. **Regulatory body may request measures to accommodate**, in particular, when the service facility is close to congestion.
2. No solution > application of priority criteria published in the **service facilities description**.
3. Priority criteria shall be:
 - **subject to approval by the regulatory body**,
 - **published in the service facility description**,
 - **non-discriminatory, equitable and transparent**

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

- existing contracts;
 - 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;
 - already allocated train paths linked to the requested services;
 - priority criteria for allocation of train paths;
- timely submission of requests

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Principles

- 1. No rejections of REQUESTs or**
- 2. Proposal of viable alternative**
- 3. Ad-hoc capacities.**
- 4. Justification obligatory to the regulatory body**
- 5. Contents: viable alternatives**
- 6. Collaboration of applicant**

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Aspects:

- 1. impact on the viability of the business models of other undertaking(s) possibly affected by the decision;**
- 2. overall amount of service facility capacity already attributed to other undertaking(s) possibly affected by the decision;**
- 3. investments made into the facility by undertaking(s) possibly affected by the decision;**
- 4. viable alternatives available to accommodate needs of other undertaking(s) possibly affected by the decision.**

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Establishment of a single point for REQUESTs

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- 1. Regular assessment of available capacity.**
- 2. Periodical review of agreements with applicants.**
- 3. Obligatory information on no-use of allocated capacity.**
- 4. Surrender of allocated capacity.**

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