

Access to service facilities and rail-related services



service facilities (Annex II point 2 of the recast)

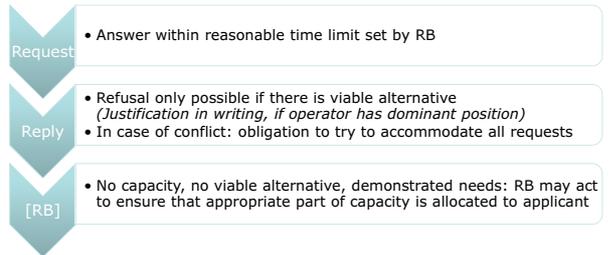
| | |
|--|--|
| Passenger stations | • plus their buildings and other facilities, incl travel information display and suitable location for ticketing |
| Freight terminals | |
| Marshalling yards and train formation facilities | incl. shunting facilities |
| Storage sidings | |
| Maintenance facilities | with the exception of heavy maintenance facilities |
| Maritime/inland port facilities | • when linked to rail activities |
| Other technical facilities | incl. cleaning and washing facilities |
| Relief facilities | |
| Refueling facilities | • plus supply of fuel |

Article 13(2) of the recast

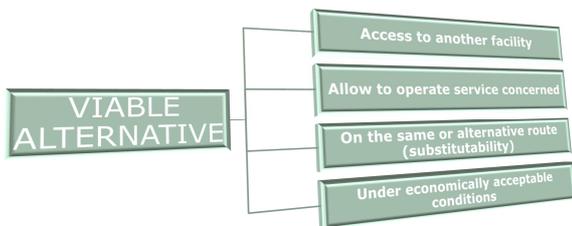
Operators of service facilities must supply
NON-DISCRIMINATORY ACCESS
 to the
service facilities AND services
 supplied in these facilities

(services supplied in these facilities = „basic services“)

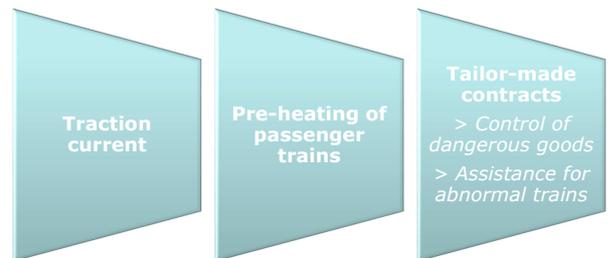
Procedure for Access/supply of „basic service“ – Art. 13(4) of the recast



Viable alternative – Art. 13(4) of the recast



Additional services (annex II point 4 of the recast)





Article 13(7) of the recast

Where operators of service facilities supply additional services, these have to be supplied **UPON REQUEST** **IN A NON-DISCRIMINATORY MANNER**



Ancillary services (Annex II point 4 of the recast)

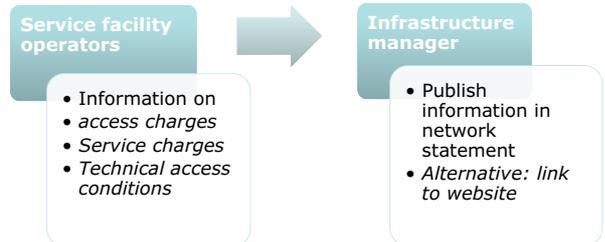


Article 13(8) of the recast

Operators of service facilities are not obliged to supply ancillary services BUT: once they offer to others such services, ancillary services must be supplied to RUs **IN A NON-DISCRIMINATORY MANNER** (upon request)



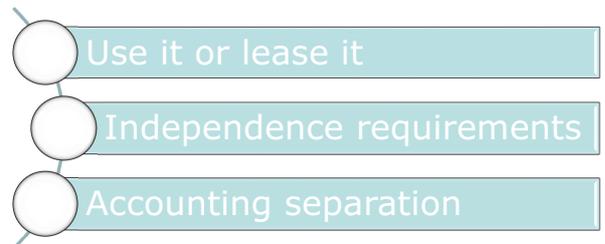
Information on service facilities (Article 27, 31(10) and Annex IV, point 6)



Charging rules (Article 31(7) and (8) of the recast)



Other aspects – Art. 13(3) and (6) of the recast





Draft implementing act

Legal basis: Art. 13(9) of the recast

"[...] details of procedure and criteria to be followed for access to services to be supplied in the service facilities referred to in points 2 to 4 of Annex II."



Approach chosen

- Aim to have a sort of 'evidence' based approach:
 - assessment of existing material (e.g. existing service facility descriptions, cases dealt with by RBs, national laws and practices) in order to identify good/bad practices
 - Intense discussions with stakeholders to identify problems to be addressed (discussions with RBs, PRIME, RUD; site visits, etc.) before presenting a first draft text



Consultation on draft text

- First draft presented in October 2016; shared with all stakeholders at the same time; discussed at individual meetings with SERAC, ENRRB, RUD, PRIME in autumn 2016
- Revised draft v1 in January 2017; stakeholder workshop with 80 participants (SFOs, IMs, RUs, MS, RBs, etc.) in February 2017
- Second stakeholder workshop on revised text v2 in May 2017; participation similar to first workshop
- Stakeholder consultation in July/August 2017 on revised text v3; 49 replies uploaded on website and ca. 10 additional contributions by e-mail
- Beginning of September 2017: revised text v4 sent to SERAC Members



Main elements of draft

Article 4, recitals 4 and 6 - service facility description

-> detailed list of information to be published by operators of service facilities

Why is it needed?

recast requires publication of conditions for access and on service facility information charges; very generic wording - no common understanding; implementation so far very poor

Main criticism:

- **burden for smaller SFOs** (in particular language requirements)
Reaction/COM: try to mitigate by developing a standard **template** (RBs and RNE work on it next year)
- **concerns over commercial confidentiality**, in particular on provisions concerning publication of charges/discounts
Reaction/COM: Articles 27 and 31(10)+ Annex IV points 2 and 6 of recast already contain an obligation to publish info on charges



Main elements of draft

Article 7, recital 11 - cooperation on allocation of service facility capacity and its use

Objective: better alignment between capacity on infrastructure and in service facilities

Why is it needed?

In practice, railway undertakings and service facility operators complain that capacity in service facilities and on infrastructure often do not match properly, leading to inefficiencies in operation; also, sometimes there are various SFOs in one facility; Problems occur at two stages: (1) allocation phase and (2) operational phase:

(1) SFOs reported about 'chicken-egg problem': before attributing capacity in their facility, they ask RU if it already got path from IM; at the same time, (certain) IMs whether RUs that have already been allocated capacity in the facility...

(2) SFOs also complained that they had no info about delays of trains scheduled to use their facilities; ETA project is trying to address this problem and IA is trying to provide a legal basis for exchange of certain kinds of information

Main criticism:

- SFOs and IMs follow **different processes for capacity allocation**, so alignment is not possible; provisions might create burdens on SFOs
Reaction/COM: define targets to be achieved rather than precise procedures



Main elements of draft

Article 10, recital 14 - coordination of conflicting requests

Background:

Today, most SFOs do not apply an annual scheduling process but reply to requests for access to service facilities on a first come-first serve basis; also, sometimes they are selling all capacity to one applicant and do not care about whether this applicant effectively needs/uses all that capacity.

Proposed solution: obligation of SFO to apply a coordination procedure in case it receives a request that is in contradiction with another request or capacity already allocated

Main criticism:

- **Out of scope** as coordination procedure is only foreseen in recast for infrastructure capacity
Reaction/COM: Article 13(9) entitles COM to define procedure for access to services; this is clearly an element of the procedure of handling requests for access to a facility
- Coordination obligation should **only apply to requests that remain to be answered** and not involve capacity already allocated, as this would lead to too much uncertainty for applicants
Reaction/COM: as many SFOs do not apply an annual scheduling process, added value of the provision would be very low if it only applied to requests that have not yet been answered; however, clarification that allocated capacity can only be modified with agreement of applicant





Main elements of draft

Articles 12 & 13, recital 16 – viable alternatives, refusal of requests

Background:

Viable alternative concept already enshrined in Directive 2001/14/EC, but apparently so far hardly applied (- at least according to feedback from sector); so far no clear guidance on how to assess viability.

Proposed solution: definition of a process of interaction between SFO and RU in and criteria for assessing viability; clarification that SFO cannot refer applicant to alternative facility, if capacity in its facility is available

Main criticism:

- **SFO cannot assess all elements** of viability on its own; excessive **burden** for SFO
Reaction/COM: IA proposed dialogue between SFO and applicant (= compromise resulting from stakeholder meetings) and thus puts less burden of SFO than initial recast wording;
- **clarification** that SFO cannot refer applicant to viable alternative, if capacity in its facility is available, is in contradiction to Art. 13(4) of recast and thus **out of scope**
Reaction/COM: Art. 13(5) of recast requires SFOs to do their best to accommodate conflicting requests as far as possible - if such obligation exists for conflicting requests, SFO should certainly be obliged to accommodate request if capacity is available; any other interpretation could lead to sending applicants around from one facility to the next in a never-ending circle; how can non-discrimination principle be respected if you can choose to grant capacity to one applicant, while sending another to a viable alternative?



Background to specific provisions

Exemptions – Art. 2

MS asked for exemptions in order to avoid 'excessive burden' for small SFOs

Reaction/COM: give RBs a possibility to exempt certain SFOs from application of the provisions of the IA (except for certain provisions on service facility description!) BUT:

even if exemptions are granted, recast will still apply, so in practice similar procedures will have to be applied...

NOTE: RBs need to develop common principles for applying the exemptions before the IA becomes applicable; RBs must not grant exemptions for categories of facilities but only for individual facilities



Background to specific provisions

Publication of service facility description – Art. 5, recitals 7 & 8

1. Where/How to publish:

Publication in NS of IM or on a website

In practice, the website can be the one of the SFO or a common web-portal, such as the last mile infrastructure portal developed in the context of the last mile study on freight

NOTE: some MS have obliged SFOs to publish info on a website and only provide IM with a link (e.g. FR)

2. Requirements to be met

COM considers that according to Art. 27 of recast service facility description is in principle part of NS and thus has to follow same rules as NS (e.g. consultation, language requirements, etc.)



Background to specific provisions

Publication of information on available capacity and temporary capacity restrictions – Art. 6(4) and recital 12

Requirement to make this information available on real time basis was suggested by some stakeholders (mainly by UIRR)

Other stakeholders complain that this will not be feasible/too burdensome, but the idea is that such a tool could (sooner or later) be integrated in the last mile infrastructure portal;

The information could be given in the form of a kind of 'traffic light system', indicating whether there is still enough remaining capacity to accommodate any request ('green'), there is some remaining capacity that would allow to accommodate certain requests ('yellow') or there is no remaining capacity available ('red')



Background to specific provisions

Self-supply of services – Art. 4(2)(e) and recital 5

Wording of Article 13(2) of the recast seems to suggest that applicant can only request access to a facility and does not necessarily have to ask for supply of a service, i.e. could just use the facility to self-supply a service

Sector is very concerned about possibility for self-supply, as they fear it can have very negative consequences for business models of SFOs (e.g. what about staff, that is employed to provide services?)

Proposed solution: in principle, SFOs choose whether to offer self-supply or not, but RB can also oblige SFO to offer self-supply, when this appears to be necessary to prevent market distortion/undesirable developments in the market (based on Article 56(9) of the Directive)



Background to specific provisions

Applicants – Art. 1 and recital 10

Art. 13 of recast Directive mainly grants rights to railway undertakings; the term 'applicant' is only used in Art. 13(5)

In practice, a number of SFOs allow not only RUs but also non-RU applicants (e.g. shippers) to book capacity in their facility; COM intention was thus to have draft IA apply to all applicants; however, some MS have transposed Art. 13 of the recast in a way that only covers RUs and are thus opposed to extending IA to applicants

Proposed solution: where MS have decided to extend application of Art. 13 to non-RU applicants, IA should also be applied to these entities





Background to specific provisions

Prohibition of bundling of services – Art. 8(2) and recital 13

Spirit of recast is that RUs should only have to pay for services they request; IA underlines this principle;

Measures to encourage efficient use of capacity in service facilities - Art. 10(5) and 13(6), recital 17

Idea: encourage service facility operators to put in place mechanisms to make best use of capacity available in a facility, as some SFOs still do not have market-oriented behaviour; entitle RBs to request such mechanisms from SFO

Examples of possible measures: fines for capacity reserved but not used; withdrawal of unused (framework) capacity;



Thank you for your attention!

