

PRIME

Platform of Rail Infrastructure
Managers in **Europe**

PRIME Subgroup on Implementing Acts: Overview and State of Play

Stefano Castro, RFI

PRIME Subgroup on Implementing Acts

- ✓ Since april 2016, one meeting of the SG IA took place on October 28, 2016, focused on art.13 of Directive 34/2012 “Conditions of access to services”
 - A first draft of IA was delivered by the Commission at the beginning of October
 - Participants: EC, 12 IMs (Infrabel, IP Portugal, Network Rail, DB Netz, PKP PLK, Prorail, RFI, SBB CFF FFS, SNCFR, Trasse Schweiz AG, ÖBB, Trafikverket), CER, EIM
- ✓ Concerning the Delegated Act on art.43 of Directive 34/2012 “Schedule for the allocation process”, originally addressed by the SG IA, the Commission decided in october to set up a separate group of experts on timetabling (with participation of IMs and member states representatives) who are being consulted for the finalisation of the document.

The draft text elaborated by the Commission defines the procedure and criteria for access to the services following the principles of transparency, efficient use of the capacity and the independency of services' operator .

DISCUSSION PAPER ON ACCESS TO SERVICE FACILITIES AND RAIL RELATED SERVICES

- **Article 1** Subject matter
- **Article 2** Definitions
- **Article 3** Service facility statement
- **Article 4** Applicants
- **Article 5** Principles for allocation and use of service facility capacity
- **Article 6** Information on available service facility capacity
- **Article 7** Requests for access to a service facility and rail related services
- **Article 8** Handling of conflicting requests
- **Article 9** Refusal of access
- **Article 10** Viable alternative
- **Article 11** Regulatory intervention in the case of conflicting requests
- **Article 12** Single point of contact for requests
- **Article 13** Incentive mechanism to ensure optimum effective use of service facility capacity
- **Article 14** Continuous capacity management
- **Article 15** Publication of unused facilities for lease or rent
- **Article 16** Ticketing services in passenger stations
- **Article 17** Accounting separation
- **Article 18** Independent requirements for service facility operators
- **Article 19** Entry into force

Implementing Act on service facilities: general remarks

ONE SIZE FITS ALL APPROACH

A distinction between different types of service facilities is needed in order to avoid potential unworkable solutions:

- Definition of service facility capacity
- Deadlines alignment to the path allocation process
- Handling of conflicting request

SOME MATTERS POTENTIALLY OUT OF SCOPE

- Service facility statement
- Charging principles
- Lease or rent principle

OVERRIDING ROLE OF REGULATORY BODY

- Approval ex-ante of allocation priority criteria
- Observation function during the coordination process
- Independence requirements assessment

Implementing Act on service facilities: the structure

The legislative provisions of the draft Implementing Act can be clustered in 4 macro thematic area:



Implementing Act on service facilities: open points (1)



Overregulation with respect
to art.27 Recast

Implementing Act on service facilities: open points (2)

Handling service request

- Obligation to provide information on available spare capacity → potential impact on the competition among service operators
- Allocation decision to be made according to specific deadlines for ad hoc or other request in the working TT → overruling the Recast which places on RBs the responsibility of establishing time limits

Handling of conflicting request

- Participation of the RB as observer during the coordination process between applicants and service operators → beyond the role of the RBs
- RB pre-approval of priority criteria to be published by the operator → beyond the role of the RBs

Viable alternative to be identified by the operator of service facility

- Identification of “best” alternatives in other facilities in case of conflicts → Disproportionate burden placed on the operators
- Obligation to provide viable alternative in other MSs → Unrealistic application

Implementing Act on service facilities: open points (3)

Single point of contact for requests in service facilities

- Risk of potential discrimination in a competitive market
- Uncertainty about the subject in charge of the SPC establishment obligation
- Extra cost and no obligation to use it by applicant

Continuous capacity management

- Publication of the assessment of the efficient use of capacity → issue of business confidentiality
- Repeated failure to use capacity by the applicant → need for harmonised understanding

Lease or rent principle

- Application to be fine tuned due to the need of clarifying the concept of reconversion of unused facilities → Possible impact on property rights

Decision making and organizational independence of service operators

- Need to ensure consistency between these provisions of independence requirements and other EU legislation → Fourth package market pillar

Implementing Act on service facilities: next steps

PRIME members recognize the need for harmonized rules for service facilities in order to:

- strengthen fair and non-discriminatory access
- foster the cooperation between IMs and operators of service facility

The elaboration of the Implementing Act should reflect both the scope of art. 13 of Recast Directive and as well as the best practise implemented by Regulatory Bodies and service facility operators

The implementation of the Regulation should be effective after an adequate transitional period (2 years at least) allowing service facility operators to adapt their processes and procedures to the new legal framework.

A revised Implementing Act is planned to be issued by the Commission at the end of 2016

A further consultation of all stakeholders (IMS,Rus,RBs) is planned to be organized by the Commission at the beginning of February

The Implementing Act on access to service facilities is expected to be adopted in 2017