

IRG-Rail (2021) 4

Independent Regulators' Group – Rail

IRG-Rail Subgroup on Access to Service Facilities

## **Statement on the Responsibility of Infrastructure Managers for Third Party Service Facility Descriptions in Network Statements**

May 2021

## Introduction

1. The Independent Regulators' Group – Rail (hereafter: IRG-Rail) is a network comprising independent rail Regulatory Bodies (hereafter: RBs) from 31 European countries. The IRG-Rail acts as a platform for cooperation, information exchange and sharing of best practice between national railway regulators in order to face current and future regulatory challenges in railways and to promote a consistent application of the European regulatory framework.
2. Since its creation in 2011 the overall aim of IRG-Rail has been to contribute to the creation of a single, competitive, efficient and sustainable railway market in Europe. An important part of IRG-Rail's role is to provide the European lawmakers and stakeholders within the railway business with the members' experience of the practical application of European rules.
3. This statement is published in order to provide stakeholders on the railway market, and Infrastructure Managers (hereafter: IMs) in particular, with RBs views on the matter of responsibility for the content of the Service Facility Descriptions (hereafter: SFD) supplied by third party operators of service facilities for inclusion in the IMs' Network Statement (hereafter: NS).
4. It is important to note that RBs can only express their views and take position relating to their own competences and monitoring of railway legislation.

## Background

5. The Commission Implementing Regulation (EU) 2017/2177 (hereafter: IR) on access to service facilities and rail-related services was adopted on 22 November 2017.<sup>1</sup> It sets out the obligation for operators of service facilities (hereafter: SFO) to make SFDs publicly available in several ways, including by providing the IMs with relevant information to be included in the NS.
6. IMs are responsible for producing and publishing a NS. On several occasions, IMs have addressed RBs, i.e. members of IRG-Rail, with questions and opinions on the responsibility for the content of SFDs supplied to them by third party operators of service facilities, for inclusion in the IM's NS. As the IMs do not control these service facilities, nor the services supplied in these facilities, they claim that they cannot be held accountable for the related information in the NS. So far, neither the European Commission nor individual RBs have issued a formal statement on the interpretation of the EU regulation on this matter.
7. Against this background, the members of IRG-Rail have sought to find a common position, with the aim to express a clear view on the IMs' responsibilities for third party SFDs information in the NS.

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<sup>1</sup> As of today, Regulation (EU) 2017/2177 is not a part of the EEA-agreement and thus not implemented in Norway. The IR is not implemented in Switzerland either.

## Legal framework

8. Article 3 (11) and (12) of Directive 2012/34/EU contains the following definitions:

*'Service facility'* means the installation, including ground area, building and equipment, which has been specially arranged, as a whole or in part, to allow the supply of one or more services referred to in points 2 to 4 of Annex II.

*'Operator of service facility'* means any public or private entity responsible for managing one or more service facilities or supplying one or more services to railway undertakings referred to in points 2 to 4 of Annex II.

9. Recital (8) of the IR, further clarifies that in case different entities are in charge of deciding on access conditions for a service facility, allocating capacity in the service facility or supplying rail related services in the facility 'all entities concerned are to be considered operators of a service facility within the meaning of Directive 2012/34/EU' and each of them should meet the requirements of the IR for the part for which it is responsible. It also specifies that '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'.
10. Article 27 (2) of Directive 2012/34/EU states that the NS shall 'contain information setting out the conditions for access to service facilities connected to the network of the infrastructure manager and for supply of services in these facilities, or indicate a website where such information is made available free of charge in electronic format. The content of the network statement is laid down in Annex IV.'
11. Annex IV (6) of Directive 2012/34/EU sets out that the NS shall contain a section with information on access to and charges for service facilities. It further clarifies, that SFOs, which are not controlled by the IM, shall 'supply information on charges for gaining access to the facility and for the provision of services, and information on technical access conditions for inclusion in the network statement or shall indicate a website where such information is made available free of charge in electronic format'.
12. Article 4 (1) of the IR, states that 'operators of service facilities shall establish a service facility description for the service facilities and services for which they are responsible'.
13. According to article 5 (1) of the IR, 'operators of service facilities shall make publicly available the service facility descriptions free of charge, in one of the following ways:
- (a) by publishing it on their web portal or a common web portal and providing the infrastructure managers with a link to be included in the network statement;
  - (b) by providing the infrastructure managers with the relevant and ready-to-be-published information to be included in the network statement.'
14. Article 5 (3) of the same Regulation further states that 'operators of service facilities shall keep the service facility description up to date as necessary'.

## Discussion

15. According to the definition in article 3 (12) of the Directive 2012/34/EU a SFO is any entity responsible for managing service facilities or supplying services referred to in points 2 to 4 of Annex II. As a result, in addition to their IM function, where IMs fulfill the requirements in article 3 (12) they also qualify as SFOs, with an obligation to establish SFDs and include the information in their NS. In these cases, the IMs are clearly responsible for the content of their own SFDs.
16. Alternatively, third party SFOs can provide access to service facilities, or supply of services for example: maintenance companies, port facility operators, terminal operators, fuel suppliers or railway undertakings which offer shunting or other rail-related services to applicants. These third party SFOs are likewise obliged to establish SFDs and, in accordance with the IR, they should make the content of the SFDs publicly available in the NS of the connecting or main<sup>2</sup> IM.
17. Article 5 of the IR sets out the rules for SFOs and IMs in regard to 'Publication of service facility description'. However, the article does not explicitly state whether IMs can be held accountable for the content of third party SFDs<sup>3</sup> once the information is 'included in the NS' or whether, in terms of responsibility, it makes any difference if third party SFDs are directly included in the NS based on a 'ready-to-be-published information', or indirectly included via a link in the NS.

## Conclusions

18. Based on the results of a survey among the members of IRG-Rail, and exchange of experiences in the IRG-Rail Access to Service Facilities Subgroup, the IRG-Rail members' conclusion when interpreting the applicable regulation is that:

**Infrastructure Managers are not, and should not be held, responsible for the content of service facility descriptions, produced by third party service facilities operators, neither if service facility descriptions are published on a website and referred to via a link in the network statement, nor if they are provided to the Infrastructure Managers as 'ready-to-be-published information' and included directly in the Infrastructure Managers' Network Statement.**

19. The IRG-Rail members aim to share this conclusion with stakeholders on the international and national railway markets, by publishing the statement on the IRG-Rail website and encourage IRG-Rail members to set up a link to it on their own website.

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<sup>2</sup> See article 5 (1) of the IR.

<sup>3</sup> Legal status of NS and SFD might vary from country to country.