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Independent
Regulators' Group - Rail

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Subgroup Access to Service Facilities

Regulatory approach to the concept of private sidings

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Transparent information on service facilities is essential for fair and improved access to the railway market. IRG-Rail members are monitoring the establishment of service facility descriptions in their member states. Regulatory bodies have been confronted with service facility operators refusing to develop and publish such a description because they consider themselves "private" and therefore out of scope of railway market regulation. This paper summarizes the findings from IRG-Rail's investigation of national approaches to identifying private sidings.

1. Introduction

1. Following the entry into force of the Implementing Regulation (EU) 2017/2177 on access to service facilities and rail related services (the Regulation), many regulatory bodies (RBs) have started to investigate the establishment and publication of service facility descriptions (SFDs) that are mandated under the Regulation.
2. Stakeholders, especially those working in international freight operations, are asking for more transparent and detailed information on service facilities throughout Europe. In this regard, they are sometimes seeking help from individual RBs and IRG-Rail to encourage service facility operators (SFOs) to publish SFDs. During these investigations some RBs have been confronted with SFOs arguing that they "are private" and are excluded from the provisions of the railway market regulation laid down in Directive 2012/34/EU (the Directive) and the Regulation. In consequence they refuse to establish and publish SFDs or grant non-discriminatory access.
3. This has motivated IRG-Rail to look into the subject of private sidings in more detail. This paper is the result of this analysis and seeks to summarize the different approaches to private sidings observed in several IRG-Rail member states, highlighting common practices and outlining some of the challenges for a common understanding and regulatory approach.
4. When monitoring or enforcing the establishment and publication of Network Statements and SFDs, RBs must address initially whether or not, or to what extent, a rail asset falls under the railway market regulation. The concept of private sidings is of particular importance, in determining the full scope of the Directive and the Regulation, hence the operator's obligations.
5. As the Annex II of the Directive lists service facilities based on their purpose and functionality, RBs have been able to identify these rail assets in a consistent and robust way independently of their ownership regime and the legal nature of their operator. However, the identification of private sidings, a notion introduced by Recital 12 and Annex I of the directive, is more challenging.
6. To get an overview of the different national approaches to the concept of private sidings, IRG-Rail distributed a questionnaire to its members. The core purpose of the questionnaire was to find out if national definitions and/or explanatory provisions exist and what criteria are used to qualify a rail asset as a private siding. In addition, it addressed some special topics, for example, the regulation of access to sites neighbouring a private siding. The questionnaire was followed by a workshop to better understand national approaches and to explore differing interpretation of key concepts.

2. Legislation

7. When discussing the topic, the following European provisions come into consideration:
    a. Annex I of the Directive states: "Railway infrastructure consists of the following items, provided they form part of the permanent way, including sidings, but excluding lines situated within railway repair workshops, depots or locomotive sheds, and private branch lines or sidings".

b. Recital 12 of the Directive states: "Since private branch lines and sidings, such as sidings and lines in private industrial facilities, are not part of the railway infrastructure as defined by this Directive, managers of those infrastructures should not be subject to the obligations imposed on infrastructure managers under this Directive. However, non-discriminatory access to branch lines and sidings should be guaranteed, irrespective of their ownership, where they are needed to get access to service facilities which are essential for the provision of transport services and where serving or potentially serving more than one final customer".

c. Art. 2 (2)(d) and Art. 2 (3)(d) of the Directive state: "Member States may exclude the following from the application of (…):

   i. "(2)(d) undertakings which only operate freight services on privately owned railway infrastructure that exists solely for use by the infrastructure owner for its own freight operations."

   ii. "(3)(d) privately owned railway infrastructure that exists solely for use by the infrastructure owner or its own freight operations."

d. Art. 10 (1) of the Directive states: "Railway undertakings shall be granted, under equitable, non-discriminatory and transparent conditions, the right to access to the railway infrastructure in all Member States for the purpose of operating all types of rail freight services. That right shall include access to infrastructure connecting maritime and inland ports and other service facilities referred to in point 2 of Annex II, and to infrastructure serving or potentially serving more than one final customer."

e. Recital 6 of the Regulation on access to service facilities and rail-related services states: "Where it is necessary to pass through a private branch line or siding to access a service facility, the operator of the service facility should provide information about the private branch line and siding. Such information should enable the applicant to understand who to contact in order to request access to this line in accordance with Article 10 of Directive 2012/34/EU."

f. Art. 4 par. 2 lit c.) of the Regulation requires the service facility operators (SFO) to give "…; information on private branch lines and sidings that are not part of the railway infrastructure but are needed to get access to service facilities which are essential for the provision of railway transport services".

3. Findings and Considerations

8. One of the main findings of the working group's investigation is that the existing European legislation leaves room for interpretation regarding the regulation of private sidings. This has resulted in individual national approaches and transpositions across IRG-Rail member states. Nevertheless, IRG-Rail member states have identified some key shared principles and similarities in approaches to deal with private sidings.

9. Private sidings and private branch lines are explicitly excluded from the list of infrastructure in Annex I of the Directive[1]. Recital 12 of the Directive also mentions that the regulatory provisions for infrastructure managers do not apply to private sidings and private branch lines. However, there are no legal definitions of the term "private siding" or "private branch line". Recital 12 simply mentions an example "such as sidings and lines in private industrial facilities".

10. There also seems to be no clear demarcation between railway infrastructure according to Annex I, service facilities according to Annex II and private sidings according to Recital 12 of the Directive. Furthermore, Recital 12 is only referring to railway infrastructure. Since a corresponding provision for service facilities is missing in the Directive there is room for different interpretation and transposition into national law, which has led to different national approaches.

11. Only very few IRG-Rail members have adopted an explicit legal definition of the terms "private branch line" or "private siding" in their national legislation. Nevertheless, most IRG-Rail member states have a national concept that deals with the subject, some have used in their legislation different wording than those in the Directive (e.g. Austria, Germany[2]), whilst others have developed an approach based on a direct interpretation of the Directive.

12. IRG-Rail observes that the main task is to define and identify a private siding. Most RBs usually start with the assumption that a rail-related asset or service falls under the scope of the Directive and the Regulation; either as infrastructure according to Annex I or as service facility according to Annex II of the Directive. If proven to be a private siding it may be considered not to fall under or face limited railway market regulation.

13. Recital 12 gives the example that railway market regulation should not apply to operators of sidings and lines in private industrial sites unless "important" service facilities need to be reached. As not only sidings and lines but any rail related asset or service needs consideration, many IRG-Rail members tend to interpret the exclusion intended in Recital 12 as referring to any rail related asset or service within a private industrial site or similar sites.

14. IRG-Rail members identify private sidings based on different criteria. They range from looking at the legal nature of the owner or operator, the function, the inclusion on specially listed services or based on opinions of other administrative bodies or the infrastructure manager. Generally, in many responding IRG-Rail member states, there is more than one criterion to identify private sidings.

15. Some countries use ownership by a natural person or a company under private law as the main criterion. For several IRG-Rail members it is based on whether the use of the private siding is only for own freight operations. In this case, services provided stay within the own production chain and owners or operators do not handle third party goods.

[1] To note: some language versions of the Directive do not contain the term "private" in Annex I. For instance, the French version of Recital 12 and Annex I refers to "*embranchements particuliers*" which could be translated by "specific branch lines" and is not equivalent to "private branch lines".

[2] see Annex

16. In some IRG-Rail member states where the criterion for "own freight operation" is used, discussions take place with operators or owners offering freight services to third parties to identify whether the rail-related assets and services could be considered "private". Generally, IRG-Rail members would not consider those as private sidings. Operating sidings, lines or other rail related assets and services to offer freight services to third parties does not seem comparable with private industrial facilities that are given as an example for private sidings in Recital 12. Looking at the intention of Recital 12, the sidings and lines within private industrial sites are used to transport or handle goods, which are needed by the operator or owner of the private industrial site itself, for own business purposes rather than for offering freight transport services to third parties.

17. In line with Recital 12 of the Directive most IRG-Rail members ensure that non-discriminatory access to private sidings is guaranteed, irrespective of their ownership, where they are needed to get access to services facilities which are essential for the provision of transport services and where they serve, or potentially serve, more than one final customer. In some IRG-Rail member states operators of private sidings have to grant access not only if a connecting service facility needs to be reached but as well if this private siding is the only access to another private siding.

18. In some IRG-Rail member states, the room for interpretation with regard to regulation of private sidings leads to discussion regarding terminals owned or operated by shippers and freight forwarders. Access to service facilities, especially terminals, is essential for non-discriminatory and competitive access to the multi-modal freight transport market (particularly at a regional level). Operators of terminals usually provide services for third parties. Their exclusion from the scope of the Directive and the Regulation, based on defining them as private sidings, may lead to monopolies in freight services and a distortion of competition in the railway market. Most IRG-Rail members therefore consider terminals, even if privately owned or operated by a private company, as service facilities according to Annex II of the Directive. Even if the sidings and lines might be considered a private siding, because of the legal nature of their operator or owner, access has to be given to the connecting service facility which is essential for the provision of transport services and/or where serving or potentially serving more than one final customer. In these IRG-Rail member states it is essential to determine whether the terminal has a relevant function for the railway market, and thereby falling within the scope of the railway market regulation, with the obligation to publish a SFD.

Annex

At the workshop held in Vienna on 12 and 13 April 2022, seven RBs held presentations on private sidings. Bundesnetzagentur (Germany), ORR (United Kingdom), ÚPDI (Czech Republic), Dopravný úrad (Slovakia) and RRT (Lithuania) explained how "private" and "non-private" sidings are operated according to their national legislations. Transportstyrelsen (Sweden) presented their national legislation along with some general theories for the classification of terminals and RAEA (Bulgaria) informed the group of their enforcement of access to a siding declared as private but used for access to a neighbouring plant in Bulgaria. Schienen-Control (Austria) on the other hand, provided a translation of the relevant provisions for the definition of "private sidings" in the EisbG, the Austrian railway act.

PRIVATE SIDINGS – Austria (AT)

In Austria "private sidings", defined as "Anschlussbahnen" or "Materialbahnen" under art. §7 and §8 of the Austrian railway act, are non-public connecting railroads/railways between a private siding and the main railway infrastructure that fall out of the scope of regulation, while criteria such as "ownership" or "own goods" are irrelevant for the definition of "private sidings".

§ 7. Connecting railways (private sidings)

Connecting railways are railways which carry the traffic of one or more enterprises with main or branch railways or tramlines and are directly or indirectly connection with them in such a way that a passage of rail vehicles is possible. In terms of their operational management, connecting railways are divided into

1. *Connecting railways with own operation by means of traction units or two-way vehicles;*
2. *Connecting railways with own operation by means of other shunting devices and facilities;*
3. *Connecting railways without own operation.*

§ 8. Railways for the transport of materials (private sidings)

(1) Railways for the transport of materials are railways intended for non-public freight transport, provided they are not connecting railways.

(2) This Act should not apply to railways for the transport of materials which are not subject to limited public transport and are part of a mine, an industrial, an agricultural or forestry enterprise, as well as to railways, which are laid out without special construction of the substructure (light railways).

§ 4 Subsidiary railways/branch lines

(2) Subsidiary railways are railways intended for public transport, provided they are not main railways or tramlines.

§ 3. Non-public railways

Non-public railways are railways which a company operates primarily for its own purposes (non-public transport).

§ 75a.Access rights to other railways

(1) Where the provision of rail transport services by public transport to or from terminals, ports or other service facilities, if the latter do not serve exclusively the freight traffic on a railway siding, can only be provided by means of access to a railway siding, the railway undertaking operating such a railway shall grant access to its railway siding for this purpose by means of allocating capacity on non-discriminatory, reasonable and

transparent terms, reasonable and transparent conditions. For the purpose of additional access, the minimum access package specified in § 58 under the conditions set out in § 58 shall be granted. The allocation of infrastructure capacity and the granting of the minimum access package shall be made in the form of a written contract.

(2) If the provision of rail transport services from a public railway to a connecting railway or from a connecting railway to a public railway can, on account of the railway, only be provided by means of access to a connecting railway belonging to another railway undertaking, the other railway undertaking operating that connecting railway shall grant.

1. the railway undertaking operating the railway siding, and

2. railway undertakings authorized to provide railway services on the public railway,

access to these sidings for the purpose of providing rail transport services in transit by services by allocating infrastructure capacity on non-discriminatory, reasonable and transparent conditions and, for the purpose of providing access in addition to such access, to the minimum access package specified in § 58 under the exclusion of any discrimination. The allocation of infrastructure capacity and the granting of the minimum access package shall be made in the form of a written contract.

Private sidings summary - BG

In the Bulgarian national legislation there is no a specific definition of the concept "private siding".

In the national legislation there are the following definitions:

- Industrial railway branch is the track development, which is not included in the network of the National Company "Railway Infrastructure", along which the movement of the rolling stock of the carrier is allowed and on which the carrier performs internal railway transport.
- Internal railway transport are railway tracks and the rolling stock of natural or legal persons used for their own needs. Internal railway transport does not fall within the scope of application of the Railway Transport Act.
- Right of access to the railway infrastructure of the Republic of Bulgaria for the performance of freight transport services shall be granted under fair, non-discriminatory and transparent conditions to railway undertakings licensed in a Member State of the European Union for the performance of freight transport. This right includes access to infrastructure that connects seaports and inland ports to other service facilities and to infrastructure that serves or could serve more than one end-user.

Upon a complaint received from a railway undertaking about denied access to pass through one industrial railway branch to a neighboring industrial railway branch, RAEA issued a decision by which it decreed that the appellant railway undertaking be given immediate access to pass. Also, the RO issued a prescription to the owner of the industrial railway branch through which territory is passed to go to the neighboring industrial railway branch to prepare a description, as well as to prepare a methodology for determining the fee for access to the railway track and services, which are provided to railway undertakings. The methodology should be submitted to the RO for approval.

Both parties (RB and the owner of industrial branch through is passed to go to the neighboring industrial railway branch) partially appealed the decisions of the Administrative Court and the Supreme Administrative Court. The last decision of the Administrative Court is currently being appealed for the second time in front of the Supreme Administrative Court

PRIVATE SIDINGS - Czech Republic (CZ)

Sidings are tracks serving the operator's or other entrepreneur's own needs and they are excluded from the EU legislation. However, the siding operator is obliged to allow non-discriminatory access to the sidings connecting another siding, service facility or loading places, whose owner or operator is different from the owner or operator of the siding. The access charges are costs plus reasonable profit. UPDI solved some access cases. UPDI decided that the siding operator PKP Cargo International has to provide access to the siding system connecting a loading device of a mining company and that some parts of sidings are actually storage sidings. UPDI decided that compulsory access to terminals Brno and Bohumin has to be granted. Those sidings are operated by CD Cargo. UPDI used the definition of freight terminal from the Regulation (EU) No 1315/2013. UPDI described more ongoing cases.

PRIVATE SIDINGS – Germany (DE)

Generally, open access has to be granted to every railway infrastructure as well as service facility. They are considered public and fall under the railway market regulation. In Germany, rail assets are considered non-public only in exceptional cases. Even then, certain provisions of the national Railway Regulation Act (Eisenbahnregulierungsgesetz - ERegG) apply.

The European terms "private siding" or "private branch line" used in Recital 12 of the Directive 2012/34/EU is not legally defined in the German law. However, the national law provides a definition for the term "Werksbahn" ("industrial siding") which transposes the ideas of Recital 12 and Art. 2 para. 2 (d) of the Directive.

„Industrial sidings" are non-public rail assets according to the General Railway Act (Allgemeines Eisenbahngesetz – AEG). Its definition can be found in Section 2 para. 8 General Railway Act:

> *"Industrial sidings are rail infrastructure operated exclusively for the use of the company's own freight traffic. This includes rail infrastructure used for the internal transport or the delivery and receipt of goods by rail for the company operating the rail infrastructure or for companies affiliated with it under company law. The existence of the sentence 1 shall not be precluded if the rail infrastructure is also used to transport goods of adjoining rail infrastructure or of undertakings located on the infrastructure, or if other uses are permitted on an occasional or small scale."*

In Germany, "industrial sidings" are often part of safety-relevant plants, such as reactor plants or chemical plants as well as factories with connection to the railway network. The main criterion to identify an "industrial siding" is whether the transported goods are considered goods for the purpose of the operator of the "industrial siding" – own freight traffic. Usually the operator of an "industrial siding" producing or trading its goods will decide autonomously whether to use rail services at all and which RU to hire. If he is the only shipper of goods for his own purpose there is no necessity for regulatory impact. However, non-discriminatory access to the "industrial siding" is necessary in special cases.

Section 15 Railway Regulation Act (Eisenbahnregulierungsgesetz – ERegG) covers those cases.

> *"The operator of an industrial siding may reserve the right to perform itself movements on the railway infrastructure it operates, or parts thereof, or to have them performed by a railway undertaking it has commissioned. […]*

If the operator of an industrial siding does not reserve the right to perform itself movements on the railway infrastructure it operates or to have them performed by a railway undertaking […], every applicant shall have the right of access to railway infrastructure under equitable, non-discriminatory and transparent conditions to the extent that this is necessary for the freight services for own goods of the connected railways and the undertakings located on the railway infrastructure [of the industrial siding]. […]"

Adjoining "industrial sidings" or companies located on the premise rely on the possibility to be reached through the upstream "industrial siding". Therefore, the operator of the upstream "industrial siding" needs to grant non-discriminatory access; either by letting RU pass through the "industrial siding" or by offering the rail transport itself.

If an "industrial siding" is used to reach an adjoining service facility it is no longer considered "for own freight traffic" and the "industrial siding" loses its privilege under Section 2 para. 8 AEG, Section 15 ERegG. The operator is then subject to the general rules of regulatory law (especially access rights according to Sections 10, 11 ERegG). He has to provide at least a corridor to the adjoining service facility through the "industrial siding". For this part, a SFD has to be prepared.

PRIVATE SIDINGS –Great Britain (GB)

The GB approach to the term "private sidings" is characterised by the concept of the Network which is a concept defined and regulated under legislation. The Network is subject to both safety and economic regulation.

The vast majority of GB rail infrastructure is managed by the mainline infrastructure manager - Network Rail (NR) - and is formally defined as the Network. By default, other rail infrastructure is not part of the Network. Some major examples of non-Network rail infrastructure include London Underground and the high-speed line between London and the Channel Tunnel. Beyond these major examples, there are smaller examples of other rail infrastructure that *could* constitute private sidings and branch lines.

In GB, there is not a specific definition in applicable legislation for "private sidings" or "private branch lines". Furthermore, there is no concept in law of private networks.

The Sectional Appendix provides comprehensive information on rail infrastructure that forms part of the Network, thereby identifying the scope of the Network. The Sectional Appendix is a document compiled by NR and is the official definition of railway infrastructure, giving a detailed description of all railway lines owned by NR. There are modules for different areas, and each is divided into the following sections:

- Section 1: Route Module: this gives a general overview of the route showing lines, station names, and reference numbers, as well as a list of known areas for exceptionally poor railhead conditions, and lines where Special Working Arrangements apply.
- Section 2: Route Availability: This is a list of which train types are permitted to travel over each route
- Section 3: General Instructions: This covers general information pertaining to operations over the whole area/route.
- Section 4: Local Instructions: This provides detailed information relating to specific practices at given locations.

In GB within the applicable legislation, definitions of both "private sidings" and "private branch lines" are absent. Safety legislation addresses nevertheless the general concept of sidings for safety management purposes. The Railways and Other Guided transport Systems (ROGS) 2006, distinguishes between those assets that are included

in the definition of 'transport system' and those that are not. Sidings that are not included in the definition include: marshalling yards or freight depot sidings; maintenance depot sidings; stabling points; wagon or carriage sidings; exchange or transfer sidings. Those sidings that are identified as part of the 'transport system' (for the purposes of the management of safety only) include turnback or reversing sidings and loops and lay-over sidings.

"Railway infrastructure" is defined as consisting of the items described as either "Network", "Station", or "Track" in Section 83 of the Railways Act but excludes such items:

> a*) Which consist of, or are situated on, branch lines and sidings whose main operation is not directly connected to the provision of train paths.*
>
> *b) Within a maintenance or goods depot, or a marshalling yard.*
>
> *c) Within a railway terminal, port, factory, mine, quarry, nuclear site or site housing electrical plant.*

Infrastructure is considered to either be part of the NR Network or exempted (under the Railways Act). Those assets not considered to be "Railway Infrastructure" can be regarded as "Service Facilities". Railway infrastructure is identified by recognizing the Infrastructure Manager which provides information to ORR, as the regulatory body, about its sidings and branch lines. ORR does not have a register that lists all private sidings and branch lines. Track boundaries between private and NR infrastructure are subject to Connection Contracts that set out the rights and obligations in respect of the maintenance, repair and renewal of the connection between the two networks.

PRIVATE SIDINGS - Lithuania (LT)

According to the Railway Transport Code of the Republic of Lithuania (the Code):

> Art. 3 (38) states: *"sidings – a railway track intended for activities of natural and legal entities which are directly or through other railway tracks connected with the railway station".*
>
> Art. 3 (9) states: *"railway infrastructure – the railway tracks, except railway tracks located at the sites of rolling-stock maintenance facilities (workshops, depots or locomotive sheds), other structures, the land occupied by the railway infrastructure, equipment and facilities necessary for the organisation and management of railway transport traffic and ensuring security of railway transport".*
>
> Art. 3 (13) states: *"service facility – the installation, including ground area, building and equipment, which have been specially arranged, as a whole or in part, to allow the supply of one or more basic, additional and/or auxiliary services related to railway transport".*

Depending on the infrastructure category the rail asset belongs to, the applicable charges also change. According to the Code, the charge for the use of service facilities (passenger stations, freight terminals, etc.) and the main services related to railway transport provided at these facilities may not be larger than the costs of providing the service plus the reasonable profit. When additionally describing the requirements for the applicable pricing in national law, it is indicated that the charge for the access to railway tracks connected to the service facilities must be equal to the costs directly incurred due to operating the railway transport. This describes an additional definition of some part of the infrastructure – railway tracks connected to the service facilities.

After the RRT began an investigation in 2021 in the pricing of service facilities, questions arose about the proper classification of rail assets into a specific infrastructure category. The company acting as infrastructure manager and service facility operator stated that it does not have sidings in its managed infrastructure, i. e. it operates only tracks (included sidings) classified as main tracks or service facilities. The company explained that it had no sidings, and these tracks are so-called because they are recorded in the station book under this name and registered in

the register, but this does not mean that these tracks are considered sidings under national law. Because of that, services provided on sidings, according to the company, were deemed to be provided at service facilities and classified as station tracks (service facilities). The technical specifications define the station site, stipulating that the site ends at the entrance traffic signals. If there are different traffic signals on the track, the station site does not end and continues.

RRT, having evaluated the actual circumstances and legal provisions, determined that the siding definition makes it clear that these tracks shall be directly or through other railway tracks connected with the railway station and intended for activities of natural and legal entities. Also, the design rules for railway stations stipulate that sidings are connected to the stations but should not be described as station tracks due to different installation requirements and regulations. Station by itself and as a service facility has clearly defined site boundaries. For this reason, long (e. g. 12, 10, or 5 kilometers) single tracks cannot be assigned to the station area. The station books indicate that such tracks are named sidings and have a map showing where these tracks are connected to the station. After analyzing more stations scheme, RRT found other examples where such tracks belong to other managers, in which case these tracks were considered sidings and not station tracks, as was with RRT investigated case.

After the analysis, it was identified that the company did not assign the tracks (sidings) to the service facility correctly. These tracks (sidings) should have been classified as tracks connected to the service facilities. Accordingly, the incorrect allocation of the tracks (sidings) to the service facility resulted in a higher charge than should have been applied. RRT decided that according to the actual circumstances, the charges for using these tracks (sidings) should be recalculated. This RRT decision is appealed to the court.

PRIVATE SIDINGS – Sweden (SE)

Until June 2022, the Directive was implemented in the Swedish Railway Act (2004:519)[3] in the sense that operation of or on "railway infrastructure not managed by the state and only used by the infrastructure owner, or manager, for transport operations of their own goods" was excluded from the application of chapter 6 and 7 (rail market regulation). The wording was slightly different from the Directive's wording, referring to the infrastructure owner's own freight operations, but reflected recital 12 in the sense that sidings and lines in private industrial facilities, so called "industrial sidings", used for incoming and outgoing transports of goods related to the industry's own business, was excluded from rail market regulation.

The new Railway Market Act (2022:365), adopted in June 2022, uses the same wording for exclusion of industrial sidings. In addition, the definition of railway infrastructure excludes "private sidings" (PS) and "private branch lines" (PBL). However, there are no further definitions of these terms. Given these circumstances, the only conclusion that can be drawn is that PS and PBL are not automatically equal to industrial sidings, but could be. The new Railway Market Act also sets out that access to PS and PBL should be granted in a non-discriminatory manner, if needed for access to a service facility.

[3] In June 2022 the Swedish Railway Act (2004:519) was substituted by four new Railway Acts. The rail market regulation of the Directive 2012/34/EU was then adopted in the new Railway Market Act (2022:365).

Transportsyrelsen's methodology for classifying rail assets follows a step-wise approach. When encountering any rail asset listed in Annex I of the Directive for the first time, the assumption would be that the rail asset is railway infrastructure. A bit simplified; all rail assets are "born" as railway infrastructure. In the next step a test needs to be performed to sort out whether or not the asset can be excluded from rail market regulation. This can be the case if, for instance, fulfilling the criteria for "industrial siding". If not excluded, we take a look at the function and purpose of the particular rail asset. In case it is intended for transports (from A to B) it remains classified as infrastructure, while assets specifically arranged to allow the performance, or supply, of services (listed in the Directive, Annex II p.2-4) change its classification to service facility.

Classification of terminals

In Sweden, rail assets aimed for loading and unloading goods are classified as service facilities (terminals), unless the facility is privately owned (> 50 %) and only handle goods aimed for the owner's business (typically referring to an industry) i.e. an industrial siding. That is not the case when the purpose of the goods handling is to provide transport services to third parties, as part of a logistic chain. For the European aspect, if such operators would argue that they have their own "freight operation", Transportstyrelsen would like to stress the importance of going back to the purpose of the facility. In cases where the rail facility is arranged to serve the transport market, rather than an individual company, there are strong reasons for applying railway market regulation. Accordingly, such terminals should be classified as SF, and not PS.

Further reasoning and conclusions:

As opposed to road, railways are a closed system where regulation is aimed to optimize usage. Terminals are a crucial part of the "closed railway system". It is not beneficial for the railway system to have an excessive amount of switches/points on the main lines, nor for the society to have too many terminals. Accordingly, new terminals should only be established when the old ones are full. Also, since terminal operators and shippers compete on the transport market (while industries compete in other areas), it makes sense to apply railway market regulation. Exclusion of terminals may lead to monopolies on freight services. Monopolies are not beneficial for the railway system!

PRIVAT SIDINGS - Slovakia (SK)

Slovakia has a definition of sidings in the national Railway Act (513/2009) where siding is a railway track directly or through another siding connected to a railway infrastructure; it is used for the movement of railway vehicles for the purpose of loading, transshipment and unloading of goods in enterprises, warehouses, ports and terminals or for other purposes.

Private siding are not included in Annex II of 2012/34/EU therefore they are not considered automatically as a service facility.

On the other side, non-discriminatory access to branch lines and sidings is guaranteed (according Recital 12 of the Directive), irrespectively of their ownership, where they are needed to get access to services facilities which are essential for the provision of transport services and where serving or potentially serving more than one final customer. If there is any SF in the area of a private siding and this SF is commercially used, the non-discriminatory access has to be granted.

The RB SK keeps a list of valid issued permits for track operation, i.e. list of siding operators. This information is used to identify the beginning and end of a track and its function. The majority of those sidings serve the needs of the company (operator) and is excluded from railway market regulation.