



***Regulatory Body for Railway
Transport and Brussels Airport
Operations***

PUBLIC CONSULTATION

in relation to the

Draft decision on determining the reasonable time limit within which responses must be provided to requests by railway undertakings for access to, and supply of services in service facilities

PRELIMINARY PROVISIONS AND CONDITIONS OF THE PUBLIC CONSULTATION

DRAFT CONSULTATION

This is a public consultation document that will be published on the website and LinkedIn page of the Regulatory Body for Railway Transport and for Brussels Airport Operations (hereinafter "the Regulatory Body"), the purpose of which is to publish its draft decision on determination of the reasonable time limit within which responses must be provided to railway undertakings' requests for access to, and supply of services in service facilities (hereinafter "the Draft Decision").

In summary, the Draft Decision reads as follows:

- A) The time limit for the operator to send an **acknowledgement of receipt** to the applicant **informing it whether or not its access request is complete** shall be **5 (five) working days**. If the request is incomplete, the operator shall request the missing information within this period;
- B) The time limit for responding to **ad hoc access requests** by operators of service facilities is **5 (five) working days, and this applies for the service facilities and services listed in Annex II, point 2 (a) to (d) and (f) to (i) of the Recast**. If the access request is complete, the acknowledgement referred to in A) need not be sent. If the access request is incomplete, the operator shall ask for the missing information in good time to be able to respond to the ad hoc request within 5 (five) working days;
- C) The time limit for responding to requests for access to and for the supply of services in service facilities in **point 2 of Annex II of the Recast** (Article 9(1) of the Implementing Regulation in conjunction with Article 9, Section 4 of the Belgian Railway Code (Sporcodex)) is **30 (thirty) calendar days**, starting from the first working day after the acknowledgement of receipt stating that the request is complete;
- D) The time limit for responding to **late requests** for access to service facilities and rail-related services listed in Annex II, point 2, points (a) to (d) and (f) to (i) of the Recast, when an **annual deadline** is applied (Article 9(4), paragraph two of the Implementing Regulation), is **30 (thirty) calendar days**, starting from the first working day following the acknowledgement of receipt stating that the request is complete;

- E) The time limit for responding to requests for access to **additional and ancillary services** in points 3 and 4 of Annex II of the Recast (Article 9(5) of Commission Implementing Regulation) is **30 (thirty) calendar days**, starting from the first working day after the acknowledgement of receipt stating that the request is complete;
- F) This Draft Decision entirely replaces Decision D-2016-05-S on determining the reasonable time limit within which responses must be provided to railway undertakings' requests for access to, and supply of services in passenger stations;
- G) The time limits set in A) to E) will be evaluated further in the future by the Regulatory Body and adjusted if necessary;
- H) Operators of service facilities shall promptly include in the description of the service facility the reasonable time limit defined above in A) to E) that applies to requests for access to their service facility(ies) and/or service(s), in accordance with Article 4(2)(f) of the Implementing Regulation.

TARGET GROUP

The Regulatory Body wishes to use this consultation to consult the **operators of service facilities, railway undertakings and any other interested parties** on the draft decision before taking a final decision on the subject.

RESPONSES

If desired, interested parties may submit written comments on the Draft Decision. **These comments will be summarised in a consultation report to be published on the Regulatory Body's website and LinkedIn page.**

The following conditions shall apply to the submission of written comments:

a) Consultation period:

The consultation period is 30 working days and runs until 23.59 CET on September 15th, 2021 inclusive.

b) Form for submitting comments:

Comments are submitted via email at info@regul.be.

c) Contact person and/or contact details for enquiries:

Ms Anja Vroenhove, +32 277 30 48, anja.vroenhove@mobiliteit.vlaanderen.be.

CONFIDENTIALITY AND PROTECTION OF PERSONAL DATA

If the interested party considers that its comments contain confidential information, such information must be specifically and unequivocally indicated as confidential. The reasons for the confidentiality and the potential harm or damage that the respondent believes could be caused if the confidential information were to be published must also be stated. If the interested legal entity considers that there are valid reasons for not including its name, it shall justify this in its response.

Names and other personal details of natural persons are subject to data protection legislation and will not be published.

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***Regulatory Body for Railway
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Draft decision on determining the reasonable time limit within which responses must be provided to requests by railway undertakings for access to, and supply of services in service facilities

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1. Subject

1. Article 9, Section 4 of the Belgian Act of 30 August 2013 on the Railway Code (hereinafter "the Railway Code") states that railway undertakings' requests for access to, and supply of services in the service facilities referred to in Annex 1, point 2 of the Railway Code shall be answered within a reasonable time limit determined by the regulatory body.
2. By decision D-2016-05-S¹, the Regulatory Body for Railway Transport and for Brussels Airport Operations (hereinafter "the Regulatory Body") had, on the basis of that provision, already set a reasonable time limit within which a response must be provided to railway undertakings' requests for access to and supply of services in passenger stations.
3. The European Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services² (hereinafter "the Implementing Regulation") has been in force since 1 June 2019. With regard to determining the reasonable time limit for responding to access requests, Article 9 of the Implementing Regulation extended and defined the competence of the Regulatory Body on the subject matter.
4. The purpose of this decision is to establish the reasonable time limit referred to in Article 9 Section 4 of the Railway Code and in Article 9 of the Implementing Regulation for responding to requests for access to, and supply of services in service facilities. It will also be examined whether it is still appropriate to maintain the reasonable time limit set by decision D-2016-05-S for passenger stations.

2. Facts and background

5. In late April 2021, the Regulatory Body sent email invitations to certain service facility operators and to several railway undertakings, with the intention of holding information sessions with these parties regarding the timescales in which requests for access to service facilities and services are currently being processed and responded to.
6. During May 2021, the Regulatory Body held discussions on this specific topic with the operators of service facilities that accepted its invitation. During these meetings, they were

¹ Decision D-2016-05-S "Vaststelling van de redelijke termijn waarbinnen de verzoeken van de spoorwegondernemingen om toegang tot, en levering van diensten in passagiersstations dienen te worden beantwoord", www.regul.be.

² OJ L 307, 23.11.2017, p. 1–13.

asked about the response times they already apply and what, if any, altered time limits would be feasible. In the same month, a meeting was also held with one interested freight transporter to obtain information on its experiences and expectations regarding the response time for requests to access service facilities and services set up by its railway undertaking.

3. Legal basis

7. Article 9, Section 4 of the Belgian Railway Code states that:

"Railway undertakings' requests for access to, and supply of services referred to in the service facility referred to in Annex 1, point 2 of the Railway Code shall be answered within a reasonable time limit determined by the regulatory body. (...)"

8. Article 2bis of the Belgian Royal Decree of 25 October 2004 establishing the Regulatory Body for Railway Transport and for Brussels Airport Operations and determining its composition and the administrative and financial charter applicable to its members provides that the Regulatory Body is the regulatory body referred to in Article 9, Section 4 of the Railway Code.

9. Article 9 of the Implementing Regulation reads as follows:

"1. After receipt of all necessary information, the operator of a service facility shall respond to requests for access to and supply of services in service facilities listed in point 2 of Annex II to Directive 2012/34/EU within the reasonable time limit set by the regulatory body in accordance with Article 13(4) of Directive 2012/34/EU. Different deadlines may be set for different types of service facilities and/or services.

(...)

4. For ad hoc requests concerning access to service facilities and services listed in points (a) to (d) and (f) to (i) of point 2 of Annex II, when setting the time limits in accordance with Article 13(4) of Directive 2012/34/EU, regulatory bodies shall take into account the time limits set out in Article 48(1) of Directive 2012/34/EU. Where regulatory bodies have not defined time limits for such ad hoc requests, the operator of a service facility shall answer the request within the time limits set out in Article 48(1) of the Directive.

Where the operator of a service facility has defined an annual deadline for submitting requests for access to service facilities and rail-related services listed in points (a) to (d) and (f) to (i) of point 2 of Annex II, the time limits for answering late requests defined by the regulatory body

shall take account of the time limits applied by infrastructure managers for processing such requests.

(...)

5. Operators of service facilities providing additional and ancillary services listed in points 3 and 4 of Annex II to Directive 2012/34/EU shall respond to requests for such services within the time limit set by the regulatory body or, where such a time limit has not been set, within reasonable time.

(...)”.

10. Points 2, 3 and 4 of Annex II to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area³ (hereinafter "the Recast") state the following⁴:

“2. Access, including track access, shall be given to the following services facilities, when they exist, and to the services supplied in these facilities:

(a) passenger stations, their buildings and other facilities, including travel information display and suitable location for ticketing services;

(b) freight terminals;

(c) marshalling yards and train formation facilities, including shunting facilities;

(d) storage sidings;

(e) maintenance facilities, with the exception of heavy maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities;

(f) other technical facilities, including cleaning and washing facilities;

(g) maritime and inland port facilities which are linked to rail activities;

(h) relief facilities;

(i) refuelling facilities and supply of fuel in these facilities, charges for which shall be shown on the invoices separately.

3. Additional services may comprise:

(a) traction current, charges for which shall be shown on the invoices separately from charges for using the electrical supply equipment, without prejudice to the application of Directive 2009/72/EC;

(b) pre-heating of passenger trains;

³ OJ L 343, 14.12.2012, p. 32–77.

⁴ The provisions from Annex II of the Recast are included in their entirety and in the same order in Annex 1 of the Railway Code, to which Article 9, Section 4 of the Railway Code refers. Where Annex II of the Recast is used in this Decision, the corresponding provisions of Annex 1 of the Railway Code will not be referred to in order to make the text easier to read, given that they are identical.

(c) tailor-made contracts for:

- control of transport of dangerous goods,*
- assistance in running abnormal trains.*

4. Ancillary services may comprise:

- (a) access to telecommunication networks;*
- (b) provision of supplementary information;*
- (c) technical inspection of rolling stock;*
- (d) ticketing services in passenger stations;*
- (e) heavy maintenance services supplied in maintenance facilities dedicated to high-speed trains or to other types of rolling stock requiring specific facilities."*

4. Analysis

11. The competence of the Regulatory Body to set the reasonable time limit for responding to requests for access to service facilities and services has been further expanded by the Implementing Regulation, as mentioned above. The scope of this competence is therefore no longer limited to the access requests referred to in Article 9, Section 4 of the Railway Code. Given the direct effect of the Implementing Regulation, the Regulatory Body will therefore base its analysis below mainly on the provisions of this Regulation.

4.1. Determining the time limit for sending an acknowledgement of receipt

12. Article 8(3) of the Implementing Regulation requires that operators of service facilities acknowledge receipt of any request for access to service facilities and rail-related services "without undue delay". The Article also states that where the request does not contain all the information that is required on the basis of the service facility description and necessary for taking a decision, the operator of a service facility shall inform the applicant of this and set a reasonable deadline for providing the missing information. If such information is not submitted by that deadline, the request may be rejected.

13. Article 4(2)(f) of the Implementing Regulation stipulates in this sense that the service facility description must contain information on the minimum content requirements and procedures for requesting access to the service facilities and rail-related services. It is therefore up to the operator of a service facility to decide what information it needs in advance of responding to an access request. This means that, in the first instance, when receiving an access request, it will check whether it has all the necessary information to be able to respond to the request. If not, it will request the missing information from the applicant.

14. Since the reasonable time limit for responding to access requests only starts to run once the operator has all the necessary information⁵, the Regulatory Body considers that a time limit should also be set for sending the acknowledgement of receipt referred to in Article 8(3), informing the applicant of whether its request is complete or not. This allows the applicant to know within a limited period of time what the status of its case is.
15. It emerged from the discussions with the sector that it is possible in most cases to send such an acknowledgement of receipt within a relatively short period of time.
16. **The Regulatory Body therefore proposes that the time limit for sending an acknowledgement of receipt to the applicant informing it whether or not its access request is complete be 5 (five) working days. If the request is incomplete, the operator will request the missing information within this period.**

4.2. Determining the reasonable time limit for responding to access requests

17. An operator receiving a request for access to its service facility and/or a request for the supply of a service in that service facility may either grant or refuse the request. If access to a service facility or service is granted, the operator will prepare an offer.⁶ The situations in which a request for access may be refused are provided for in Article 13 of the Implementing Regulation. As the conditions for granting and refusing access fall outside the scope of this decision, it will not be further elaborated on.

4.2.1. Reasonable time limit for ad hoc access requests

18. Article 9(4), paragraph one of the Implementing Regulation states the following:

"For ad hoc requests concerning access to service facilities and services listed in points (a) to (d) and (f) to (i) of point 2 of Annex II, when setting the time limits in accordance with Article 13(4) of Directive 2012/34/EU, regulatory bodies shall take into account the time limits set out in Article 48(1) of Directive 2012/34/EU. Where regulatory bodies have not defined time limits for such ad hoc requests, the operator of a service facility shall answer the request within the time limits set out in Article 48(1) of the Directive."

⁵ Article 9(1) of the Implementing Regulation therefore provides that the reasonable time limit begins to run "after receipt of all necessary information".

⁶ See Article 9(2) of the Implementing Regulation.

19. Article 3(10) of the Implementing Regulation defines an "ad hoc request" as "a request for access to a service facility or a rail-related service that is linked to an ad hoc path request for an individual train path referred to in Article 48(1) of Directive 2012/34/EU".
20. Article 48(1) of the Recast states that the infrastructure manager shall respond to ad hoc requests for individual train paths as quickly as possible, and in any event within five working days.
21. Considering that the time limit of five working days from Article 48(1) of the Recast should be taken into account for determining the reasonable time limit on the basis of paragraph one of Article 9(4) of the Implementing Regulation, **the Regulatory Body sets the reasonable time limit for responding to ad hoc access requests by operators of service facilities at 5 (five) working days, and this applies for the service facilities and services listed in Annex II, point 2, in a) to d) and f) to i) of the Recast.**
22. Given that ad hoc access requests must already be answered within five working days, this time limit overlaps with the time limit for sending an acknowledgement of receipt stipulated in section 4.1. The Regulatory Body holds the view that this acknowledgement of receipt is not opportune in case of ad hoc requests if the access request is *complete*. However, if any information is missing from the application, the operator will be required to request this information in good time, so that it can formulate a definitive answer regarding the application within five working days.

4.2.2. Reasonable time limit for all other access requests

A. Scope

23. Article 9(1) of the Implementing Regulation states that, after receipt of all necessary information, **operators of a service facility shall respond to requests for access to and supply of services in service facilities listed in point 2 of Annex II to Directive 2012/34/EU** within the reasonable time limit set by the regulatory body in accordance with Article 13(4) of Directive 2012/34/EU.⁷ Different deadlines may be set for different types of service facilities and/or services on the basis of this provision.

⁷ Article 13(4) Directive 2012/34/EU, which was transposed into Article 9, Section 4 of the Railway Code, reads as follows: "*Requests by railway undertakings for access to, and supply of services in, the service facility referred to in point 2 of Annex II shall be answered within a reasonable time limit set by the regulatory body referred to in Article 55.*" The Article goes on to define the conditions under which requests can be refused.

24. Article 9(4), paragraph two of the Implementing Regulation also provides that, where the operator of a service facility has defined an **annual deadline for submitting requests for access to service facilities and rail-related services listed in points (a) to (d) and (f) to (i) of point 2 of Annex II**, the time limits for answering **late requests** defined by the regulatory body shall take account of the time limits applied by infrastructure managers for processing such requests.
25. Finally, Article 9(5) of the Implementing Regulation states that operators of service facilities providing **additional and ancillary services** listed in points 3 and 4 of Annex II to Directive 2012/34/EU shall respond to requests for such services within the time limit set by the regulatory body or, where such a time limit has not been set, within reasonable time.
26. By virtue of the above provisions, the Regulatory Body will determine below the reasonable time limit for responding to:
- requests for access to and supply of services in service facilities listed in point 2 of Annex II of the Recast;
 - late requests for access to service facilities and rail-related services listed in Annex II, point 2, points (a) to (d) and (f) to (i) of the Recast, if an annual deadline is applied;
 - requests for access to the additional and ancillary services set out in points 3 and 4 of Annex II of the Recast.

B. Determining the reasonable time limit

27. The Regulatory Body initially considered whether it would be useful to set different time limits for the different types of service facilities and/or services listed in point 2 of Annex II of the Recast, a possibility provided for in Article 9(1) of the Implementing Regulation.
28. In doing so, the Regulatory Body has reached the conclusion that, in view of the wide range of active operators on the market, a time limit adapted to the type of service facility and/or service would be too complicated, both for the operators themselves and for the railway undertakings. Furthermore, the Implementing Regulation itself already provides for a derogation for access requests that relate to maintenance facilities and the services provided in these facilities. Such requests may indeed benefit from a longer response time. For this reason, Article 9(4), paragraph three and 9(5), paragraph two of the Implementing Regulation provide that, for maintenance facilities⁸ and ancillary heavy maintenance services dedicated

⁸ See Annex II, point 2(e) of the Recast.

to high-speed trains⁹, the reasonable time limit shall only start once technical compatibility of the rolling stock with the facilities and the equipment has been assessed and the applicant has been informed thereof.

29. The Regulatory Body currently sees no reason to permit further derogations for other service facilities and/or services covered by point 2 of Annex II of the Recast, including for passenger stations. In this regard, the Regulatory Body holds the view that the distinction made in decision D-2016-05-S between simple and complex requests, whereby the latter were assigned a separate response time, is no longer necessary or desirable.
30. It also considers that there is no evidence to support an adapted response time for access requests for additional and ancillary services.
- 31. The reasonable time limit that will be set below will therefore apply to all service facilities and services listed in Annex II, points 2, 3 and 4 of the Recast.**
32. In a second stage, the Regulatory Body checked what reasonable time limit has already been fixed by other European regulatory bodies. A comparative benchmark published by IRG-Rail¹⁰ in 2018 shows that the reasonable time limit in other countries varies between ten working days and one month.¹¹ It is the exception rather than the rule for other regulatory bodies to allow a longer period. The benchmark also shows that the reasonable time limit applies to all service facilities and/or services in most cases.
33. The Regulatory Body holds the view that the reasonable time limit that will apply to Belgian service facilities and services must be in line with the time limits within which foreign operators are required to respond to access requests. If European operators are required to respond to access requests within a more or less similar time frame, this may increase competitiveness and the level playing field between these players on the one hand, while on the other hand, this aspect could lead to a wider choice of service providers for railway undertakings if the response time is an important factor in their choice of service provider.
34. In addition, operators of service facilities can now be expected to respond quickly and efficiently to railway undertakings and to take an active role in the market in question. These aspects will become all the more important in the near future, in view of the increasing

⁹ See Annex II, point 4(e) of the Recast.

¹⁰ Independent Regulators' Group – Rail

¹¹ "Report on time limits set in the Member States for answering requests by railway undertakings for access to, and supply of services in the service facility pursuant to Article 13(4) of Directive 2012/34/EU", <https://www.irg-rail.eu/irg/documents/position-papers/199,2018.html>.

volume within European rail transport. After all, Europe's aim is to increase freight traffic by 50% by 2030 and to double it by 2050, and also to double high-speed transport by 2030 and triple it by 2050.¹² Service facility operators will need to be able to meet increasing industry demand under these rapidly changing economic conditions. The modal shift can only be achieved if the rail infrastructure is supported by a network of service facilities whose operations are up to date and adequate.

35. The consultation showed that some service facility operators are able to respond to relatively simple access requests within just a few days. For certain service facilities and/or services being offered, a longer time frame would be required in practice.
36. Since the Regulatory Body will not make any distinction between the different types of service facilities and services, a compromise needs be found that is feasible for all operators while meeting the expectations of the railway undertakings. The Regulatory Body considers that a very short time limit as used in the UK, for example, is currently not realistic or desirable for all service facilities and services. An exceptionally long period of three months, as is currently the case for complex access requests for passenger stations, is also inappropriate in this respect.
37. In addition, the time limit for late requests¹³ set out in Article 9(4), paragraph two of the Implementing Regulation must be taken into account if the operator of a service facility defines an annual deadline for the submission of requests. According to this legal provision, the infrastructure manager's time limits for late path requests must be taken into account in this case. Pursuant to Article 36 of the Railway Code, these requests must be answered within a period not exceeding one month.
- 38. In the light of all the above considerations, the Regulatory Body sets the reasonable time limit for responding to**
- **requests for access to and supply of services in service facilities listed in point 2 of Annex II of the Recast (Article 9(1) of the Implementing Regulation in conjunction with Article 9, Section 4 of the Railway Code);**

¹²Objectives from the European Commission's "Sustainable and Smart Mobility Strategy", <https://ec.europa.eu/transport/sites/default/files/legislation/com20200789.pdf>.

¹³ Article 3(11) of the Implementing Regulation defines a "late request" as "a request for access to a service facility or a rail related service submitted after the expiry of a deadline for submitting requests defined by the operator of the facility in question".

- late requests for access to service facilities and rail-related services listed in Annex II, point 2, points (a) to (d) and (f) to (i) of the Recast, if an annual deadline is applied (Article 9(4), paragraph two of the Implementing Regulation);
- requests for access to the additional and ancillary services set out in points 3 and 4 of Annex II of the Recast (Article 9(5) of the Implementing Regulation);

at 30 (thirty) calendar days, starting from the first working day following the acknowledgement of receipt stating that the request is complete.

5. Decision

Having regard to Article 9, Section 4 of the Railway Code and Article 9 of the Implementing Regulation, which authorise the Regulatory Body to set the reasonable time limit within which requests by railway undertakings for access to, and supply of, services in service facilities must be answered;

Having regard to the information obtained by the Regulatory Body during its consultation with service facility operators and railway undertakings;

The Regulatory Body determines the reasonable time limit as follows:

- A) The time limit for the operator to send an acknowledgement of receipt to the applicant informing it whether or not its access request is complete shall be 5 (five) working days. If the request is incomplete, the operator shall request the missing information within this period;**
- B) The time limit for responding to ad hoc access requests by operators of service facilities is 5 (five) working days, and this applies for the service facilities and services listed in Annex II, point 2 (a) to (d) and (f) to (i) of the Recast. If the access request is complete, the acknowledgement referred to in A) need not be sent. If the access request is incomplete, the operator shall ask for the missing information in good time to be able to respond to the ad hoc request within 5 (five) working days;**
- C) The time limit for responding to requests for access to and for the supply of services in service facilities from point 2 of Annex II of the Recast (Article 9(1) of the Implementing Regulation in conjunction with Article 9, Section 4 of the Railway Code) is 30 (thirty) calendar days, starting from the first working day after the acknowledgement of receipt stating that the request is complete;**

- D) The time limit for responding to late requests for access to service facilities and rail-related services listed in Annex II, point 2, points (a) to (d) and (f) to (i) of the Recast, when an annual deadline is applied (Article 9(4), paragraph two of the Implementing Regulation), is 30 (thirty) calendar days, starting from the first working day after the acknowledgement of receipt stating that the request is complete;**
- E) The time limit for responding to requests for access to additional and ancillary services in points 3 and 4 of Annex II of the Recast (Article 9(5) of Commission Implementing Regulation) is 30 (thirty) calendar days, starting from the first working day after the acknowledgement of receipt stating that the request is complete;**

The Regulatory Body furthermore determines that

- F) This Draft Decision entirely replaces Decision D-2016-05-S on determining the reasonable time limit within which responses must be provided to railway undertakings' requests for access to, and supply of services in passenger stations;**
- G) The time limits set in A) to E) will be evaluated further in the future by the Regulatory Body and adjusted if necessary;**
- H) Operators of service facilities shall promptly include in the description of the service facility the reasonable time limit defined above in A) to E) that applies to requests for access to their service facility(ies) and/or service(s), in accordance with Article 4(2)(f) of the Implementing Regulation.**

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