

Independent Regulators' Group – Rail

IRG–Rail

Subgroup on Access to Service Facilities

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

1. Introduction

Favourable conditions for access to and the supply of services in services facilities among the Member States are one precondition for a competitive railway market.

Directive 2012/34/EU includes core procedural rules on the handling of access requests. Pursuant to Article 13(4) of Directive 2012/34/EU *regulatory bodies shall set a reasonable time limit* within which 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.

The same obligation for regulatory bodies was taken up by the Commission's Implementing Regulation (EU) 2017/2177 of 22 November 2017. It is laid down in its Article 9(1) that after the receipt of all necessary information, the operator of a service facility shall respond to requests for access to and supply of services in services facilities *within a reasonable time limit set by the regulatory bodies*. Different deadlines may be set for different types of service facilities and/or services.

Some countries have already set these time limits, other member states, however, have not. Where time limits have been set there is some variety with regard to the approach taken.

This paper aims at giving an overview on time limits for answering access requests among the IRG-Rail members. As a first step, IRG-Rail developed a questionnaire and sent it in July 2017 to all IRG-Rail members.

2. Findings of the survey

2.1. Response rate

In the survey, members of IRG-Rail were asked to indicate the time limit that has been set by the regulatory body to answer a railway undertaking's request for access and supply of services in a service facility. In case that a country uses more than one time limit, each one should have been indicated.

The questionnaire was sent in July 2017 to all members of IRG-Rail. By the end of October 2017¹, 24 countries participated in the survey². The response rate was quite high and amounted to 80%. This high level of participation provides valuable information for the current situation in the Member States.

2.2. Transposition of Directive 2012/34/EU

The responses received revealed that time limits pursuant to Article 13(4) of Directive 2012/34/EU have not been set in all IRG-Rail members so far.

Among the 24 countries participating in the survey, there are 8 countries that have not yet set a time limit³.

¹ This report is based on the responses received by 31 October 2017 but includes more current information where provided by the members.

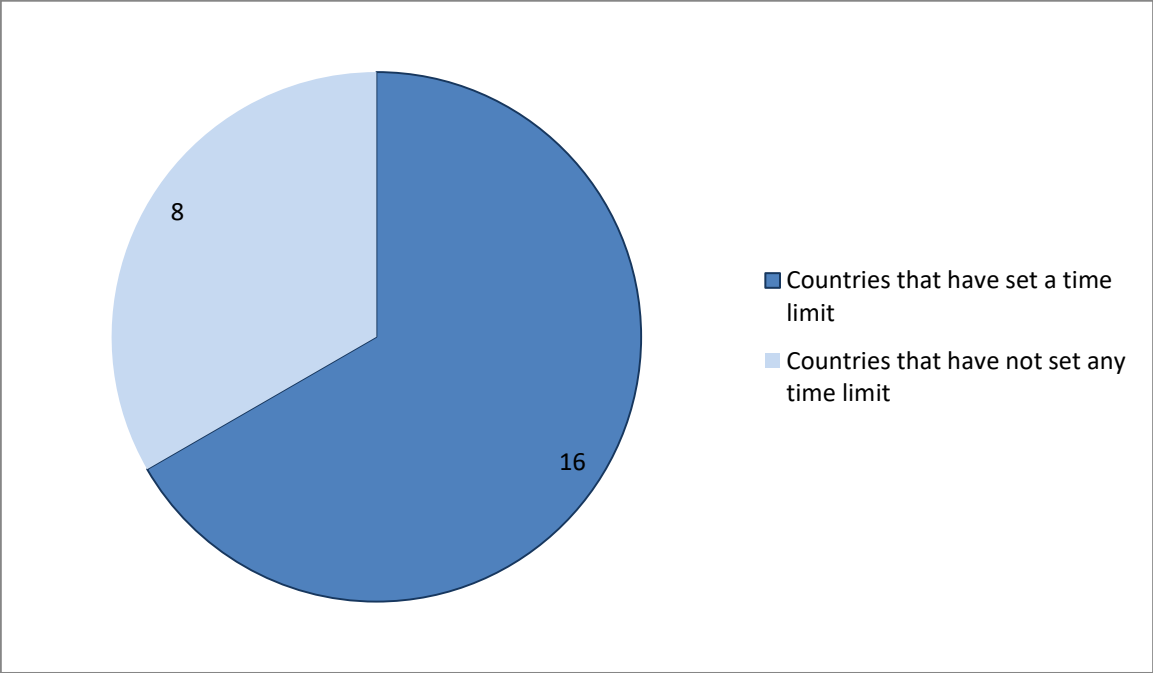
² Answers from Estonia, FYR Macedonia, Ireland, Kosovo, Serbia and Switzerland were missing.

³ The regulatory bodies in Bulgaria, Denmark, Finland, France, Greece, Lithuania, Norway and Spain have not set a time limit so far.

The reasons that have been put forward by the respective countries varied. In some countries, such as Denmark, Finland, Article 13(4) of Directive 2012/34/EU has not been transposed correctly or completely, so that the regulatory body has not the power or only *may* set a time limit. In other countries, i.e. Bulgaria, Lithuania, Norway and Greece, the Directive has been transposed into national legislation but the respective regulatory body has not exercised its right to set a time limit yet. In Norway, the issue will be discussed in the upcoming months with the intention to set a time limit thereafter.

In 16 countries⁴, however, time limits for the railway undertaking’s access request have been set.

Figure 1 – Transposition of Directive 2012/34/EU in terms of time limits⁵



2.3. Different approaches on time limits

Among the countries that have already set a time limit, regulatory bodies follow different approaches on how to set these time limits.

2.3.1. Concrete deadline or indeterminate legal term

Most countries use a specific period of time. The range goes from five days up to three months. Only in few countries, indeterminate legal terms, such as “*without undue delay*”, are established.

⁴ Austria, Belgium, Croatia, Germany, Hungary, Italy, Latvia, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and UK

⁵ Based on the 24 responses received.

Belgium, for example, has established a deadline of maximum one or three months, depending on the complexity of the case. Hungary and Slovenia use a deadline that cannot exceed 15 days. In Portugal, the time limit is 15 working days. In Latvia, the access request must be answered within one month. The deadline in Luxembourg is four weeks. In the Netherlands, there are two different time limits. Depending on the kind of service facility, it is 20 or 30 working days. In addition, the operator must check within five days whether an access request is fully and sufficiently specified. The Polish regulatory body must examine the application within no more than 14 days. But the operator may apply for a longer deadline if necessary. In Slovakia, the regulatory body sets a time limit of 15 days. In the UK, as a general rule, the deadline is 10 working days. In case of short-notice request, the timescale is expected to be shorter.

In Austria and Sweden, there is a combination of a concrete deadline and a vague legal term. As a main rule, access requests must be answered *without delay* but no later than one month.

In Romania access requests must be answered within a reasonable time-limit but no longer than 30 days.

According to the German legislation, access requests must be answered *without undue delay*.

Among the time limits set by the regulatory bodies, further distinctions have been made in some countries which lead to different time limits depending on the respective category of services.

2.3.2. Type of service facility

In some countries the time limits set by the regulatory body are only applicable to certain kinds of service facilities. In Belgium for example, the regulatory bodies have set time limits for passenger stations only. In Italy the RB has set a specific procedure only passenger stations and approved the time limits proposed by IMs for the others SF.

The Netherlands differentiate between two categories of service facilities. There is one time limit for maintenance services and another one for all other types of service facilities.

2.3.3. Type of request

On the other hand, Austria and the United Kingdom make a distinction between general and ad hoc requests; the latter are for unplanned access.

2.3.4. Complexity of the request

The Belgian regulatory body differentiates between simple and more complex requests. Both terms are defined in the decision.

The complexity of a request is also taken into account in the Netherlands. The time limit for maintenance services is ten days longer because it is expected that complex offers are involved in this kind of service facility.

2.3.5. Requests linked to train paths

Exceptions from the concrete time limits set by the regulatory bodies may be possible in Austria and Sweden if the request for the service facility is linked to a path request.

In Sweden the regulatory body's rules says that if an service facility operator adopts the same deadline for application for a service as for train paths in the next annual timetable, the time limit main rule (one month) applies once the timetable has been determined.

2.4. Beginning of the timescale

There are not only differences in the length of the respective time period but also in the beginning of the timescales. Four countries specified in the survey when their time limit begins to run. In Luxembourg, the time limit starts with the receipt of the complete application. The same rule applies in Sweden; the period starts to run after the application is complete. In the United Kingdom, however, the time limit begins after the request has been made.

The Netherlands has established a more detailed process. First, the operator must check within 5 working days whether an access request is fully and sufficiently specified.

2.5. Overview on the different time limits

Austria (AT)	<ul style="list-style-type: none"> • In general: undue delay within a maximum of one month • Ad hoc requests: five days • If access to service facility is linked to a path request: within the period required for answering the relevant path request
Belgium (BE)	<ul style="list-style-type: none"> • Time limit only for passenger stations: <ul style="list-style-type: none"> ○ Simple request: maximum one month ○ More complex requests: maximum three months
Germany (DE)	<ul style="list-style-type: none"> • Without undue delay
Hungary (HU)	<ul style="list-style-type: none"> • Maximum 15 days
Italy (IT)	<ul style="list-style-type: none"> • Time limits for passenger stations: <ul style="list-style-type: none"> ○ for requests of areas for ticket offices and customer caring: 15 working days for answering the request; 45 working days for sending the contract proposal; 70 working days for delivering the area (except for specific and objective technical problems, ie necessity of adaptation works); ○ for requests of areas for ticket machines and mobile information desk: 10 working days for answering the request; 40 working days for sending the contract proposal; 65 working days for delivering the area (except for specific and objective technical problems, ie necessity of adaptation works). • Time limit for other SF <ul style="list-style-type: none"> ○ for annual requests one month before TT change ○ for ad hoc requests same time limits for path allocation

Latvia (LV)	<ul style="list-style-type: none"> • Within one month
Luxembourg (LU)	<ul style="list-style-type: none"> • Four weeks
Netherlands (NL)	<ul style="list-style-type: none"> • Within 30 working days in case of maintenance services • Within 20 working days in case of all other service facilities
Poland (PL)	<ul style="list-style-type: none"> • Within no more than 14 days
Portugal (PT)	<ul style="list-style-type: none"> • Within 15 workings days
Romania (RO)	<ul style="list-style-type: none"> • In a reasonable time, but no longer than 30 days
Slovakia (SK)	<ul style="list-style-type: none"> • Within 30 days
Slovenia (SI)	<ul style="list-style-type: none"> • Within 15 days
Sweden (SE)	<ul style="list-style-type: none"> • Main rule: without delay but not later than one month • Exception: For requests linked to train paths in time table periods that has not yet been established, the main rule applies once the time table has been determined.
United Kingdom (UK)	<ul style="list-style-type: none"> • General rule: within 10 working days • In case of short-notice requests: shorter timescale expected where reasonable

3. Conclusions

There is a wide diversity among the European countries relating to the transposition of Article 13(4) of Directive 2012/34/EU. There are some countries that have not set time limits for answering access requests so far. Those member states that have established time limits follow different approaches. A harmonisation of time limits at this stage seems not feasible.

The existing approaches may serve as examples for the countries that have still to fulfil their requirements.

Annex – Questionnaire with responses of IRG-Rail members



IRG-Rail Subgroup Access to Service Facilities

Dear members of the IRG-Rail Access to service facilities subgroup,

Following our last meeting, we would be grateful to have your response to the following question:

Question:	Pursuant to Article 13.4 of Directive 2012/34/EU (the Recast) which has been implemented in your national law, could you please indicate the time limit that has been set by the Regulatory Body to answer a railway undertaking's request for access to and supply of services in a service facility. If your country uses more than one time limit, please indicate each one.
Austria (AT)	In general the operator of a SF has to decide on a request for capacity without undue delay within a maximum of one month. For ad-hoc requests there is a time limit of five days. If the access to a SF is linked to a path request and the IM is the operator of the SF the decision has to be taken within the period required for answering the relevant path request.
Belgium (BE)	<p>At this moment we only set the time limit for access requests for passenger stations. This deadline was set by means of decision D-2016-05-S (available in Dutch and French - http://www.regul.be/en/content/railway/decisions-and-appeal-concerning-railway-transport/decisions).</p> <p>We made a distinction between simple and more complex requests (defined in the decision). For the simple requests a deadline of maximum 1 month has been determined. For the more complex requests a deadline of maximum 3 months has been set.</p> <p>We shall evaluate these deadlines in the light of experience gained and adapt them if necessary.</p>
Bulgaria (BG)	Under the national law, the regulatory body sets the time limits for response of the service facility operator to the requests for access and provision of services in the SF. This provision is not yet

	implemented in practice in Bulgaria, because we are at the stage of registering the SFs.
Croatia (HR)	Three days for all SFO and services within SFO.
Denmark (DK)	No time limit is set yet. This part of the directive is not correctly transposed into Danish national law – right now the national law does not give the Danish RB the authority to set the time limit.
Estonia (EE)	n/a
Finland (FI)	RB has not so far set the time limit. (Under our national law, the RB <u>may</u> set the time limit.)
France (FR)	SFOs usually specify time limits within their service facility description and ARAFER delivers opinion with regards to this document.
FYR Macedonia (MK)	n/a
Germany (DE)	The request for access to a service facility and for the provision of services according to Annex 2 Number 2 has to be answered <i>without delay</i> (Section 13(1) Rail Regulation Act).
Greece (GR)	In Greece a time limit for answering access requests for service facilities doesn't yet exist. RAS is in a consultation process with the relevant parties and soon a decision will be announced. Till then, RAS has decided to examine the request and respond on a case by case basis.
Hungary (HU)	According to the Hungarian railway act 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 time limit set by the regulatory body. The time limit cannot exceed 15 days. We have investigated two operators. The facilities provide service regulated under Point 2. d) of Annex II of the 2012/34/EU Directive. Taking into account the relevant national legislation and the service facility statements published by the operators, we set the maximum time limit to be determined (15 days) for answering requests. While determining the time limit we have taken into consideration that requests may only be refused if there are viable alternatives allowing railway undertakings to operate the freight or passenger service concerned on the same or alternative routes under economically acceptable conditions. Considering the fact that in case of lack of capacity in the service facility the procedure for determining whether a viable alternative is available is part of the capacity allocation process, which in the regulatory body's opinion requires a significant amount of time, we considered that setting the maximum time limit for answering requests was justified.
Ireland (IE)	n/a

Italy (IT)	<p>The RB has established a detailed process with the timeline for the answer to the applicant for the access to passenger stations, mentioned in ANNEX 2, art.2, point a, of directive 34/2012(NS, chapter 5, paragraph 5.3.1., page 106). The regulatory body has established the following time limits:</p> <ul style="list-style-type: none"> • for requests of areas for ticket offices and customer caring: 15 working days for answering the request; 45 working days for sending the contract proposal; 70 working days for delivering the area (except for specific and objective technical problems, i.e. necessity of adaptation works); • for requests of areas for ticket machines and mobile information desk: 10 working days for answering the request; 40 working days for sending the contract proposal; 65 working days for delivering the area (except for specific and objective technical problems, i.e. necessity of adaptation works). <p>For the other access to the other services/facilities the RB has analysed and approved the time-limits proposed by IM with the annual RB decisions concerning the Network Statements.</p>
Kosovo (KS)	n/a
Latvia (LV)	Service facility operator shall answer requests made by railway undertakings for access to, and supply of services in the service facility referred to in point 2 of Annex II within one month.
Lithuania (LT)	This part of the Directive is transposed into Lithuanian national law, but RB has not so far set the time limit.
Luxembourg (LU)	The reasonable time limit has been set to 4 weeks starting with the reception of the complete application. The regulation has been preceded by a public consultation.
Netherlands (NL)	<ul style="list-style-type: none"> • An operator must respond to an access request for, for example, facilities such as terminals, washing installation, tank installations and passenger stations within 20 working days. • An operator must respond to an access request for maintenance services within 30 working days. This term is longer because of the fact that complex offers are involved. • An operator must check within 5 working days whether an access request is fully and sufficiently specified.
Norway (NO)	The Norwegian RB has not yet set a deadline. We intend to discuss the issue with relevant stakeholders in the coming months, and hope to set a deadline shortly thereafter.
Poland (PL)	The operator shall examine the applications within no more than 14 days from the date of receipt of the application by the operator.

	The operator may apply to RB for a longer deadline for processing applications.
Portugal (PT)	The request for access to a service facility and for the provision of services according to number 2 of Annex 2 of Directive 2012/34/EU, submitted by a railway undertaking, has to be answered within 15 working days (Art 13(6) of Decree-law 217/2015 which transposed Directive 2012/34/EU)
Romania (RO)	Art 13 (4) from the national law 202/2016 transposing Directive 2012/34/EU "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 National Railway Supervision Council, but no longer than 30 days from submitting the request".
Serbia (BR)	n/a
Slovakia (SK)	Within 30 days (The time limit is stated in the railway law)
Slovenia (SI)	Time limit of 15 days set by RB in accordance with RB's general legal act.
Spain (ES)	Spanish Regulatory Body has not set a time limit.
Sweden (SE)	The main rule is that the application must be answered without delay but no later than one month after the application is complete. The exception to this is when the requested services are to be performed in the future, where annual timetables have not yet been established, and when a co-ordination between the usage of the service facility or services and train paths can be motivated. Service providers can then postpone the starting date from which the main rule applies until the date when the annual timetable, for the relevant timetable period, is determined. Applicable procedures must be published in the SFD. The exemption from the main rule has been considered necessary to allow appropriate handling of capacity allocation for services closely related to train paths. Requests for such services, e.g. in storage sidings or terminals, are normally made at the same time as train paths in the annual timetable capacity allocation process. If only the main rule was applicable, the services would need to be allocated within one month, i.e. long before the train paths that are determined (normally three months before the timetable shift). By introducing the possibility for SFOs to extend the time limit for answering such requests, services can be prevented from being 'sold out' or allocated on a first-come-first-served basis to customers who, in the end, might not have the best reasons for using them.

Switzerland (CH)	n/a
United Kingdom (UK)	As a general rule, 10 working days, commencing on the first working day after the request has been made. However, where there is a short-notice request (such as ad hoc requests for unplanned access), we would expect service providers to deal with such requests within a shorter timescale where it is reasonable to do so.