

Role of Regulatory Bodies in relation to publication of Service Facility Descriptions on web portals

Statement prepared by IRG-Rail Subgroup on Access to Service Facilities

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SUMMARY OF MAIN MESSAGES

- IRG-Rail welcomes initiatives of developing common European tools for the rail sector and improving transparency of information to rail service users; one example being the Rail Facilities Portal, funded by the European Commission.
- IRG-Rail recognizes the potential of common web portals in encouraging competition and welcomes the effective use of such platforms.
- Service Facility Operators must produce Service Facility Descriptions. According to EU legislation publication on a common web portal is optional and legislation does not refer to a single, or particular, common web portal.
- Common web portals should be designed to reflect the characteristics of a large variety of service facilities and services. They should also meet the needs of different users as well as diverse market conditions. Co-operation of portal managers with all relevant parties is therefore paramount.
- Regulatory Bodies have powers to monitor Service Facilities Descriptions. EU and domestic regulation intentionally leave room for flexibility in this regard.
- As independent supervisory authorities, Regulatory Bodies are not and should not be directly involved in the design, development or approval of common web portals. Nevertheless, IRG-Rail continues to support portal managers in ensuring their success.

I. Background

- Directive 2012/34/EU (the Directive) and Implementing Regulation (EU) 2017/2177 (the Regulation) set the legal framework for access to service facilities and rail-related services. These regulations state that Service Facility Operators (SFOs) shall produce and make Service Facility Descriptions (SFDs) publicly available free of charge. One way for SFOs to do this is by publishing their SFD on a common web portal¹ and provide the Infrastructure Manager (IM) with a link to this portal, which should be included in the Network Statement.

¹ Although the Regulation does not further specify what distinguishes a 'common web portal' from any other internet portal, we understand it to mean any comprehensive internet portal in the public domain including

- For many stakeholders it is important that information on rail-related service facilities and services in Europe can be easily found in one central place. However, the Regulation does not refer to a single, or particular, common web portal. In the light of the benefits of a common web portal in providing transparency of SFD information throughout Europe, the European Commission (EC) funded such a platform, named the Rail Facilities Portal (RFP), with the aim to make it the preferred tool. In June 2020, the development and management of the RFP was transferred to RailNet Europe (RNE), who is now in charge of the RFP, with the support of the International Union for Road-Rail Combined Transport (UIRR).
- IRG-Rail welcomes initiatives of improving non-discriminatory provision of information to rail service users and the development of common European tools for the rail sector. Regulatory bodies (RBs) have contributed to discussions on the RFP from early on. Since 2019 representatives of IRG-Rail have participated as observers in the Governance Board of the RFP and in November 2020, IRG-Rail expressed the interest of its members in pursuing exchanges with RNE and UIRR about the specificities of the RFP in a joint letter to RNE/UIRR.
- After a series of meetings in 2021 where the RFP was discussed with RNE/UIRR, the EC and other stakeholders in the railway industry, IRG-Rail agreed that the role of the RBs in relation to SFDs and the publishing of such documents needed to be further explained in order to eliminate misunderstandings and clarify to what extent RBs may contribute to the development and adoption of common web portals – with specific references to the RFP and the support requested by RNE/UIRR.
- By publishing this statement, IRG-Rail seeks to clarify RBs' positions and engagement in relation to SFDs and their publication on common web portals to help boosting rail transport and an effective shift to rail.

II. Legal Basis

- Article 27(2), 31(10) and Annex IV point 6 of the Directive state that the Network Statement shall contain information on charges and on the conditions for access to service facilities connected to the IM's network and for the supply of services in such facilities, or indicate a website where this information is made available free of charge in electronic format. The Directive also sets out the general obligations of SFOs in this regard.
- The Regulation specifies the obligations on information outlined in the Directive. Article 4(1) states that SFOs shall establish a SFD and Article 4(2) sets out a minimum list of information that is to be included in the SFD, to the extent it is required. According to Article 5(1) the SFO shall make the SFD publicly available; either by providing the IMs with the relevant and ready-to-be-

information on rail-related service facilities and services in Europe which makes its contents easily accessible to all, free of charge.

published information to be included in the Network Statement, or by publishing it on their web site, or a common web portal, and providing the IM with a link to be included in the Network Statement. Article 5(5) acknowledges that information in the SFD, and the obligation to make it publicly available, shall be met in a way that is proportionate to the size, technical characteristics and importance of the service facility concerned. Article 6(3) states that publishing of indicative information on available capacity and information referred to in Article 4(2)(I) should be made on a real-time basis through the use of a common web portal, when technically possible with reasonable economic efforts.

III. Observations on EU legal basis

8. IRG-Rail has the following observations:

- The EU legal basis for SFDs and the publishing of such documents on web portals is clear.
- The legal framework sets up requirements on the SFD information (i.e. the content) as well as how SFDs are made publicly available (i.e. the method for publication). To be “compliant” with the legislation the SFO needs to fulfil both sets of obligations.
- SFOs have more freedom in establishing their SFDs than IMs have for developing Network Statements. For example, the publication of SFDs is possible at any time and a previous consultation is not necessary. IRG-Rail observes that SFDs can and should remain flexible descriptions of services and facilities available on the network, so that users are able to gain up-to-date information as to the business opportunities each SFO can offer at a given time.
- According to EU legislation, SFOs have a choice of whether to use a common web portal, or not, for publication of information. Publishing the SFD on a common web portal and providing the IM with a link to be included in the Network Statement, is one of three ways to fulfil the legal obligations on publication of SFDs.
- The Regulation does not specifically restrict to one particular common web portal.
- The requirement in Article 6 (3) of the Regulation refers to the obligations of providing real-time information through the use of a common portal where technically possible and economically reasonable. More particularly, it refers to data under Article 6 (2) and 4 (2) (I) of the Regulation, which partially belong to the service facility description. IRG-Rail acknowledges that this does not influence the publication of the entire service facility description as stated in Article 5 of the Regulation.
- The Regulation has been designed to allow for flexibility in order to reflect differences between facilities and services offered different types of SFOs and also different markets. To control that SFDs are proportionate to the size, technical characteristics and importance of the service facility concerned, RBs have been entrusted to monitor SFDs on their own initiative and on a case-by-case basis.

IV. Regulatory Bodies' views on SFDs and common web portals

9. The main function of SFDs is to ensure transparency of all technical characteristics, arrangements and procedures that applicants need to know to get access to the service facility or services and perform the necessary operation(s). This transparency is key for enabling non-discriminatory access to service facilities and services.
10. The Regulation sets out the minimum requirement expected for SFDs, but does not provide an exhaustive and explicitly defined list of information that should be provided. This is due to the diversity of, and discretion given to, SFOs. The Regulation also provides that SFOs should publish all the necessary information proportionate to the size, technical characteristics and importance of the service facility concerned, thereby allowing flexibility as to the nature and volume of information required for SFDs to be deemed compliant. Small domestic SFOs should not be expected to provide the same amount of information as major SFOs operating strategic facilities.
11. The use of a common web portal offers unique opportunities other methods of publication may not have. For example, users can access and compare, in one place, the information they need on a large number of service facilities and services, whilst SFOs can easily market their facilities and services to potential customers and develop their business by taking into account the competitive environment and customize their offers.
12. IRG-Rail recognizes the potential of common web portals in encouraging competition. A free to use and readily available platform that provides access to transparent and harmonised information encourages the efficient planning of rail services and intermodal transport, in particular across borders, as applicants are in the position to compare different SFDs and find the operator that meets their needs best. This should make rail services more attractive.
13. The success of a common web portal largely depends on the data it makes available. Availability of useful data depends on the willingness of SFOs to upload and update SFD information. To make it the preferred tool for publication and to increase its attractiveness for users, it is crucial that the portal is intuitive and user friendly. IRG-Rail's view is that common web portals should be designed to meet the needs and reflect the characteristics of different types of service facilities and services as well as different users (e.g. railway undertakings, operators, shippers and freight forwarders). Accordingly, when designing and operating a common web portal, portal managers should co-operate with the users in order to understand their needs and business conditions. They should also take into account existing platforms and aim to add value to the market. Nevertheless, the responsibility for the content and accuracy of information is always with the SFOs.

14. IRG-Rail acknowledges that RBs are empowered to monitor whether an SFO has published a SFD, whether the SFD is available in (or via) the IM's Network Statement, and whether the SFD contains the information required under legislation. SFOs are expected to comply with the law and follow domestic protocols. In doing so SFOs are deemed to have provided the necessary information and a valid SFD, unless the RB raises an objection.
15. Regardless of the option chosen by the SFO for publication, priorities and approaches taken by each RB to monitor SFDs and common web portals differ in accordance with domestic legislation, reflecting different regulatory environment and market situations. For example, in Germany, the RB pre-checks the SFDs and in Italy, regulation requires SFOs to publish their SFDs on the RFP, making the use of that portal mandatory. It is also common for RBs to conduct their monitoring activities ex-post upon receiving complaints or ex-officio.
16. It has previously been suggested that RBs could provide a register of all SFOs or SFs falling into their jurisdiction to contribute to a single database of all SFOs/SFs across member states. Some RBs (Germany, Italy and Croatia) keep such information and are willing to publish it on their website. Yet, there is no obligation placed on RBs to register or keep such lists and most RBs are not doing so. Nevertheless, IRG-Rail welcomes any initiative to aid the collection of SFDs and observes that in most countries, it is the IM who has the experience and knowledge to keep such a register.
17. IRG-Rail wholly supports portals as a platform for publishing SFD information according to a well-designed common structure and format as well as providing useful functionalities (e.g. interactive maps, translation and advanced search functions) and recognizes the potential they have in reflecting rail customers' information requirements and harnessing a transparent and connected European rail market.
18. To ensure the voluntary and widespread uptake of common web portals they need to appeal to participants in the railway sector and its market. Portals should therefore be customized to reduce barriers, costs and administrative burden, boost business and fulfil the needs for different services and markets as effective business tools. As such, they should allow the provision of information from a variety of service facilities as well as services with a myriad of different options and characteristics. Web portals, such as the RFP, should provide "smart" template forms with sufficient flexibility. IRG-Rail acknowledges that it might be a major challenge to find a one-size-fits-all format.

IV. IRG-Rail commitments

19. Being independent supervisory authorities RBs are not and should not be involved in the design, development or approval of common web portals. RBs are neutral to all portal initiatives.

Nevertheless, RBs welcome the effective use of common portals and continues to support portal managers. IRG-Rail members are prepared to share their experience and provide support by:

- Informing domestic stakeholders of available portals and welcoming their use.
- Sharing public facts on the characteristics of different markets for rail-related services with portal managers (i.e. experiences and results of market monitoring), where possible and appropriate.
- Developing, in 2023, an IRG-Rail guidance note for application of some of the provisions in Article 4 of the Regulation.
- Sharing the RB's list of SFOs/SFs, where available and publish on IRG-Rail website such information, or general advice on how to identify SFOs/SFs in different members' countries.
- Continuing to take part as observers in the RFP Governance Board and actively engage by preparing questions ahead of meetings.