

# Implementing Act on Access to Service Facilities

Crucial for improving the rail market and promoting modal shift

The European Commission will begin discussions this week with Member States on the **Implementing Act on Access to Service Facilities**. This Act relates to Article 13 of Directive 2012/34/EU establishing a Single European Railway Area, ensuring non-discriminatory access to service facilities across the European railway network.

**Transport & Environment (T&E) support the Commission's proposal as there is a pressing need to improve the functioning of the railway market.** This Implementing Act aims to make rail more attractive for users, which in turn helps to decarbonise the transport sector.

Established in 1990, T&E represents 50 organisations from 26 countries across Europe, mostly environmental groups and campaigners working for sustainable transport policies at national, regional and local level. T&E have been managing a rail freight platform since 2015. This platform brings together a variety of stakeholders from the railway sector to discuss the problems that the sector is facing and what can be done to increase the share of freight on trains. **The Implementing Act on Access to Service Facilities relates to one problem that is at the heart of rail's inability to grow** and reflects a concern that we've heard from several shippers, freight forwarders, and railway operators.

The rail freight market has been liberalised since 2007 but there are still market practices that restrict the growth of rail. This is partly the reason why rail's share of the freight market has not evolved since 2007; remaining at approximately 17%. New rail companies that have entered the market have to invest substantial amounts of money in rolling stock, staff and other administrative costs. Such new entrants cannot be expected to also have the initial access to capital necessary to build their own service facilities as well. This is why there is an ambition for the Commission to further oblige operators of infrastructure (both public and private) to allow other companies the chance to access their facilities. This is crucial for the growth of competition in rail freight and for improving the performance and, therefore, the volume of goods on rail. T&E believe that there is **a pressing need for an Implementing Act to deal with the issue of incumbent/dominant operators denying access to installations essential to the business of a railway company in order to restrict competition.**

## **Case study: Dutch Railways vs. Veolia**

The Netherlands Authority for Consumers and Markets concluded in 2015 that The Dutch railway company NS put Veolia (a new operator to the Dutch market) at a competitive disadvantage by not providing sufficient services required to operate a train. The case related to a tender process for a public-transport contract in Limburg. Veolia's requests for services such as ticket machines, service desks, and employee break rooms were not accommodated. The Dutch Railway Act mandates NS to make competitors a reasonable offer for using these services. NS failed to do so. Furthermore, NS gave the new entrant's commercially sensitive information to a subsidiary of NS who were also participating in the same tendering process. The subsidiary used this information when competing for the contract. The Netherlands Authority for Consumers and Markets found that *"the behaviour of NS has*

*thwarted the normal competitive process, which is **at the expense of riders and taxpayers who deserve the highest quality at the best possible price**".*

The Commission's proposal for an Implementing Act on Access to Service Facilities would go a long way towards stopping such practices.

The Implementing Act will outline a set of requirements that operators of service facilities will need to respect. Such operators will need to be transparent in their pricing mechanisms and conditions for access to their installations and services. All applicants will be notified on the receipt of their request and the procedure for handling requests will improve legal certainty and transparency. Facility operators owned by incumbent train operators won't be able to prevent their competitors from accessing facilities by pretending that the facility is full. If access is denied then operators will need to provide a justification for why this was not possible and also a recommendation for a viable alternative. Last but not least, Regulatory Bodies will have their role clarified, which will help the market to be better regulated. The Implementing Act simply reconfirms what operators of service facilities should already be doing. Therefore, it cannot be said to be an increased burden for such operators.

There exists today in Europe a rail market where new entrants are at a competitive disadvantage to incumbent operators. There are examples in several member states of new entrants being required to pay double that of what incumbents pay for accessing the same service, while the installations that are the subject of discriminatory practices were often built with public investment in order to provide a public service. This is why the proposed regulation is essential and urgent for rail to realise its potential. **The benefits of such an Implementing Act are for the users of rail and the growth of the mode's success.**

T&E would like to see the Commission's proposal supported by Member States and accepted by the Council. We believe that this legislation could play a significant role in changing the dynamics of the railway market and improving services for both passengers and shippers; aiding in increasing volumes on this greener mode. **That is why we're calling for you to support the proposal in discussions on Thursday December 15th.**

## Further information

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