

Measures concerning access to service facilities and rail-related services

CONTENTS

REGULATORY ACT	3
Section I — Subject and scope of regulation	3
1. Subject and purpose of regulation	3
2. Definitions	3
3. Scope	4
Section II — Obligations for operators and owners of service facilities	5
4. General obligations for operators of service facilities.....	5
5. Criteria for the application of the exemptions provided for in Implementing Regulation (EU) No 2017/2177.....	6
6. Disclosure requirements	8
7. Time limits for responding to requests for access	8
8. Capacity management and allocation	9
9. Complaints: procedures	9
10. Unused facilities	10
Section III — Regulation for specific services	11
11. Passenger stations.....	11
12. Shunting services: quality monitoring system, charges and border stations.....	13
13. Shunting services: Single Operator.....	15
14. Rail connections	18
15. Maintenance centres.....	20
16. Port railway infrastructures.....	21
17. Penalty system and final provisions	21

REGULATORY ACT

Section I — Subject and scope of regulation

1. Subject and purpose of regulation

- 1.1** This Act lays down measures concerning the access to service facilities and rail-related services, in accordance with Article 37 (2) of Decree-Law No 211 of 6 December 2011, Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services, hereinafter referred to as Regulation, and Legislative Decree No 112 of 15 July 2015 on “*Implementation of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (Recast)*”, as amended by Legislative Decree No 139 of 23 November 2018, with a view to consolidating and supplementing the regulatory acts adopted by the Authority in the field covered by these measures.

2. Definitions

For the purpose of this Act, the following definitions shall apply, in addition to the definitions laid down in Article 3 of Legislative Decree No 112/2015 and Article 3 of the Regulation:

- a) **self-supply** (*autoproduzione*): production of goods and services by a company for its own use, for use of the parent company and of the subsidiaries, in accordance with Articles 7 and 9 of Law No 287 of 10 October 1990;
- b) **railway (operating) area** (*comprensorio*): aggregated system of infrastructures relating to a port, inland terminal or industrial/commercial area consisting of service facilities, other interconnected facilities and one or more railway stations or facilities connected to the railway network, as well as the related connecting rail infrastructure;
- c) **passenger station manager**: operator in charge of the management of the facilities and areas of a passenger station that are functional to and/or necessary for railway operation, in accordance with Article 13 (2) (a) of Legislative Decree No 112/2015, or part thereof;
- d) **Single Operator** (*Gestore Unico*): operator of the shunting service, as identified by the operators of the railway operating area, that is in charge of marketing and shunting operation, if any, in the railway operating area, with exclusive rights on the parts of the railway area where the shunting services are provided to the benefit of more than one operator of the railway area, without prejudice to the provisions concerning the in-house provision of services and self-supply;
- e) **interconnected facility**: plant where industrial or logistic activities are carried out, including ports and industrial development areas, that is interconnected directly or indirectly to the railway infrastructure through one or more tracks; this includes rail-siding facilities, as defined by Legislative Decree No 112/2015, Article 3 (1) (ss);
- f) **undertaking operating rail passenger services**: railway undertaking operating passenger services, or undertaking providing rail transport services, that uses railway undertakings for traction, or undertaking that provides rail passengers with information and ticketing services on the basis of commercial agreements with the railway undertakings;
- g) **light maintenance**: set of maintenance activities other than heavy maintenance as defined in Article 3 (1) (pp) of Legislative Decree No.112/2015;

- h) **operator of the railway area (*operatore comprensoriale*)**: public or private entity, which is the owner of parts of the railway operating area where either shunting operations and freight movements (loading, unloading, transshipment) are carried out; where the owner of an area has transferred or assigned the use to other persons, it may delegate them to exercise the rights and obligations arising from these regulatory measures. As regards the state-owned areas falling within the jurisdiction of a Port System Authority (*Autorità di Sistema Portuale*, hereinafter "PSA"), and any other areas for which the shunting service qualifies as a service of general interest within the meaning of Article 6 (4) (c) of Law No 84/1994, the operator of the railway area shall be understood to be the PSA itself, for the purpose of these measures;
- i) **operator of the shunting service**: operator of the service facility providing shunting services;
- j) **operator-in-charge of the shunting service**: person, as identified by the Single Operator, that is in charge of the operation of shunting services in the railway operating area within the remit of the Single Operator;
- k) **heritage rail operator**: operator carrying out rail transport with heritage rolling stock, i.e. rolling stock referred to in Article 3 (1) of Law No 128 of 9 August 2017 laying down "*Provisions for the establishment of tourist railways through the re-exploitation of disused lines or of lines being disused that are located in areas of particular or archaeological value*";
- l) **railway boundaries**: perimeter, whether or not they coincide with the area owned by the infrastructure manager (hereinafter: IM) within which the latter carries out its activity. For the purpose of the activities pertaining to sidings, it is the perimeter that is determined and in case modified by the IM based on service requirements, including by using connected facilities, and it shall be indicated in the connection contract;
- m) **shunting service**: service for rolling stock movements, including coupling, uncoupling and removal of carriages, from arrival and departure tracks to the loading/unloading points within each production unit, or to the tracks intended for other railway services, and vice-versa; in border stations, shunting service also means the movement of rolling stock needed to enable a train coming from a foreign network to continue its journey on the Italian network, and vice-versa;
- n) **border station**: station connecting foreign networks, that is located in the Italian territory;
- o) **freight terminal**: set of facilities for freight transport that are interconnected to rail networks and are attributable to the service facilities referred to in Article 13 (2) (b), (c), (d) and (g) of Legislative Decree No 112/2015, that are subject to the obligations laid down in this Decree, in the Regulation and in this regulatory act.

3. Scope

- 3.1 The regulatory measures provided for in this act shall apply to all operators of service facilities that are interconnected to the railway networks referred to in Article 1 (1) (a) and (4) of Legislative Decree No 112/2015 (hereinafter: the operators), including the entities that are responsible for the performance of the services carried out therein (hereinafter also: the providers). Infrastructure managers, owners of service facilities and entities applying for the connection to the railway infrastructure are also subject to these regulatory measures.

- 3.2** Excluded from the scope of these regulatory measures, with the exception of measure 14, are the entities in charge of the management of private infrastructures — which are interconnected to the railway networks falling within the scope of Legislative Decree No 112/2015 — that are used only for the freight operations of the owner of these infrastructures, as well as the service providers within such infrastructures. The exclusion shall not apply where the private infrastructure is necessary for access to essential service facilities for the provision of transport services or where it serves or is likely to serve more than one final customer.
- 3.3** Within 120 days of the date of publication of this regulatory act, the operators of interconnected facilities shall notify, on the basis of the operating instructions that will be published by the Authority on its website within 30 days of the above date of publication, a declaration to the effect that they fall or do not fall within the scope of application under Measure 3.
- The Authority shall assess, on the basis of the developments of the relevant markets, the desirability of repeating the notification process, at least every two years.
- 3.4** The operators of interconnected facilities are required to notify the Authority in due time that the conditions for their exclusion or inclusion in the scope of this regulatory act are no more in place. These reports shall be assessed by the Authority, that shall communicate the outcome thereof within six weeks of receipt of all relevant information, with following publication on its institutional website.
- 3.5** The Authority shall publish on its website the lists of the operators of service facilities that have notified the declaration referred to under 3.3, and any following updates, taking also into account the communications referred to under 3.4.

Section II — Obligations for operators and owners of service facilities

4. General obligations for operators of service facilities

- 4.1** Access to service facilities shall be granted to applicants on equitable, non-discriminatory and transparent conditions, on the basis of a charging system that is characterized by management production efficiency and cost containment for users.

The services provided to applicants in the service facilities shall be organised and operated in compliance with the principles of transparency, equity and non-discrimination, by ensuring, according to measurable criteria, the maximisation of management production efficiency and the cost containment for users.

Article 13 (9) and (11) of Legislative Decree No 112/2015 identifies, among all service facilities, the additional and ancillary services for which specific legal and regulatory provisions apply. In accordance with Article 6(1) of the Regulation, the Authority may request the reasons why a rail-related service is designated as basic, additional or ancillary.

- 4.2** The operators of service facilities shall:
- adopt, within 180 days of the date of publication of this regulatory act, a system to ensure minimum quality standards of the services provided, as well as a penalty system that is related and proportionate to the compensation for the provided services. This

system of guarantees and penalties shall be published by the operators of service facilities for the purpose of the consultation with users at least 40 days before its adoption, in order to allow the parties concerned to submit their comments and proposals for assessment by the service facility operators that will provide a reasoned reply;

- publish on their websites, on a monthly basis and for each service, the quality standards supplied, together with indicative information on the available capacity.

5. Criteria for the application of the exemptions provided for in Implementing Regulation (EU) No 2017/2177

5.1 A request for exemption from the application of all or some of the provisions of Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services (hereinafter: Regulation), with the exception of Article 4(2) (a) to (d) and (m) and Article 5 thereof, and from the application of measures 7, 8 and 10 of this Regulation, without prejudice to the application of Legislative Decree No 112/2015, may be lodged by operators of service facilities operating the following service facilities or providing the following services:

- a) service facilities or services that have no strategic importance for the functioning of the rail transport market. For the purposes of assessing the lack of strategic importance, in the context of its case-by-case assessments, the Authority shall take into account, *inter alia*:
 - for freight terminals and related services, the rail traffic accounting for less than 2.000 average annual wagons, with reference to the last two years of operation;
 - for other facilities referred to in Article 13 (2) (c), (d), (f) and (i) of Legislative Decree No 112/2015 and related services, whether such facilities are not operated or provided by operators under the direct or indirect control of a controlling entity pursuant to Article 3(7) of the Regulation, or of an infrastructure manager;
 - unused residual capacity that is relevant for the reference market;
- b) service facilities that are operated, or services that are provided, in a competitive market that is characterised by a number of competitors providing comparable services. The operators shall justify the request for exemption by supplying information that is suitable for attesting the presence of an appropriate degree of competition, and by providing detailed information on the following:
 - substitutability of the facility or service within the market concerned, to be defined according to the technical features of the facility or service and to the types of its users, as well as with regard to the type of specialisation and categories of goods that are served or may be served by the competing facilities;
 - relevant geographical area, in terms of distance and relevant characteristics of the rail network to which the competing facilities are connected;
 - existing level of competition (in terms of number of operators on the market concerned and their market share), level of potential competition (including in terms of available capacity and possible growth in the capacity of competing facilities), absence of barriers to entry and existence of user's bargaining power, any existing self-supply of services;

- c) service facilities or services for which the application of the Regulation could adversely affect the functioning of the relevant market. The operators shall duly justify the request for exemption, showing the possible negative impact of the application of the Regulation on the market in which the facility operates, by indicating, in particular, which articles/paragraphs of the Regulation are causing this effect and by providing all necessary economic and quantitative elements for the assessment by the Authority, taking into account, *inter alia*, the impact on:
- i. level of competition in the relevant market;
 - ii. level of efficiency of the management of facilities and services;
 - iii. economic sustainability of the management of facilities and services;
 - iv. charges for users.
- 5.2** Any request for exemption must be properly justified with appropriate and complete quantitative and qualitative elements, on the basis of the information provided separately for the different types of service facilities or services referred to under 5.1 (a), (b) and (c), and prove that they do not belong to the categories referred to under 5.3. In assessing the exemption requests, the Authority shall take into account the common principles established by IRG-Rail in “18 (7) Common principles on granting exemptions under Article 2 (2) of Commission Implementing Regulation (EU) No 2017/2177”, as published on the Authority’s website. Within six weeks of receipt of all relevant information, the Authority shall take its decisions and ensure their publication on its website.
- 5.3** In any case, the exemption shall not apply to the operators that operate service facilities or provide services falling under one of the following categories:
- a) passenger stations;
 - b) facilities or services under direct or indirect control, including *de facto* (as specified in Article 2359 of Civil Code), of a controlling entity pursuant to Article 3(7) of the Regulation, or of an infrastructure manager, or of a relevant economic operator;
 - c) facilities interconnected to parts of the railway infrastructure belonging to the network of rail freight corridors, as defined in Regulation (EU) No 913/2010, and related services;
 - d) facilities or services that were subject, for at least one third of the years following their entry into operation, to congestion by reason of which it was not possible to adequately satisfy requests for access or supply, at least once during each of those years, whether or not consecutive;
 - e) facilities, including in port, and related services;
 - f) facilities included in areas which have identified a Single Operator, as provided for in measure 13 of this regulatory act.
- 5.4** A request for exemption from the application of all or some of the provisions of the Regulation may be lodged by the operators of service facilities that are intended to be used exclusively by heritage railway operators for their own needs.
- 5.5** Operators receiving exemptions granted under this measure are required, within the time limits and in accordance with the procedures laid down in the measure granting the exemption, to notify the Authority that the conditions for granting the exemption no longer apply. The Authority shall withdraw or amend the exemption if, as a result of a reasoned request or an alert, or on the basis of information collected by the Authority, it is verified

that the conditions for granting the exemption are no longer met, or that a different identification of the provisions of the Regulation, for which the exemption was granted, is needed.

- 5.6** The withdrawal or amendment of the exemption referred to under 5.5. shall be provided for by the Authority following a procedure, in consultation with the parties concerned, to be concluded within six weeks of receipt of all relevant information; the relevant decision shall be published on the Authority's website.

6. Disclosure requirements

- 6.1** Operators of service facilities shall comply with the obligation laid down in Article 5(1) of the Regulation, within the time limit and according to the procedures specified by the infrastructure manager to whose network the facilities are connected, as referred to in paragraph 2 of that Article. The obligation shall in any case be fulfilled through the *European Rail Facilities Portal* as well.¹

In the first year of application of the Regulation, the above time limit, if it is not yet identified by the railway infrastructure managers, is set at the 30th of October 2019. Infrastructure managers shall update their 2020 Network Statements accordingly and ensure the timely publication thereof.

- 6.2** For the service facilities description, the operators of service facilities shall use the model published on the IMs' websites. The IMs shall publish on their websites the updated version of the common model drawn up by the association of European national infrastructure managers (*RailNetEurope*) in accordance with Article 5(2) of the Regulation and have it translated into Italian.
- 6.3** By the 30th of October 2019, the operators of service facilities shall communicate to the Authority any negative outcome of the coordination activities referred to in Article 5(4) of the Regulation, in order to allow the Authority to make a decision to designate one of the operators of the service facility to comply with the obligation laid down in Article 5 (1) of the Regulation.

7. Time limits for responding to requests for access

- 7.1** Paragraphs 7.2 through 7.5 identify the time limits by which the service facility operators shall respond to the requests for access to service facilities and to rail-related services, including additional and ancillary services; this is without prejudice to the possibility for operators to identify shorter deadlines and publicise them in accordance with Article 4 (2) (f) of the Regulation.
- 7.2** Operators of service facility shall respond to the requests without undue delay and in any event no later than the following time limits by communicating:
- a) within 30 days, the acceptance of the request or, where applicable, of any grounds that prevent or could prevent the request from being accepted, e.g. existence of a conflict with other requests received;

¹<https://railfacilitiesportal.eu/>

- b) within 45 days, in case of conflicting requests, the outcome of the coordination procedure and the following application of the priority criteria referred to in Articles 10 and 11 of the Regulation;
- c) within 90 days, if it has not been possible to comply with a request through the coordination procedure, the outcome of the following procedure for identifying and assessing viable alternatives, as provided for in Articles 12 and 13 of the Regulation.

7.3 The time limits referred to under 7.2 are calculated as of the date of receipt of the request. Where the operator of the service facility has established a time limit for the submission of requests, the time limits referred to under 7.2 shall be calculated for the requests received in due time as of the expiry of the above time limit. The operator of the service facility shall also reply to late requests, provided that compliance with the deadline is a priority for the purpose of capacity allocation, as required by Article 11 of the Regulation. Operators of service facilities may also identify a period after this time limit of up to 45 days during which the processing of late requests is suspended. In accordance with Article 9 (4) and (5) of the Regulation, for service facilities and rail-related services referred to under (2) (e) and 4 (e) of Annex II to Directive 2012/34/EU, the processing of requests shall be suspended as long as it is necessary to assess the technical compatibility of the rolling stock with those facilities and equipment, and the applicant shall be informed accordingly.

7.4 The service facility operator shall respond to requests for access to the service facilities and the services listed in Annex II (2) (a) to (d) and (f) to (i) of Directive 2012/34/EU that are related to the requests for capacity provided for in Article 30 of Legislative Decree No 112/2015, within 5 working days of the date of receipt of the request.

7.5 The time limits provided for in the commitments approved by Authority's Decision No 66/2015 concerning requests for location of ticketing services, mobile information desks, reception and assistance inside passenger stations shall remain applicable.

8. Capacity management and allocation

8.1 Applicants and operators of service facilities may jointly request the Authority, no later than 15 days before the date set for the initiation of the coordination procedure provided for in Article 10 of the Regulation, to participate therein as observers.

8.2 In cases where the request for access to a service facility referred to in Article 13 (2) of Legislative Decree No 112/2015 could not be met following the application of the coordination procedure laid down in Article 10 of the Regulation and the service facility is close to congestion, the operator of the service facility shall inform the Authority within 10 days of the expiry of the time limits laid down in measure 7, explaining the reasons for the negative outcome of the coordination procedure, so as to allow ART to adopt the decisions within its remit.

9. Complaints: procedures

9.1 Where the applicant lodges a complaint with the Authority against decisions taken by the operator of a service facility, the Authority shall examine the complaint in accordance with Articles 13 and 14 of the Regulation, request the relevant information and enter into consultations with all interested parties within one month of receipt of the complaint.

- 9.2** When the Authority identifies, on the basis of the information collected, the conditions for the exercise of the powers provided for in Article 13 (7) and Article 37 of Legislative Decree No 112/2015, it shall initiate a proceeding aimed at taking the necessary measures to remedy the situation.
- 9.3** The proceeding shall be concluded within a reasonable time, as indicated in the decision initiating it, and, in any event, shall not exceed six weeks of the receipt of all relevant information.

10. Unused facilities

- 10.1** Owners of the service facilities referred to in Article 13 (2) of Legislative Decree No 112/2015, in which the operator initiated an even partial reconversion process, that was launched before the expression of interest referred to in Article 15 of the Regulation, shall inform the Authority thereof by sending the necessary documents so as to allow ART to assess its plausibility. The Authority shall make its assessment within six weeks of receipt of all relevant information; if the assessment is negative, the Authority shall require the publication of the availability of the facility as being for lease or rent, as a whole or in part.

Section III — Regulation for specific services

11. Passenger stations

- 11.1** Available areas and services shall be allocated to any undertaking operating in rail passenger services on the basis of transparent and non-discriminatory criteria, at the station where it provides or intends to provide its services, for the supply to its customers of ticketing services (automatic and not), reception and assistance to passengers and information desks. These criteria should ensure equal and adequate visibility and accessibility for travellers to all undertakings concerned.
- 11.2** Promotion of services and access to advertising space in the station where it is requested should be guaranteed to all undertakings operating in rail passenger transport under non-discriminatory conditions.
- 11.3** Any contract concluded between undertakings operating rail passenger services and station managers, which may be related to the services referred to in Article 13 (2) (a) of Legislative Decree No 112/2015, shall comply with the following criteria:
- a) identification, in agreement with the undertaking operating rail passenger services, of service level agreements (SLA) that ensure the quality of the services rendered, with an accurate identification thereof. These services should include information to users, in order to ensure prompt, timely and accurate information to passengers on train arrivals/departures (time, delay, track, placement of carriages on track, where applicable);
 - b) cost-oriented charges, plus a reasonable profit;
 - c) duration, including multiannual, subject to the right to equal and non-discriminatory access of other undertakings operating rail passenger services to the station and to its services.
- 11.4** The functional and necessary structures for railway operation, as referred to in Article 13 (2) (a) of Legislative Decree No 112/2015, include — among others — the areas required by railway undertakings so as to provide reception and assistance to their customers. Within four months of the date of publication of this regulatory act, station managers shall provide to supplement the charging systems drawn up pursuant to the Authority's Decision No 96/2015 as necessary, and to comply with all the obligations laid down in Legislative Decree No 112/2015 and in the Regulation.
- 11.5** Where the station manager refuses a request for specific areas for the provision of ticketing services, assistance, reception and information desks, as this is in conflict with another request or concerns already allocated areas, and the applicant lodges a complaint with the Authority in accordance with Article 13 (7) of Legislative Decree No 112/2015, in the examination of the complaint, the Authority shall, in particular, take the following elements into account, where relevant, in addition to those referred to in Article 14 of the Regulation:
- location, extent and level of use (in terms of number and tickets sold and number of passengers served) of any areas that may be already assigned to the applicant in the same station;
 - location, extent and level of use of areas which may be already assigned to other undertakings operating rail passenger services in the same station to which the complaint relates;

- number and extent of the areas requested and obtained at other stations in the national territory, both by the applicant and by other undertakings operating rail passenger services in the same station to which the complaint relates, and level of use of these areas.

11.6 For passenger stations where several undertakings operate rail passenger services, and for all passenger stations with more than 50 trains per day with commercial stops, the station manager shall:

- publish the station plan, that indicates size, location and lease availability, areas allocated to undertakings operating rail passenger services for the provision to their customers of ticketing services (automatic and not), reception (with restricted/free access), assistance and information desks, as well as size and location of the areas used for commercial activities. Only for stations including Open Access services, as well as the stations serving (or next to) an airport, the plan shall be submitted for consultation of the relevant stakeholders and shall also indicate the closing dates for leasing the areas already allocated to the provision of services that are functional to rail transport, and in particular those for ticketing services (automatic and not), reception (with restricted/free access), assistance and information desks, as well as any other relevant information on any modification of existing areas or creation of new areas with similar purposes.

The plan shall be drawn up and updated annually in accordance with the following time schedule: the draft plan for year X + 2 shall be submitted for consultation, if it is so required, by the 30th of June of year X and adopted and published according to the same procedures and the same timeframe as the service facility description; after its adoption, any amendments for exceptional and unscheduled needs involving a reduction or reallocation of the areas intended for services that are functional to rail transport, shall be communicated to the Authority and to all stakeholders at least 30 days in advance of the entry into force of such amendments, that shall be accompanied by a report giving the reasons therefor;

- in order to provide information to the parties involved in the consultation, if so required, shall publish on its website by the 30th of June each year, or provide the infrastructure manager for inclusion in the network statement, the following data referred to the previous year, for each station within its remit and within the limits of its direct availability: number of train arrivals (end of commercial service), departures (origin of commercial service) and in transit with commercial stop; area assigned to undertakings operating passenger rail services broken down by (i) ticketing services (automatic and not), (ii) reception and assistance, (iii) information desks;
- may assign to commercial activities the areas reserved for undertakings operating rail passenger services that were not requested by the latter, while providing in the relevant contracts for an early termination clause, to be exercised in the event such undertakings request these areas for the purpose of using them as functional and necessary facilities for rail operation. The request shall be filed at least 7 months before the first working timetable referred to therein. The station manager may establish conditions for applicants, which should be proportionate, transparent and non-discriminatory, to protect their legitimate expectations of future revenues and use of station areas. The above timing and conditions, including the areas to which they refer, shall be published in the service facility description.

12. Shunting services: quality monitoring system, charges and border stations

- 12.1** Paragraphs 12.2 through 12.4 of this measure shall apply to all operators of shunting services operating in service facilities with D-O traffic exceeding 40 train/month or 450 train/year, as well as at border stations.
- 12.2** Upon implementation of paragraph 4.2, operators of shunting services shall adopt in their model contracts a quality monitoring system for the services supplied; the monitoring system of the quality levels of the shunting service provided (in particular, with reference to the waiting time for the execution of the required activities) shall include at least the following:
- a) upon implementation of each working timetable and of the changes that have a significant impact on the organisation of service facilities, the operator of the shunting service shall draw up and update (in collaboration with the applicants, the IM, other facility operators) a planning document indicating the train arrival and departure times, as well as all the operations to be carried out after the train arrival or before the train departure, including the beginning and end of the shunting service, with the relevant timetables and associated responsibilities; the planning document shall highlight, in the case of freight traffic, the time windows provided for the train unloading/loading. In agreement with the applicants and the IM, the operator of shunting services shall identify three slots (peak, average and off-peak), that may be differentiated by day of the week or period of the year characterizing the facility in relation to the planned traffic. The operator of shunting services shall ensure compliance with the planning document by carrying out the operations under its responsibility so as to ensure the transfer of trains in due time and the placement on the station tracks for departure as scheduled;
 - b) the operator of shunting services shall undertake to guarantee the start of operations for moving the train to the facility of destination at the latest within 15':
 - of the timetable specified in the planning document, in case of punctual arrival of the train at the station of destination;
 - of the timetable specified in the planning document or, in case the actual time of arrival of the train is later than the time specified in the planning document, of the actual time of arrival, in case of delays at the station of destination within, respectively:
 - 15' in peak time slots;
 - 30' in average time slots;
 - 60' in off-peak time slots;
 - of the timetable set out in the planning document, in case of delays exceeding the above thresholds, but such to allow in any case the availability of the train to the operator of the shunting service within the scheduled starting time of the service;
 - c) during the operations for extraction of the train from the facility and its following placement at the station, the operator of the shunting services undertakes to ensure that such operations (and any preparatory technical operations prior to departure) are started in accordance with the timetable laid down in the planning document;

- d) for train paths not included in the planning document, that have been previously agreed upon between the applicants and the operator of the shunting service in cooperation with the IM and the other service facility operators concerned, the operator of the shunting service undertakes to start the shunting operations no later than 60' of the arrival of the train at the station of destination, or of the end of the operations for making the train available in the facility (for pre-departure operations).

Non-compliance with the obligations laid down under (b) and (c) or non-compliance with the time limits laid down under (d) imply the payment of a penalty by the operator of shunting services to the applicant; this shall be defined between the parties identified in the relevant contracts, as a percentage of the compensation provided for the shunting operation, and in any event shall not be less than 10%. No charge may be imposed on the operator of shunting services in case of late arrival of the rolling stock at the station of destination exceeding the delays specified under (b), in case of delays in making the train available for extraction from the facility, and in any case where the operator proves that the failure to carry out the operations on time depends on causes that are not attributable to its liability.

- 12.3** The operator of shunting services shall publish on its website the percentage ratio of the transactions subject to penalties, pursuant to paragraph 12.2, to the total transactions, both with reference to individual users and to all of them. These data shall be published, at least every six months, within three months of the end of the reference period.
- 12.4** In order to ensure uniform procedures for charging shunting services and to facilitate the comparison, by the users, of the technical and economic conditions provided in the facilities, the rates applied by the operator of shunting services shall, in particular, refer to at least the following services, where provided: shunting on flat ground, gravity shunting, terminalisation of complete trainsets, terminalisation with coupling/uncoupling, transfers between sidings and/or stations, removal (or addition) of wagon or sets of adjacent wagons, removal of wagon or sets of adjacent wagons that cannot be pushed off), special trainset coupling/uncoupling, locomotive coupling/uncoupling, immobilisation or provision of movable scotch blocks to the RU, placing/removal of flashing tail lights, locomotive piloting/haulage, special shunting operations at border terminals including stabling/placing with shunting locomotives (including coupling/uncoupling).
- 12.5** Shunting services at border stations shall be organised, in compliance with the principles set out under 4.1, in accordance with one of the following alternative arrangements:
- a) directly provided by the infrastructure manager which the border station belongs to or, to the extent permitted under the existing legislation on in-house awarding, by a company controlled by the infrastructure manager, with its own resources, by adopting charges that are related to relevant and efficient costs; these entities, as service facility operators, may authorise upon request the self-supply of services in accordance with the Regulation;
 - b) awarded to third parties on an exclusive basis, through a public tendering procedure in accordance with the provisions of Legislative Decree No 50/2016, to be carried out by the infrastructure manager which the border station belongs to, in accordance with the timing and procedures laid down under 13.12 through 13.14; the contracting company, as operator of the service facility, may authorise upon request the self-supply of the service in accordance with the Regulation;

- c) self-supply of services, where all the RUs that provide the self-supply of services are identified as operators of shunting services and ensure the provision of the service to any other applicants, at a charge that is equal to the cost of the supply plus a reasonable profit margin; also permitted is the supply of shunting services by any other undertaking with the necessary technical expertise and safety requirements provided for by the Italian National Safety Authority for Railways (ANSF). This provision does not impose on the RUs concerned the obligation to invest in resources or facilities to meet all requests. In case of a refusal to supply the service, the applicant shall promptly inform the Authority;
- d) the infrastructure manager which the border station belongs to or, to the extent permitted by the existing legislation on in-house awarding, a company controlled by the infrastructure manager, shall only provide, by adopting charges that are related to relevant and efficient costs, the shunting service consisting in the movement of rolling stock that is necessary to enable a train from a foreign network to continue its journey on the Italian network, and vice versa; the remaining shunting operations shall be provided directly as referred to under (c).

In the cases referred to under (b), (c) and (d), the coordination of shunting movements shall remain under the sole responsibility of the infrastructure manager.

In the cases referred to under (b), (c) and (d), the IM shall submit beforehand to the Authority's approval a report, including appropriate documentation, on the feasibility and implementation of the chosen organisational solution, as well as on its consistency with the principles under 4.1. The Authority shall respond within 45 days of the transmission of the full documentation by the IM.

13. Shunting services: Single Operator

Possibility of a Single Operator

13.1 For the railway operating areas («*compensori ferroviari*») that comply with the following conditions:

- a) presence of a port area or at least two operators of the railway area («*operatori compensoriali*») and
- b) freight traffic above 80 train per month or 900 train per year,

it is possible to provide for the identification of the Single Operator on the basis of the criteria, procedures and implementing conditions referred to in this measure.

In-house provision of services and self-supply

13.2 In the case of conflicting requests that cannot be otherwise met, the Single Operator shall consider allowing access for self-supply of services to the parts of the railway area on which it holds exclusive rights, pursuant to Article 10 (3) of the Regulation. In the case of maritime port facilities that are connected to rail services, where the shunting service can be classified as a service of general interest pursuant to Article 6 (4) (c) of Law No 84/1994, the provisions of Article 9 of Law No 287/1990 concerning the self-supply of services shall in any case apply.

Criteria and procedures for identification of the Single Operator and associated obligations

- 13.3** The operators of the railway area, also with regard to the implementation of measure 12, may identify, in a transparent manner, the Single Operator of the shunting service.
- 13.4** For the purpose of identifying the Single Operator referred to in paragraph 13.3, the operators of the railway area agree on the criteria for a balanced, reasonable and weighted representation of each of them, as well as on the necessary and sufficient share of consent to state that substantial agreement has been reached. In case of no agreement, representativeness is determined on the basis of double majority, whereby a decision is taken with a positive vote of more than 50% of the railway area operators, representing more than 75% of freight traffic (number of shunting operations) arriving at and departing from the railway area in the previous year.
- 13.5** At the initiative of the operator with the highest share of incoming and outgoing freight traffic, the operators of the railway area, by applying transparent and non-discriminatory procedures and in accordance with the criteria of representativeness referred to in measure 5.2, shall prepare a draft document that may be qualified as “Rules of procedure for shunting operations in the railway operating area” (*Regolamento comprensoriale della manovra ferroviaria*, hereinafter: ReCoMaF).
- 13.6** The proposing operator shall submit the draft rules of procedure referred to in Measure 13.5 within 7 days of their drafting to the RUs that have carried out shunting operations in the railway operating area during the 12 months prior to the date of such drafting; within 30 days of the date of the submission, the RUs may provide their written observations to the operators of the railway areas, that, based on transparent and non-discriminatory procedures and in accordance with the criteria of representativeness set out in measure 13.4, shall sign the final version of ReCoMaF.
- 13.7** The ReCoMaF, as concluded under Measure 13.6, shall be transmitted by the proposing operator referred to under 13.6 within 10 days of its signature, to the Authority and to all relevant stakeholders.
- 13.8** Against the decisions taken, the parties concerned may apply to the Authority pursuant to Article 37 of Legislative Decree no. 112/2015, if the required conditions are met.
- 13.9** Any later modification of ReCoMaF shall follow the procedure outlined in Measures 13.4, 13.6 and 13.7. Likewise, the operators of the railway area may decide to terminate the ReCoMaF.
- 13.10** The ReCoMaF shall regulate at least the following:
- a) arrangements for common organisational and planning decision-making concerning shunting operations;
 - b) mandatory revision of the rules of procedure in case of entry, exit or variations in the representativeness of railway operators, and the procedures thereof;
 - c) method for identifying the Single Operator which, while ensuring that the measurable criteria set out in Measure 4.1 are met, is carried out by awarding the service, alternatively:
 - 1) to one of the operators of the railway area or to a pool thereof, in accordance with the procedures laid down in the existing legislation (e.g. consortium, network contract under Law No. 33/2009);

- 2) to a third party, that is characterized by an appropriate guarantee of economic and financial reliability and is chosen based on selective procedures:
- by the competent Port System Authority, in case of a railway operating area including maritime port infrastructures that are connected to rail services, where the shunting services may be qualified as a service in the general interest pursuant to article 6 (4) (c) of Law No 84/1994; or, in all other cases,
 - by a person acting in the name and on behalf of the operators of the railway area. This person represents the operators of the railway area in the shunting-related activities, and, in particular, in the relations with the Single Operator and the Authority;
- d) deadline by which the procedure for identifying the Single Operator shall be concluded with the award of the shunting service to the operator;
- e) procedures whereby the Single Operator may award the sole operation of shunting services to one or more shunting operators-in-charge, subject to the compliance with Measure 4.1;
- f) identification of the essential assets for carrying out the shunting services in the railway operating area, in particular with reference to the traction rolling stock specified in Measure 13.12, as well as any procedures for making it available to the Single Operator or to the operator-in-charge of the shunting service ;
- g) obligation for all operators of the railway operating area to sign the planning document for the rail services referred to under 13.15, 13.16 and 13.17;
- h) guaranteed minimum performance levels of shunting services and related penalty system borne by the Single Operator, in accordance with Measure 12.2 ;
- i) obligation borne by the Single Operator and/or any shunting operators-in-charge to:
- 1) adopt non-discriminatory technical and economic conditions to be applied to the customers of shunting services;
 - 2) apply to customers of shunting services charges that cannot exceed the cost of supply, increased by a reasonable profit;
 - 3) publish, in accordance with the existing rules and regulations, the technical and economic conditions governing the shunting services, in compliance with the provisions under 12.4;
 - 4) set up a separate reporting system for cost accounting of shunting services;
 - 5) communicate to the Authority the technical and economic conditions that may be applied by way of derogation from those published pursuant to 3) as above;
 - 6) publish on its website the guaranteed performance levels of shunting services and the related penalty system.

13.11 The Authority reserves the right to impose appropriate remedies where the rules of procedure for shunting in the railway operating area do not comply with this measure.

Purchase of shunting locomotives

13.12 If the purchase of the shunting locomotives is charged to the contracting company, the procedures for selecting the Single Operator and any awarding arrangements by the latter

of the sole operation of shunting services shall provide a reasonable timescale, in any case not less than six months between the date of award of the service and the date of commencement of the service, for the purchase of the necessary traction rolling stock.

Length of shunting service award

In order to allow the Single Operator to recover the investments pertaining to shunting operations, and the operators of the railway area to periodically review the decisions made in the ReCoMaF as referred under 13.3 through 13.11 above, the awarding of shunting services in the railway operating areas under a Single Operator shall have a length of no less than three years and no more than five years. The same limits shall apply to any awarding of the sole operation of the shunting service to the operator-in-charge of the service, where the latter is required to purchase shunting locomotives.

- 13.13** The length of the award is notified to any person holding rights on the areas and infrastructures of the railway operating area.

Integrated scheduling of shunting operations

- 13.14** The scheduling of shunting services shall be coordinated with the scheduling of the railway infrastructure capacity and with the load processing time within each production unit.
- 13.15** For the purpose set out under 13.15, the operators of the railway area, the IM, the Single Operator and the applicants concerned shall sign, with due regard to commercial confidentiality, a service planning document for the railway operating area, assuming the liability for compliance with the timetables provided for therein. This document shall be drawn up in accordance with the procedures set out in measure 12.
- 13.16** Without prejudice to the obligation to implement Regulation (EU) No. 1305/2014 of 11 December 2014 on the technical specification for interoperability relating to the telematics applications for freight subsystem of the rail system in the European Union and repealing Regulation (EC) No 62/2006, the IM, the applicants for the service, the operators of the railway area and the Single Operator are required, within their respective areas of responsibility, to pursue the interoperability of their respective IT platforms or their integration.

Single Operator on railway operating areas of significant geographical extent

- 13.17** From the date of publication of this regulatory act, the identification or extension of the Single Operator's scheme to railway areas that include relatively remote infrastructures from the geographical point of view shall be subject to the Authority's prior approval.

14. Rail connections

Criteria for assessing the applications for the connection to the national railway infrastructure and to the railways included in the scope of Legislative Decree No 112/2015

- 14.1** Interested parties shall be given the opportunity to connect to the railway infrastructures under transparent, equitable and non-discriminatory conditions, as provided for in Article 13 (3) of Legislative Decree No 112/2015.
- 14.2** When regulating the linking and operation of the connections to the relevant infrastructure, the IM shall clearly indicate the applicable principles and rules for assessment of the authorization to the connection.

- 14.3** Among the principles set out under 14.2, the IM includes the principles of road safety and traffic regularity. Compliance with those principles, as regards the application for connection, shall also be assessed by reference to the planned development programme of the section of infrastructure concerned.
- 14.4** If the connection is refused due to reasons of regularity, this must be justified by explaining in detail, on the basis of objective information, that the IM is unable to take appropriate measures to ensure consistency of the timetable or remedies to its development plan and/or to the present features of the railway infrastructure under its responsibility.
- 14.5** Any refusal of the connection for security reasons must be justified by explaining in detail that the IM is unable to take appropriate remedies to its development plan and/or to the present features of the railway infrastructure under its responsibility.
- 14.6** In the event of a refusal by the IM, applicants may request the Authority's intervention. Against a refusal based on reasons of regularity of the operation, the Authority may impose on the IM to reconsider its decisions by applying techniques for ensuring consistency of train paths and station integrated programmes.

Construction and operation of the connection: verification, design and execution of construction works or modifications of connections

- 14.7** The IM shall identify and publish in the network statement (NS) the infrastructure and technological standard features for the connection to the relevant rail infrastructure. In addition, in order to encourage the production of appropriate technical documentation attached to the application for the connection, the IM undertakes to make available, upon request, copies of the necessary technical information (planimetric excerpts of railway plan, schematic plan, electrification plan and electric traction system, etc.).
- 14.8** The IM shall verify the plans submitted by the applicant for the connection and provides appropriate cooperation to the applicant in the design stage.
- 14.9** The IM shall carry out the design and construction of the infrastructure works for the connection to the component inside the railway boundaries.
- 14.10** The costs of the activities referred to under 14.8 and 14.9 shall be charged to the connected undertaking referred to under 14.12 through 14.17.
- 14.11** The connected undertaking may carry out directly, in whole or in part, the works inside the railway boundaries; taking charge of this responsibility by the connected undertaking shall be expressly provided for in the connection contract.

Fees for activities carried out by the IM

- 14.12** As part of the process for authorization, design, verification and approval of the works, construction, verification and entry into operation of the connection, and for its operation, the IM shall identify the list of rates for the above activities in accordance with the principle of proportionality to the costs incurred and to a reasonable profit margin, and shall notify them in advance to the Authority.
- 14.13** The list of charges for the services referred to under 14.12 shall be published by the IM in the NS.
- 14.14** For the services concerning construction and supply of material, the IM shall use its own lists of charges as lodged with the Revenue Agency and in force at the time of the signature of the connection contract or of the amendment to the existing contract.

- 14.15** For the services provided by its personnel, the IM shall publish the hourly cost of the personnel employed on the basis of the required qualifications, as part of the list of services referred to under 14.12.
- 14.16** At the time of the permission to connect and prior to the signature of the connection contract, the IM shall present an estimate of the costs to be borne by the connected undertaking for the stages preceding the entry into operation of the connection. If the estimates use cost items that cannot be referred to 14.14 and 14.15, the connected undertaking may request the appropriate specification of the criteria used for calculation of the amounts relating to these items. In case of an unsettled disagreement, the connected undertaking may apply to the Authority in accordance with Article 37 (2) of Legislative Decree No 112/2015.
- 14.17** For extraordinary maintenance work or modification of the connection, the provisions under 14.16 shall apply.

Services and supplies by the IM during the management of the connection

- 14.18** The supervision of the operation of the connection (management and maintenance of connections, compliance with the rules of railway operation, compliance with specific rules on traffic safety, labour, environmental protection, etc.) related to legal/regulatory requirements borne by the IM, for the part carried out by the IM outside the rail boundaries, shall be charged to the connected undertaking.
- 14.19** The ordinary maintenance of connections inside the rail boundaries, and the associated costs, shall be borne by the IM.
- 14.20** The activities of the operating staff of the IM for the preparation of the position of point switches, that cannot be operated by other previously authorised entities, for the marshalling of rolling stock, from and to the connections, shall be borne to the IM only if they are provided inside the railway boundaries and if they are not outside the regular line opening timetable.
- 14.21** The costs of the activities referred to under 14.18 and of the activities under 14.20 that are carried out by the IM and are charged to the connected undertaking or to another entity as identified by the existing legislation shall comply with the requirements set out under 14.12 through 14.17.

15. Maintenance centres

- 15.1** Maintenance centres are all the facilities where rolling stock maintenance activities are typically performed in order to maintain or restore the conditions of efficiency and safety for the relevant railway operation; such maintenance activities may also be carried out on sites other than these centres, subject to compliance with the existing applicable railway and work safety legislation.
- 15.2** In case of refusal of the access, by the operator of the service facility or by the IM, to heavy maintenance services provided in maintenance centres that are dedicated to high-speed trains or other type of rolling stock that require specialised centres, the applicant may apply to the Authority, that shall assess whether the operator of the service facility or the IM complied with the non-discrimination principle, as laid down in Article 13 (11) and (12) of Legislative Decree No 112/2015.

- 15.3** Maintenance centres dedicated to high-speed trains or other type of rolling stock requiring specialised centres shall provide for the possibility to perform both heavy and light maintenance services, unless the impossibility to supply these services is justified and explicitly notified to the applicants; light maintenance services fall within the scope of Article 13 (2) (e) of Legislative Decree No 112/2015.
- 15.4** These regulatory measures shall apply to all maintenance centres operating in the national territory, without prejudice to the general obligations for the operators of service facilities under measure 4 of this regulatory act, in particular those relating to ensuring the existence of equitable, discriminatory and transparent access conditions, on the basis of a charging system based on production efficiency of the operations and cost containment for users.

16. Port railway infrastructures

- 16.1** In the railway infrastructures serving port areas, the connection contracts provided for by Legislative Decree No 112/2015, that govern the relationship between the IM and the Port System Authority, are characterized by the compliance with the particular conditions of rail access to port terminals, in the light of an optimal use of rail and platform capacity, as well as the simplification of the related operations management. The connection contracts between the IM and the PSA are supplemented as provided for under 16.2 and 16.3.
- 16.2** Equitable and non-discriminatory access to the rail infrastructures for modal interchange inside ports is ensured, inter alia, through the obligation, by the IM/concessionaire of the area, to provide access to the first- and last-mile infrastructures in their availability, to all applicants, in accordance with transparent rules and available capacity.
- 16.3** In compliance with existing concessions, the PSAs, when identifying the services of general interest, shall allow the self-supply of shunting services to the facility operators that have a railway connection on an exclusive basis to the IM network. If the self-supply were not possible for technical or efficiency reasons, as identified by a survey of the PSA and/or the IM, within their respective areas of responsibility, the operator of the service facility concerned may request the Authority's prior verification of the outcome of the survey and its supporting documents. When so requested, the Authority shall assess the need for a consultation with the Rail and Road Safety National Agency (ANSFISA) for its areas of competence, and shall deliver an opinion no later than six weeks of receipt of all relevant information.
- 16.4** In the event of a positive outcome of the aforementioned verification, the operators of the service facility concerned should apply only to the single operator that is identified by the PSA for the provision of that service.

17. Penalty system and final provisions

- 17.1** For the infringement of the measures provided for in this Act, the provisions of Article 37 (14) of Legislative Decree No 112/2015 shall apply.
- 17.2** In those matters not provided for in this regulatory act, the provisions of Legislative Decree No 112/2015 and of the Regulation shall apply.