

## Annexes

### *1. Annex 2.3.2.1 General Terms and Conditions of the Network Access Contract*

In Chapter VI § 36 of the already mentioned Annex the following modifications were made:

#### § 36 Terms and conditions of payment

1. Unless otherwise provided in the Network Access Contract, network access charges shall be paid in HUF.
2. Payment of charges shall be on the basis of acknowledged invoice.
3. Parties shall define the deadline for payment in the Network Access Contract on the condition that it may not exceed 30 days.
4. In the event of late payment, infrastructure manager is entitled to levy a late interest as set out in the Civil Law.

~~Parties shall define payment conditions in such a way that they set out general conditions relating to any Railway Undertaking and set out condition that are dissimilar for Railway Undertaking operating trains that provide public services and for Railway Undertaking operating trains that do not provide public services.~~

~~Payment conditions regarding business segments~~

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~~Regarding payment, Railway Undertakings operating trains that provide public service will be ranked in the following categories:~~

~~1) Railway Undertaking shall be qualified as a client paying in accordance with the network access contract on schedule if - within 90 calendar days from the day when the examination started - Railway Undertaking gets into default at most once that do not exceed 5 calendar days~~

~~2) Railway Undertaking shall be qualified as a client in payment default if within 90 calendar days from the day when the examination started Railway Undertaking gets at least twice in payment default that exceeds 5 calendar days. In the course of this qualification procedure only the fulfilment of obligation originating exclusively from the Network Access Contract shall be examined.~~

~~A payment default exceeding 5 days and originating from a service performed to a railway company operating trains that provide public service may not be considered to be a basis of qualifying a client as a client in payment default, if railway company providing non public services can prove that the payment default arose for a reason attributable to the railway company by using its own finances did its best to settle its payment obligations towards the Infrastructure Manager in due time.~~

~~Infrastructure manager shall inform in writing Railway Undertaking of his qualification as 'client in payment default'.~~

~~A client in payment default may choose from two possibilities: either provides a payment guaranty or pays in advance. Client shall give information about his choice regarding the form of payment guaranty by a written statement within 5 working days.~~

Infrastructure Manager qualifies the network access charging demands based on operated trains providing public service (hereinafter public service demand) and the demands of network access charges based on operated trains providing not public service (hereinafter not public service demand) respecting the content of points A) and B).

If the Railway Undertaking operates trains providing public service and not public service as well, the demands for network access charges against the Railway Undertaking depending on the payment discipline different ranking should be applied by the demand types at the same time.

During the qualification only compliance with payment obligations originates from Network Access Contract should be examined. Regarding services provided by the infrastructure managers and also other services in the framework of Network Access Contract, the infrastructure manager during the qualification examines whether the client had meet conditions for payment in case of invoices and partial invoices on schedule, invoices related to cases of damage originate from this contract should not be taken into account. To define the type of the demand in case of invoices of ensuring of fuel for traction Railway Undertaking operates trains providing public service as well declares towards the infrastructure manager until the 10th day of the current month the sum of the fuel for traction for operated trains providing public service during the current month.

A) Qualification of network access charging demands based on operated trains providing public service:

1) Public service demands against Railway Undertaking are qualified as new demands, if the Railway Undertaking had not been in a Network Access Contractual relationship with the infrastructure manager before, therefore the infrastructure manager does not have direct data of the Railway Undertaking's payment ability.

The accounting occurs on the basis of the conditions for good demands between the Railway Undertaking's and the infrastructure manager's Network Access Contract in the first 90 days from the day of the contracting parties signature.

On 90th calendar day after the Network Access Contract signature the public service demands against the Railway Undertaking will be ranked as good demand or risky demand. Railway Undertaking gets written information related to modification made on payment discipline ranking.

2) Public service demands against Railway Undertaking are qualified as good demands if within the 90 calendar day period from any examination date after their compliance with payment obligations has got only once into default in paying that exceeds 5 calendar days concerning the public service demands.

3) Public service demands against Railway Undertaking are qualified as risky demands if within the 90 calendar day period from any examination date after their compliance with payment obligations has got at least twice into default in paying that exceeds 5 calendar days concerning the public service demands.

The infrastructure manager does not take into account those numbers of default days, which are within the 5<sup>th</sup> calendar day of the invoicing and after the proved receipt day of payment maturity of the Railway Undertaking.

The infrastructure manager informs the Railway Undertaking in writing of the risky demand's requalifying. The Railway Undertaking could initiate a payment rescheduling agreement with the infrastructure manager; on the other hand this agreement does not modify the qualification of the demand's origin payment maturities and the deadline for payment arising for future demands.

State refund of expenses for the operation of trains providing public service is ensured according to the concerned year's Finances Act and regulation of distraint. In addition, the statement of ensuring state refund of expenses of the Ministry who ordered public utility is

qualified as security for risky public service demands' payment. This is valid if the sum of the risky public service demand against the Railway Undertaking does not exceed the still not granted sum of state refund of expenses laid down in Finances Act. In this case invoices for network access charges made for operation of trains providing public service invoicing system consistent with good demands should be applied.

The infrastructure manager practices equity in case of determining the requalifying of risky demand if the common sum of the invoices affected with default does not reach 1% of the public service turnover of the Railway Undertaking fixed in the signed accomplishment document of the last half-year but at most the sum of 50.000 HUF. If the public service demand exceeds this sum, the demand should be qualified as risky demand.

Railway Undertaking who owns risky public service demand could ask for the re-examination of the public service demands' status against him and the public service demands' rating as good demands if within the 365 calendar day period he has got only once into default in paying that exceeds 5 calendar days concerning the public service demands. The infrastructure manager is obliged to revise the Railway Undertaking's request for re-examination within 15 calendar days from the receipt and inform in writing the Railway Undertaking about the result within 15 calendar days after the closing of the re-examination. During the judgement of the request besides the payment discipline of the Railway Undertaking the infrastructure manager examines the last documents submitted by Railway Undertaking and prescribed by infrastructure managers. If the Railway Undertaking meets all the requirements, the public service demands against him will be ranked as good demands.

4) Public service demands against Railway Undertakings are qualified as demands, which need particular attention, if:

- a. the still not granted sum of state refund of expenses is less than the sum of the demand, or
- b. Railway Undertaking had not fulfilled its public service payment obligation originates from Network Access Contracts until the fixed deadline stated in multiple written notice, or
- c. he undertook prepayment and based on the above mentioned points he did not fulfil it, or
- d. he chose payment assurance and he did not complete it until the adequate level in case of performance increase and utilization, or
- e. the Railway Undertaking does not comply with the agreement regarding part-payment signed between the Railway Undertaking and the infrastructure manager

f. against the Railway Undertaking liquidation, forced cancellation, bankruptcy proceedings or last settlement starts.

In respect of public utility type of railway passenger transport service, which is the object of public service contract, the operation of public service trains could be suspended only if the Railway Undertaking in case of demand against him, which needs particular attention, is not able to verify that payment default that occurred by the different temporal granting of state refund of expenses from the deadline for payment and/or the necessary security exceeds the still not granted sum of state refund of expenses and also if against the Railway Undertaking liquidation, forced cancellation, bankruptcy proceedings or last settlement starts.

The infrastructure manager and Railway Undertaking quarterly, until the 10<sup>th</sup> day after the current quarter harmonize the public service demand payment's status against the Railway Undertaking and also the actual sum of refund of expenses, which serve as security.

B) Qualification of network access charging demands based on operated trains providing not public service:

1) Not public service demands against Railway Undertaking are qualified as new demands, if the Railway Undertaking had not been in a Network Access Contractual relationship with the infrastructure manager before, therefore the infrastructure manager does not have direct data of the Railway Undertaking's payment ability.

The accounting occurs on the basis of the conditions for good demands between the Railway Undertaking's and the infrastructure manager's Network Access Contract in the first 90 days from the day of the contracting parties signature.

On 90<sup>th</sup> calendar day after the Network Access Contract signature the not public service demands against the Railway Undertaking will be ranked as good demand or risky demand. Railway Undertaking gets written information related to modification made on payment discipline ranking.

2) Not public service demands against Railway Undertaking are qualified as good demands if within the 90 calendar day period from any examination date after their compliance with payment obligations has got only once into default in paying that exceeds 5 calendar days concerning the not public service demands.

3) Not public service demands against Railway Undertaking are qualified as risky demands if within the 90 calendar day period from any examination date after their compliance with payment obligations has got at least twice into default in paying that exceeds 5 calendar days concerning the not public service demands.

The infrastructure manager does not take into account those numbers of default days, which are within the 5<sup>th</sup> calendar day of the invoicing and after the proved receipt day of payment maturity of the Railway Undertaking.

The infrastructure manager informs the Railway Undertaking in writing of the risky demand's requalifying. The Railway Undertaking can choose between providing payment security and having possibility for prepayment. He should declare his choice and the form of payment security in writing within 5 calendar days after the receipt of notice.

Should the Railway Undertaking fail to make this statement on schedule, or in the case of choosing the possibility of the payment guarantee he fails to provide the payment guarantee within 5 working days after making statement about the provision of a payment guarantee, rules of payment in advance laid down in the network access contract shall automatically apply.

a) If Railway Undertaking chooses the possibility of payment guarantee, the total sum of any of the below listed guarantees must continuously figure out a value **originated from the operation of trains not providing public service** projected to 2,5 months calculated from the average performance - inclusive of VAT - invoiced to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> months prior to the month under review **including traction current as well**.

In this case Railway Undertaking is obliged to provide one of the below mentioned payment guarantees to the infrastructure manager as follows:

i) Bank guarantee

Bank guaranty shall be handed in to the infrastructure manager. If the payment guarantee is a bank guarantee, text of the bank guarantee must comprise the followings:

- The issuing bank irrevocably undertakes that - without examining the fundamental relationship - it pays the sum of the bank guarantee to the beneficiary within 5 bank working days after receiving by the beneficiary the first notice.

Bank guarantee must come from

- a lending institution holding a public rating of investment grade (BBB or Baa3 or higher ratings) issued by at least one of the credit rating agencies Moody's, Standard&Poor's, Fitch. The lending institution must hold operational licence in any member states of the EU or OECD, or from a subsidiary or branch of this lending institution with the majority ownership of this institution,
- or from a lending institution holding a rating of non investment grade and having a significant market share in Hungary (its balance sheet total assets of the previous closed business year exceed HUF 250 billion).

ii) Security deposit

Railway Undertaking shall pay a security deposit to the infrastructure manager to a bank account assigned by the infrastructure manager.

iii) Bond issued on the basis of an insurance contract including cash surety

Bonds issued by the insurance company shall arise from

- an insurance company holding a public rating of investment grade (BBB or Baa3 or higher ratings) issued by at least one of the credit rating agencies Moody's, Standard&Poor's, Fitch. The insurance company must hold operational licence in the any member states of the EU or OECD,
  - or from a subsidiary of the insurance company with the majority ownership of this company,
  - or from a branch of the insurance company,
  - or from a subsidiary or branch of the insurance company in majority ownership of a bank holding a public rating of investment grade (BBB or Baa3 or higher ratings) issued by at least one of the credit rating agencies Moody's, Standard&Poor's, Fitch, also holding operational licence in the EU or in any member states of OECD,
- iv) guarantee of claim insurance of a credit insurance company undertaken by the insurance company must arise from
- credit insurance company holding a public rating of investment grade (BBB or Baa3 or higher ratings) issued by at least one of the credit rating agencies Moody's, Standard&Poor's, Fitch. The credit insurance company must hold operational licence in the EU or in any member states of OECD

- or from a subsidiary of the credit insurance company with the majority ownership of this company,
- or from a branch of the credit insurance company
- or from a subsidiary or branch of the credit insurance company in majority ownership of a bank holding a public rating of investment grade (BBB or Baa3 or higher ratings) issued by at least one of the credit rating agencies Moody's, Standard&Poor's, Fitch, also holding operational licence in the EU or in any member states of OECD,

b) payment in advance: should the Railway Undertaking choose none of the payment guarantees listed under point a), Railway Undertaking is obliged to pay in advance the charges of services **connected with the operation of trains not providing public service, providing by the infrastructure manager in the framework of Network Access Contract** or the charges of other services the infrastructure manager may provide. **In case of prepayment fuel for traction is an exception, daily invoicing should be applied.**

~~3). Railway Undertaking shall be considered to be a new client if Railway Undertaking and infrastructure manager do not have any contractual relation with each other, and thus infrastructure manager does not have any direct data about the credit solvency of the Railway Undertaking. If, when concluding the network access contract, infrastructure manager has information about the payment discipline of the Railway Undertaking on the basis of any other legal relation established with the Railway Undertaking, rating shall be based on these data.~~

~~In case of a new client, if - within a 90-calendar-day period after signing the network access contract - Railway Undertaking has got only once into default in paying that does not exceed 5 calendar days, Railway Undertaking shall be rated as a client paying in accordance with the network access contract on schedule. In this period accounting shall happen in compliance with conditions applying to clients who pay in accordance with the network access contract on schedule. After the period of 90 calendar days following the conclusion of the network access contract, Railway Undertaking shall be rated either as a client paying in accordance with the network access contract on schedule or as a client in default. Railway Undertaking shall be noticed if his payment discipline rating has changed.~~

~~If the Railway Undertaking had already a business contact earlier with the infrastructure manager or with an economic company owned in majority by the Railway Undertaking, and an expired debt has resulted from this contact over the past 365 calendar days at least twice, Railway Undertaking shall be rated as a client in default.~~

~~In the event if Railway Undertaking does not operate trains providing public service, general rules are as follows:~~

~~When qualifying the client, infrastructure manager also examines whether the client had meet conditions for payment of invoices and partial invoices on schedule regarding the services provided by the infrastructure manager and other services infrastructure manager may provide.~~



The indebted Railway Undertaking could initiate a payment rescheduling agreement with the infrastructure manager; on the other hand this agreement does not modify the qualification of the demand's origin payment maturities and the deadline for payment arising for future demands.

Infrastructure manager shall treat ~~the Railway Undertaking~~ fairly while changing the qualification of a ~~Railway Undertaking~~ to the qualification of a client in default **risky demand** if the total sum of invoices affected by late payment is not as high as 1% of turnover of the Railway Undertaking defined in the signed performance acknowledgement document of the previous half year, or not as high as 50 000 HUF. Should the **demand debt** of the ~~Railway Undertaking~~ exceeds this sum of money he **it** must be rated as a client in default **risky demand**.

Railway Undertaking rated **with** as a **risky not public service owned demand** ~~client in default~~ may request the review of its qualification as a ~~client in default~~ **with not public service demands against him** and may also request the changing of this status ~~to the status of a client paying in accordance with the network access contract on schedule~~ **in case of not public service demands** if Railway Undertaking, over 365 calendar days, has got into default only once with payment that did not exceed 5 calendar days. Infrastructure manager is obliged to review the request of the Railway Undertaking ~~with the status of a client in default for revising his status~~ within 15 calendar days after the day receiving the request, and shall notify in writing the Railway Undertaking of the result of the review within 15 calendar days after the review has been completed. When judging the request, infrastructure manager shall examine besides the payment discipline also the last documents of the Railway Undertaking submitted as prescribed by the infrastructure manager. If Railway Undertaking corresponds to all requirements ~~he can~~ **not public service demands against him will** be rated again as **good demands** ~~a client paying in accordance with the network access contract on schedule~~.

#### 4) Demands against Railway Undertakings need particular attention, if:

- Railway Undertaking had not fulfilled its not public service payment obligation originates from Network Access Contracts until the fixed deadline stated in multiple written notice, or
- he undertook prepayment and based on the above mentioned points he did not fulfil it, or
- he chose payment assurance and he did not complete it until the adequate level in case of performance increase and utilization, or

- the Railway Undertaking does not comply with the agreement regarding part-payment signed between the Railway Undertaking and the infrastructure manager
- against the Railway Undertaking liquidation, forced cancellation, bankruptcy proceedings or last settlement starts.

In case of demand, which needs particular attention the operation of trains providing not public service will be suspended. Further conditions are in chapter VIII.

Infrastructure manager besides the above mentioned record makes client qualification; he examines all Railway Undertakings payment ability and for this requires the same solvency information as follows from the client ~~paying in accordance with the network access contract on schedule, from the client in default and from the new client:~~

- annual report as defined in the Decree No 45/2006. (VII.11.)GKM Annex 2 point a), that must be submitted to the infrastructure manager until 15 July of the year following the actual year,
- a statement from the head of the company to be authorized to sign that Railway Undertaking does not have any overdue public debts, does not have acknowledged overdue debt that expired more than 60 calendar days ago. The statement must be submitted to the infrastructure manager quarterly until the 15<sup>th</sup> calendar day of the month following the actual quarter.

Above this, from those who recently signed a Network Access Contract infrastructure manager requires that new clients make the following documents available until the day at the latest when the network access contract enters into force:

- if the organisation is in operation, a business plan as defined in the Decree 45/2006. (VII.11.)GKM Annex 2, point c),
- if the organisation has newly been established, a business plan defined in the Decree 45/2006. (VII.11.)GKM Annex 2. point c),
- statement from the head of the Railway Undertaking on the volume of the turnover related to the network access contract (in money) to be expected in the first 3 months beginning on the day of signing the network access contract.

Railway Undertaking is obliged to submit and supply any kind of documents or data in Hungarian to the infrastructure manager by sending a copied exemplar of the original documents via post or in an electronic way. Railway Undertaking seated abroad may meet his data supply obligation also in English or German if the document is available in English or German. Otherwise, Railway Undertaking seated abroad is obliged to attach to the document the authentic Hungarian, English or German translation of the original document.

For an Railway Undertaking seated abroad, if legislation in force in the country of his seat foresees a deadline to prepare and approve the annual report in a later date than it is foreseen in the Hungarian legislation, submission of documents listed above after the deadline may not be considered as a late data supply if they exceed the deadline by 30 days at the most. Railway Undertaking seated abroad is bound to verify in writing to the infrastructure manager if legislation abroad stipulates otherwise.

If, as regards the Railway Undertaking

- based on the above documents, taking into account the total sum of bills invoiced in the last month, infrastructure manager recognises that in the given month Railway Undertaking used services that exceeds 20 % of the sum of equity capital demonstrated in the last submitted annual report with the exclusion of fuel for traction, or
- based on the above documents, following their submission, infrastructure manager recognises that
  - long term liabilities / (equity capital + long term liabilities) > 70%, or
  - Railway Undertaking has overdue public debts, or
  - Railway Undertaking has overdue **acknowledged** debts that expired more than 60 calendar days ago, or
  - in the case of a new client, the volume of the turnover planed - related to the network access contract - in the first 3 months exceeds 30% of the equity capital, or
- Railway Undertakings fails to submit on schedule any of the above mentioned documents with the above mentioned content, and also fails to submit them within 8 calendar days after receiving the notice send by the infrastructure manager thereof,

**for demands of Railway Undertakings infrastructure manager applies procedure for risky demands stated in points A) and B).** ~~payment in advance or the provision of a payment guarantee (detailed conditions of which can be seen in sub-point 2) of this Chapter “Client in default”).~~

In the event if based on the above documents it is not possible to recognise that planned turnout related to the network access contract of the new client **who recently signed a Network Access Contract** in the first 3 months exceeds 30% of equity capital, but this will be, however, the case, infrastructure manager may **applies procedure for risky demands stated in points A) and B).** ~~demand from the Railway Undertaking a payment in advance or the provision of a payment guarantee (detailed conditions of which can be seen in sub-point “) of this Chapter “Client in default”).~~

Obligation of payment in advance or provision of payment guarantee shall exist until conditions verifying these obligations will cease, and Railway Undertaking will request to

review ~~the status of demands against him, his status of a client in default and also request to rate him again as a client paying in accordance with the network access contract on schedule~~ **therefore not public service demands against him will be rated again as good demands**. Infrastructure manager is obliged to review the request of the Railway Undertaking ~~with the status of a client in default, and to revise his status within 15 calendar days after the day receiving the request, and shall notify in writing the Railway Undertaking of the result of the review within 15 calendar days after the review has been completed.~~ When judging the request, infrastructure manager shall examine besides the payment discipline also the last documents of the Railway Undertaking submitted as prescribed by the infrastructure manager. If Railway Undertaking corresponds to all requirements **not public service demands against him will** ~~he can be rated again as good demands~~ **a client paying in accordance with the network access contract on schedule.**

In order to achieve unanimity, it shall be laid down, that infrastructure manager shall require from Railway Undertaking the payment in advance or the provision of payment guarantee exclusively in the case **if the demand against** Railway Undertaking has been rated as a **risky demand** ~~client in default~~ or based on the above documents conditions of this rating exist.

~~Infrastructure manager may use the above information for the purpose of decision-making exclusively in a way laid down by this §. Infrastructure managers shall respect the confidentiality of data came to their knowledge on the basis of the above.~~

In Chapter VIII § 42 of the already mentioned Annex the following modifications were made:

§ 42 Suspension of fulfilment of the Network Access Contract by the infrastructure manager

1. Infrastructure manager may suspend the fulfilment of the contract
  - a) ~~if Railway Undertaking failed to fulfil its payment obligation arisen from previous or this Network Access Contract by a deadline set out in a notice received in writing,~~  
  
**if the demand against the Railway Undertaking stated in 37. § points A/4 and B/4 is qualified as a demand that needs particular attention.**

