

**FOR THE TIMETABLE PERIOD OF 2016/2017**

# **PERFORMANCE REGIME**

**Effective: from 00:00 of 11 December 2016 until 24:00 of 09  
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## I. Scope of the Performance Regime

The scope of the Performance Regime covers:

- a)* railway company operating nationwide open access, not for own railway network (hereinafter referred to as infrastructure manager),
- b)* railway undertaking (RU),
- c)* non-RU applicant
- d)* rail regulatory body,
- e)* Rail Capacity Allocation Body (hereinafter referred to as VPE)

Territorial scope of the performance regime covers the nationwide open access railway networks in Hungary.

## II. Legal framework

- Directive 2012/34/EU of the European Parliament and of the Council on establishing a single European railway area,
- Paragraphs 67/K. (1) - (6) of Act CLXXXIII of 2005 on railway transport,
- Regulation No 57/2015. (IX.30.) of NFM on detailed rules of the Performance Regime

### III. Principles of the Performance Regime

Provisions of the Performance Regime shall equally and non-discriminatory apply both to the applicants and infrastructure managers. General requirement of the Performance Regime is simplicity, transparency, liability, cost-efficiency, usage of measurable data, as well as it must not impose exaggerated legal and/or administrative burden either on applicants or on infrastructure managers.

VPE shall regularly evaluate experience gained from the Performance Regime relating to the given timetable period or after the given timetable period at the latest. VPE shall also compare the results with the measurable objectives given in figures and shall draw conclusions of them so as to initiate changes in the schemes of the Performance Regime of the next period, if necessary.

Performance Regime includes:

- incentive scheme to facilitate punctual train run,
- incentive schemes supporting environmentally friendly transportation as well as
- other incentive schemes related to train run.

**Payment obligation arising from incentive schemes mentioned above and financial compensations are related to the charges determined in Network Statement but not related to the mark-ups.**

Regarding the incentive schemes with kilometre-based accounting, the charging kilometre is taken as the base for accounting.

From accounting point of view exclusively Infrastructure Managers and Railway Undertakings are in legal relationship with each other.

As long as the request for rail capacity is submitted by a non-RU applicant determined in Paragraph 2 Section 3.8. of the Railway Act, financial compensations and penalties emerging from the incentive scheme can be claimed by/from the Railway Undertaking designated by the non-RU applicant.

If the request for rail capacity is submitted by a non-RU applicant but the train path is not used, the payment obligation is imputable and compensation can be determined if they are included in the framework contract concluded as it is indicated in Paragraph 54/(4) of the Railway Act in order to ensure the basic principles set out in Paragraph 67/K. Section (3) of the Railway Act.

Accounting of acknowledged compensations and penalties related to the Performance Regime shall be carried out - at the same time as the network access charges are accounted - in a separate document on the basis of fact and planned data. Accounting of disputed items shall be carried out on the basis of the

agreement between the parties, or of binding decision of the court and/or the Rail Regulatory Body.

Definition of notions used in the Performance Regime can be found in Annex 3.

### **The aim of the Performance Regime**

Performance Regime shall always be established aim-oriented. Checking the achievement of the objectives that were previously defined is an inseparable part of the functioning of the system.

Regarding measures to be taken within the framework of the Performance Regime such measurable objective shall be set, the realisation of which would have an effect as it is anticipated. As a result, expectations towards the Performance Regime shall be determined accurately and in a transparent way so as to give information to the market players on the probable positive effects of the Regime.

Performance Regime shall motivate the schedulable and optimal use of railway services. Flexibility is an important factor in railway transportation because of the competition with road transportation.

Performance Regime is part of the 'General Terms and Conditions for the Use of Railway Infrastructure' of the contractual connection concluded between the infrastructure manager and the applicants.

## IV. Elements of the Performance Regime

### IV.1 Incentive scheme to facilitate punctual train run

One of the main elements of the Performance Regime is the main quality indicator, namely the punctuality of trains defined in relation to the timetable of the allocated train path. Basis of this performance element is the divergence of the fact data from the planned data of the timetable of the train path. Divergences must be recorded by the infrastructure managers at each measuring point. Performance Regime shall evaluate the punctuality of trains on the basis of delays measured at the destination stations.

Train paths submitted to VPE 5 days before the scheduled train run and allocated by VPE do not come under the ruling of the incentive scheme of 'Punctuality of the train run compared to the time data of the timetable of the allocated train path'.

Detailed prescription of the measuring and coding systems of the infrastructure managers can be found in Annex 1.

#### a. Delay management

Legislation in force allows the taking into consideration of handling of primary delays within the framework of the Performance Regime (Directive 57/2015. (IX.30.) NFM Paragraph 7 Section (3)). The regime does not apply to secondary delays.

Delay is such an event when - for any reason/reasons - a train runs diverging from the timetable set to the allocated train path, and arrives to the stops assigned in the timetable of the train path at a later time. Delay is the positive sign difference between the fact time of the train run and the scheduled time of the train run measured in whole minutes.

**Primary delay:** a disturbance in terms of a train run in the relationship of the Infrastructure Manager (or railway infrastructure unit of an integrated railway company) and a Railway Undertaking (or a railway undertaking unit of an integrated railway company), which can be provably attributed directly to any of the given railway companies. Since these delay events directly affect running trains, they are called primary delays.

**Secondary delay:**

In this case the delay was caused by another delayed train either by a consequence of primary delay or independently from that. In addition, this delay arose in the railway undertakings' own interest and affects their own train. This type of a delay is the consequence of a forcing event (E.g.: in a single track line it is not allowed to start a train from a station in the opposite direction until the train in delay arrives at this station; because of train connections published, passengers of the

train in delay have to be awaited, or vehicles must be detached and inserted to this train etc.). Another train in delay can cause delays to the running train in question regardless the owner of the train path and regardless the original reasons for the delay. These types of delays are called secondary delays.

#### **b. Product groups**

From the Performance Regime's point of view three product groups can be distinguished: passenger trains, empty trains and freight trains. Dissimilar tolerances shall be determined for these product groups. When determining groups of products, Performance Regime considers trains indicated with markings (A,B) in Annex 4.3-2 to the Networks Statement for 2016/2017 as passenger trains, with the marking (C) as empty trains and with markings (D,E) as freight trains.

#### **c. Tolerances**

Tolerance means a delay determined for each group of products on the network in the case of which no penalty had to be applied. Tolerance is determined minute-based for delays and separately for the product groups of passenger, empty and freight trains.

For determination of the tolerance value, general punctuality data of the timetable period prior to the year of publishing the Performance Regime must be taken into consideration.

Tolerance limits are:

- passenger trains: 15 minutes
- empty trains: 40 minutes
- freight trains: 60 minutes.

#### **d. Accounting points**

Only measuring points can serve as accounting points.

Regarding Performance Regime, three different types of accounting points shall be distinguished as follows:

- end (destination) point accounting points
- last measuring point of a certain infrastructure manager,
- other (intermediate station) accounting points (for the individual product groups different accounting points may be appointed on the basis of the agreement between the infrastructure managers and the railway undertakings. From accounting point of view, other accounting points shall be considered the same way as end points are).

#### **e. Calculation methodology**

Calculation related to the incentive scheme shall be made at the accounting points by taking into account delay codes and delay data recorded by the infrastructure manager so as to subtract from the delay data the value of tolerance determined for this product group.

After subtracting the value for tolerances of the product group from the value of total delays, also the secondary delays and delays coded as Act of God (*vis maior*) shall be deducted from the remaining delay minutes to be accounted. No penalties shall be applied to secondary delays for parties since secondary delays do not come under the scope of the Performance Regime. After the subtraction, value of deviation from the remaining positive facts given in minutes shall be linked to the causers of the delay in accordance with the split of the delay left and needs to be accounted. Delays which are not coded must in every case be considered as delays from the part of the infrastructure manager as an organisation which is responsible for ensuring of coding.

Example:

Table 1

	Minute
Delay at accounting points	$x=y+z+v+w+q-c$
Total delays occurred up to the accounting point	$u=y+z+v+w+q$
from these, delay caused by reasons from the infrastructure Manager's side	y
from these, delay caused by reasons from the railway undertaking's side	z
from these, Act of God	v
from these, non-coded delays	w
from these, secondary delays	q
decrease of delays	c
Tolerance	t
	
Total delays to be accounted	$x'=x-(t+v+q)$
If $x' > 0$	
	
from this, delays caused by reasons from the railway	$y'= y/ (u-q-v)$

undertaking's side	
from this, delays caused by reasons from the railway undertaking's side	$z' = z / (u - q - v)$
from this, non-coded delays	$w' = w / (u - q - v)$
	
Number of proportioned minutes burdening the railway undertaking	$z'' = z' * x'$
Number of proportioned minutes burdening the Infrastructure Manager	$y'' = y' * x'$
Number of proportioned minutes burdening the Infrastructure Manager due to non-coded delays	$w'' = w' * x'$

In order to reduce delays, parties are obliged to perform any activity falling within their competence.

Penalty to be paid for the delay is set on a minute-based accounting in a value of 20 HUF/minute. Maximum penalty which may be imposed in a month must not exceed 1% of network access charges (excluding traction energy) to be paid by a certain railway undertaking in the given month after the requested and run trains. The 1% limit applies in the relationship of the railway undertaking and the Infrastructure Manager in question. Based on the same principle as it is for the railway undertaking, penalty may be imposed on the Infrastructure Manager in an amount of at most 1% of the network access charges to be paid by the railway undertaking after the ordered as well as ran trains in a certain month. No payment obligation or penalty is imposed in case of delays of corridor trains (freight trains running along international rail freight corridors).

Infrastructure Manager has only in those cases possibility for coding a delay as a timetable compilation fault if the Infrastructure Manager can demonstrate that despite correct and accurate network core data, traffic management circumstances and information transmitted to VPE, delay has arisen from the improper compilation of timetable or allocation of the train path. Also in this case, penalty to be paid to the railway undertaking coded as timetable compilation fault shall be paid by the infrastructure manager when accounting, since from Performance Regime point of view the Infrastructure Manager and the railway undertaking are in contractual legal relation with each other. As a next step, the infrastructure Manager will have the possibility to demand from VPE the reimbursement of the compensation that the Infrastructure Manager had to pay to the railway undertaking due to timetable compilation fault.

Table 2

Accounting of penalties on the basis of caused delays

Penalty due to delays	p (HUF/minute)
Penalty to be paid by the Infrastructure Manager	$(y''+w'')*p$
Penalty to be paid by the railway undertaking	$z''*p$

#### IV.1.1 Accounting method of the incentive scheme

Process of accounting:

Infrastructure Manager shall in every month for every train path calculate financial compensations and penalties which emerge in connection with the Performance Regime, and shall distribute them liability-proportionate to itself and to parties who are in contractual legal relationship with the Infrastructure Manager.

1. Until the end of the month which follows the actual month, Infrastructure Manager shall sum up separately for every railway undertaking the payment obligations and compensations arising from the Performance Regime with the exception of disputed cases involved in conciliation process which shall be handled after the successful ending of the dispute in the course of the monthly accounting.
2. Infrastructure Manager shall sum up the monthly balances of railway undertakings.
3. Infrastructure Manager shall prepare the invoice-attachments in order to account acknowledged compensations and penalties arisen from the Performance Regime.

Accounting of the incentive scheme is based on fact data.

#### IV.1.2 Hypothesis relating to the incentive scheme and its expected effect

Benefit to be expected from a higher punctuality of trains is the enhanced capacity due to a higher degree of planning ability.

Expectable effect of the enhanced capacity and the better use of the existing sources in general are the fall of operational costs and the increase of the general quality of services provided on the railway.

Examination of the average delay at a destination station shall be carried out during the analysis of punctuality in different product groups.

In case of passenger transport in the passenger transport product group, a desirable result of a better punctuality will be if at the destination station an average delay of trains of train paths - allocated other than instant train paths - in the affected timetable period, does not exceed 20 minutes.

Target in the freight transport product group is that - as a result of the incentive scheme - the average delay of trains of train paths - allocated other than instant train paths - should be at destination stations less than 60 minutes taking the average of all delays in the entire timetable period into account.

The average delay of trains of train paths in the given product groups/train categories at destination stations is determined as follows:

1. Determination of the number of trains run during a certain timetable period within the product group/train category under examination.
2. Total delay of trains measured at destination stations on train paths belonging to the examined product group/train category in the examined period (timetable period).
3. Average delay of trains measured at destination stations on train paths belonging to the examined product group/train category is the quotient of total delays of trains at destination stations and the number of trains run during the examined timetable period.

#### **IV.1.3 Division of tasks in connection with the incentive scheme**

Regarding punctuality of trains compared to the timetable of the allocated train path, Infrastructure Managers are obliged to record with codes the reasons and the causers of the positive divergences from the timetable. Infrastructure manager is also bound to ensure dispute right for railway undertakings regarding their own recorded data, and to ensure access right exclusively for VPE to fact data and coding of any train event, exclusive of events coded to timetable failures.

Tasks related to accounting of delays shall be carried out by the infrastructure managers on the basis of acknowledged codes recorded at accounting points in compliance with 'Calculation Methodology' defined in Chapter IV.1. After this, infrastructure managers prepare in every month invoices as attachments for enforcing the payment of compensations and penalties.

Infrastructure Manager shall deliver data to VPE in order to determine in the calculation methodology one percent of the network access charge (excepting traction current) to be paid for train run ordered in a certain month by the Railway Undertaking.

Task of VPE is to receive delay data recorded by the infrastructure managers. After receiving data, VPE shall connect fact data to the available planned data. With the help of the data base - established this way-, VPE shall carry out impact assessments and shall prepare monitoring reports. VPE shall inform Infrastructure Managers and the Rail Regulatory Body about the results.

VPE shall carry out the assessment work set out in Chapter IX with the involvement of the infrastructure managers.

## **IV.2. Incentive schemes supporting environmentally friendly transportation**

### **IV.2.1 Incentive schemes for transporting freight on railway**

If the majority of freight traffic was implemented on rails instead of roads, it would reduce traffic jams as well as the direct and indirect environmental polluting effects of road transportation to a significant extent. The increasing number of trucks contributes to the deterioration of roads, whose maintenance and repair cost huge amount of money so this damage also justifies the necessity of the switch-over from road to railway transportation.

#### **IV.2.1.1 Scope of the incentive schemes**

- a) freight transportation (which is switched over from road to railway) takes place for a distance of at least 300 kilometres,
- b) freight transportation (which is switched over from road to railway) takes place between certain/primary borders,
- c) freight transportation takes place between certain/primary service places.

#### **IV.2.1.2 The aim of the incentive schemes**

The aim of the incentive schemes of rail freight transport is to increase the competitiveness of rail transportation compared to other modes of transportation, promoting in this way the cost efficiency of maintaining the railway network, the switch-over from road to railway and relieving roads from heavy traffic.

#### **IV.2.1.3 Degree of the financial compensation**

The Railway Undertaking is released from paying a certain percentage of the total cost to be paid for the basic services when using the allocated train path.

#### **IV.2.1.4 Conditions of providing the financial compensation**

- a) Transporting freight switched over from road to railway for a distance of at least 300 km: the act of the switch-over from road to railway can be

unambiguously and demonstrably certified by the applicant and freight transportation takes place for a distance of at least 300 km.

- b) Transporting freight switched over from road to railway takes place between primary borders: the act of the switch-over from road to railway can be unambiguously and demonstrably certified by the applicant.

The following service places belong to the scope of the incentive scheme:

- Óriszentpéter Oh. (07740)
- Rajka Oh. (08896)
- Sopron határ ((07963)
- Szentgotthárd Oh. (06064)

Regarding freight switched over from road to rail for a distance of at least 300 km and freight transportation switched over from road to railway taking place between primary borders, freight transportation can be considered as 'switched over from road to railway' if the representative(s) of the applicant who is/are authorised to sign, make(s) a written legal declaration to the Infrastructure Manager stating that the freight was transported on road to its destination place in the previous timetable period. To make decision on the compensation originating from the incentive scheme is in the Infrastructure Manager's scope of authority. On the allocated train path, the quantity of goods transported shall add up to the total quantity of the freight transported by the switch-over from road to railway. The order is considered to come under the scope of the incentive scheme if the applicant submits the order with the identification number of the certificate issued previously by the Infrastructure Manager and indicates that the train path comes under the scope of the incentive scheme. Train paths ordered and run as RoLA trains undoubtedly come under the scope of the incentive scheme.

- c) Transporting freight takes place between primary service places: the train runs between service places belonging to the scope of the incentive scheme for a distance of at least 50 km and with maximum 700 gross ton train load (fulfilling both previously mentioned conditions at the same time). The order is considered to come under the scope of the incentive scheme if the applicant indicates that the train path comes under the scope of the incentive scheme.

The following service places belong to the scope of the incentive scheme:

- Budaörs (01032)
- Debrecen (13912)
- Fényeslitke-Déli rendező (42127)
- Győr-Rendező (01271)
- Soroksár-Terminál (11064)
- Soroksári út rendező (40196)

- Székesfehérvár (03269)

#### IV.2.1.5 Degree of the incentive scheme

In case of incentive elements defined in point IV.2.1.1 regarding freight switched over from road to rail for a distance of at least 300 km and freight transportation switched over from road to railway taking place between primary borders, the degree of compensation is accounted in proportion to time. Its aim is that the provided higher degree of financial compensation at the beginning shall not be ceased without a transition, in the absence of which the intension aiming to keep the freight - once switched-over from road to railway- on rail would fail. The degree of financial compensation can be found in Table 3. Financial compensations relating to the following years will be determined by the Performance Regime relating to those particular years.

Table 3

Degree of exemption from the charge of basic services

Compensation period	Degree of exemption from payment (in % of the basic service charge)
Timetable period of 2016/2017	80

In case of incentive element defined in point IV.2.1.1 regarding freight transportation between primary service places, the degree of financial compensation is determined depending on the trainload:

- the value of which is 70% of the basic service charge up to 500 gross ton trainload and
- 30% of the basic service charge between 501-700 gross ton trainload.

#### IV.2.1.6 Methodology for accounting the exemption from payment

The incentive elements of rail transportation have to be understood separately, one by one; they may not be combined, thus when using a train path only one financial compensation can be claimed at a time. The incentive scheme of supporting rail transportation can always be regarded as financial compensation deducted from the sum of money the Railway Undertaking is supposed to pay. When issuing the monthly invoices the Infrastructure Manager takes into account the compensation given in accordance with the incentive scheme.

Infrastructure Managers check if the conditions are fulfilled or not. Accounting of financial compensation may be carried out if the applicant indicates that the request comes under the scope of the incentive scheme- except for RoLa trains which ordered and run as RoLA trains. The base of accounting is the charging kilometre distance of the train run. Financial compensation to be accounted shall clearly be indicated in the invoice attachment provided by the Infrastructure Manager.

As long as the request for rail capacity is submitted by a non-RU applicant, financial compensations emerging from the incentive scheme can be claimed by the Railway Undertaking designated by the non-RU applicant.

#### **IV.2.1.7 Hypothesis and expected effect of the incentive scheme facilitating freight transportation**

In case of incentive schemes regarding freight switched over from road to railway for a distance of at least 300 km and freight transportation switched over from road to railway taking place between primary borders, the aim is to get new transports and to switch the road transportation of freight over to rail transportation. As a result rail transportation coming under the scope of the incentive schemes of “freight switched over from road to railway for a distance of at least 300 km” and “freight transportation switched over from road to railway taking place between primary borders” will appear.

In case of freight transportation between primary service places - due to this incentive scheme - , the volume of freight transportation that is demonstrably switched over from road to railway is expected to increase compared to the same period of the timetable period of 2016/2017.

VPE shall carry out an impact assessment related to the incentive scheme on a monthly basis and shall prepare monitoring report. The incentive scheme shall be modified if, regarding its annual effect, it shows a 10% positive or negative divergence from the hypothesis determined previously.

## **IV.2.2 Incentive scheme of single wagon load**

### **IV.2.2.1 Scope of the incentive scheme**

The incentive scheme of forwarding freight on railway is related to domestic train paths that are ordered by fulfilling the conditions below:

- neither the starting point nor the endpoint is a border station,
- when ordering shunting activity at any station of the affected train path and submitting this request along with the train path order,
- when ordering the shunting activity, one of the following requests shall be indicated in the request: “shunting from/to tracks designated for loading”; “shunting from/to privately-owned network spurring from a station (factory sidings)”;
- the length of train path does not exceed 80 charging km,
- the weight of train does not exceed 1000 gross ton.

### **IV.2.2.2 The aim of the incentive scheme**

The aim of the incentive scheme is to promote rail freight transportation by keeping the freight on rail instead of road transportation in case of train paths coming under the scope of the Performance Regime and it also takes into consideration the targets set out in the White Paper 2011-2020 on Transport of the European Union aiming to reduce the emission of toxic materials produced by transport and optimize the performance of the multimodal supply chains including the use of more energy-efficient means of transport in a bigger proportion.

### **IV.2.2.3 The degree of compensation related to the incentive scheme**

The base of the volume of financial compensation is 15% of the charge paid for the basic service of the train path that had been run by the Railway Undertaking.

### **IV.2.2.4 Methodology for accounting the incentive scheme of single wagon load**

The incentive scheme of supporting single wagon load can always be regarded as a financial compensation deducted from the sum of money the Railway Undertaking

is supposed to pay. When issuing the monthly invoices the Infrastructure Manager takes into account the financial compensation given in accordance with the incentive scheme.

Infrastructure managers check if the conditions are fulfilled or not. Accounting of financial compensation can only be carried out if the train path fulfils the conditions determined in point IV.2.2.1. when the order was placed, furthermore the train also fulfils the requirements during the train running. Accounting of financial compensation may be carried out based exclusively on the fact data of the train run.

Charging kilometre is used to determine the distance. Financial compensation to be accounted shall clearly be indicated in the invoice attachment provided by the Infrastructure Manager.

As long as the request for rail capacity is submitted by a non-RU applicant, financial compensations emerging from the incentive scheme can be claimed by the Railway Undertaking designated by the non-RU applicant.

#### **IV.2.2.5 Hypothesis and expected effect of incentive scheme promoting single wagon load**

Hypothesis related to this incentive scheme asserts that a 5% growth will expectedly take place in the number of trains, compared to the figures of the previous timetable period.

VPE shall carry out an impact assessment related to the incentive scheme on a monthly basis and shall prepare monitoring report. The incentive scheme shall be modified if, regarding its annual effect, it shows a 10% positive or negative divergence from the hypothesis determined previously.

#### **IV.2.3 Division of tasks related to the incentive scheme promoting environmentally friendly transportation**

Infrastructure Managers shall calculate the financial compensation given from the network access charges and taking the compensation into account they issue the monthly invoices for the railway undertakings.

### **IV.3 Other incentive schemes related to the running of trains**

#### **IV.3.1 Incentive scheme related to the efficient use of primary stations**

The main, technology-related task of primary stations is to pull wagons of departing/arriving trains in/out of train reception or train dispatch sidings. Station capacity can be used in a more efficient way if trains are not needed to be split up. In case of trains that do not need to be split up, some technological processes will be unnecessary, which result in enhanced capacity and cost-efficient human resource management.

##### **IV.3.1.1 Scope of the incentive scheme**

The scope of incentive scheme involves those train paths that run trains which are not needed to be split up and it is indicated in the allocation required by the applicant and also affects one this three primary service places:

- Budapest-Déli (01016)
- Budapest-Keleti (10017) and
- Budapest-Nyugati (10033).

##### **IV.3.1.2 The aim of the incentive scheme**

The aim of the incentive scheme is to facilitate the optimal allocation of capacity of primary stations by decreasing the number of technology-related activities.

##### **IV.3.1.3 Degree of surplus payment obligation**

The railway undertaking is obliged to pay surplus in case of the incentive scheme related to the effective use of primary stations when the railway undertaking orders train run with splitting-up of wagons but it ends up without splitting-up. The degree of this surplus payment obligation is 50% of the charge for the station use over the usual charge for the station use in case of trains that need to be split up at primary stations affected by the train path.

##### **IV.3.1.4 Methodology for accounting the surplus payment obligation**

If the railway undertaking orders train run without splitting-up of wagons but it ends up with splitting-up, the railway undertaking is obliged to pay surplus that is invoiced by the Infrastructure Manager.

As long as the request for rail capacity is submitted by a non-RU applicant, payment obligation emerging from the incentive scheme can be claimed from the Railway Undertaking designated by the non-RU applicant.

Infrastructure Managers check if the conditions are fulfilled or not i.e. accounting of financial compensation may be carried out based exclusively on the fact data of the train run, which has to be clearly indicated in the invoice attachment separately.

#### **IV.3.1.5 Degree of financial compensation**

If the number of train path requests submitted by the applicant as a train path request for primary stations under the scope of the incentive scheme without involving the splitting-up of wagons (and the trains are run this way) increase with at least 10% compared to the number of train path requests without involving the splitting-up of wagons in the previous timetable period, the Railway Undertaking is entitled to get a refund. The volume of this financial compensation related to primary stations is 5% of the total amount of charges paid for the use of origin/destination stations by the Railway Undertaking.

As long as the request for rail capacity is submitted by a non-RU applicant but the capacity is used by a Railway Undertaking designated for using railway capacity by the non-RU applicant, financial compensations emerging from the incentive scheme can be claimed by the Railway Undertaking designated by the non-RU applicant.

#### **IV.3.1.6 Hypothesis and expected effect of the efficient use of capacity at primary stations**

The number of train paths allocated without the splitting-up of wagons shall be 10% correlated to the number of train paths in category A, B or C affecting primary stations. This volume is calculated the following way:

$$\left( \frac{\sum(\text{number of train paths allocated with splitting-up of wagons at primary stations}}{\sum \text{number of train paths affecting a primary station}} \right) * 100$$

VPE shall carry out an impact assessment related to the incentive scheme on a monthly basis and shall prepare monitoring report. The incentive scheme shall be modified if, regarding its annual effect, it shows a 10% positive or negative divergence from the hypothesis determined previously.

#### **IV.3.1.7 Division of tasks related to the efficient use of capacity at primary stations**

Determination and accounting of surplus payment obligation related to the efficient use of capacity at primary stations shall be carried out by the Infrastructure Managers to the railway undertakings.

Infrastructure Manager shall deliver data to VPE regarding train paths requested without involving the splitting-up of wagons (and trains are run that way) at primary stations serving as a positive incentive scheme in the 2016/2017 timetable period.

Accountings related to the efficient use of capacity at primary stations shall clearly be comprised by invoice-attachments issued by the Infrastructure Managers for accounting of the elements of the Performance Regime.

#### **IV.3.2 Other incentive element to promote better use of infrastructure in rail transportation**

Undue path reservation has significant role in determining available free capacity. Until its cancellation, available capacity is unduly reserved therefore it blocks the allocation of other requests. As a consequence, the infrastructure manager introduces a reservation fee.

The reservation fee shall be entitled to those railway undertakings who regularly do not use the train paths allocated to them.

The regularly unused train paths are considered as the rate of all ordered and cancelled train paths.

##### **IV.3.2.1 The aim of the incentive scheme**

The reservation fee is such an incentive, which promotes better use of infrastructure element. Undue path requests should not mean obstacle to allocate free capacity.

##### **IV.3.2.2 Degree of incentive scheme**

Path reservation fee's determination consists of the proportion ratio of all ordered train paths for the analyzed month and all cancelled train paths. It will be set in percentage on the basis of the planned data. Percentage determination applies rounding rules, it operates with cardinal numbers.

The number of ordered and cancelled train paths is determined taking into consideration those train paths, which have planned running days for the analyzed month. If the ordered and cancelled train path affects both infrastructure managers, the number of train path would be taking into account in both infrastructure managers' case.

The amount of the fee is included in Table 4.

Table 4

Reservation fee for cancelled path depending on the number of items

Number of cancelled train path compared to the number of ordered train path in percentage	Payment obligation (in % of the basic service charge)
to 60 %	0
60- to 70 %	1
70- to 80 %	2
80- to 90 %	3
above 90 %	4

#### IV.3.2.3 Methodology for accounting the incentive scheme

The railway undertaking is obliged to pay reservation fee in case of allocated, but cancelled train path before the scheduled time.

As long as the request for rail capacity is submitted by a non-RU applicant but the train path is not used, the payment obligation is imputable and compensation can be determined if they are included in the framework contract concluded between the railway undertaking and the Infrastructure Manager as it is indicated in Paragraph 54/(4) of the Railway Act.

Reservation fee is invoiced by the Infrastructure Manager on a monthly basis as an invoice attachment in accordance with a percental distribution set out in the system.

The fee is a determined percentage of train paths having planned running day and cancelled train paths' basic service charges in the analyzed month.

Infrastructure Managers account the reservation percentage after the cancelled train paths mentioned in table 4 on the basis of their path sections involved. The calculation is made according to the above mentioned rules.

#### IV.3.2.4 Procedure in the event of emergency

In case of emergency and extreme weather conditions, Infrastructure Manager is entitled to withdraw train path requested by the applicant and allocated by VPE. Withdrawal of a train path by the Infrastructure Manager due to emergency is not

qualified as train path cancellation, rules of reservation fee in this case is out of scope.

#### **IV.3.2.5 Division of tasks related to the incentive scheme**

VPE registers the train path cancellations made before the scheduled time of the train run in accordance with aspects defined by the system. Infrastructure Managers invoice reservation fees to railway undertakings on the basis of data registered partly by VPE and partly by their own IT system.

## V. Border points of the network

### V.1 Country borders points

The Performance Regime in Hungary handles the country border points separated, delays arising on the connecting foreign network are considered as secondary delays, so the Performance Regime will not apply to them, while accounting of delays transferred to the foreign railway network shall happen on the basis of data registered on the last domestic measuring point in front of the connecting foreign network.

### V.2 Domestic network border

Network border points of the domestic network shall be handled from the Performance Regime's point of view in the same way as country border points, accounting of delays arising on the connecting network shall happen on the basis of measurements recorded on the last measuring point before the change of the network border, while delays transferred to the next railway network shall be considered as secondary delays to which the Performance Regime does not apply.

Handling of connections from a nation-wide open access networks to other open access networks or to non-open access networks from the Performance Regime's point of view is as follows:

If a train comes from a non-open access network to a nationwide open access network with a delay, railway undertakings shall be liable for delays suffered on the non-open access network.

If a train leaves a nationwide open access network for another open access network or for a non-open-access network, the accounting point must be the last station of the nation wide open access network. Performance Regime in this case does not handle further delays suffered by the train on other open access or the non-open-access networks.

Connecting stations of MÁV Zrt and GYSEV Zrt can be seen for the timetable period 2016/2017 in Annex 3.2.2-2 to the Network Statement.

## **VI. Data-demand connected to the Performance Regime**

Infrastructure Managers are obliged to deliver to VPE data defined in the Performance Regime.

### **VI.1 Incentive scheme related to the facilitating of punctuality of train run**

Punctuality data are available at the Infrastructure Managers. Information to be compulsorily delivered by the Infrastructure Managers to VPE can be seen in Annex 2.

## **VI.2 Incentive scheme of supporting environmentally friendly transportation**

VPE is obliged to provide the Infrastructure Managers with data of train paths ordered (which were indicated in the request) by the applicants and coming under the scope of the Performance Regime.

## **VI.3 Other incentive scheme related to train run**

In order to perform impact assessment for the Performance Regime, Infrastructure Manager is obliged to deliver to VPE real time fact data about and deliver the indications of requests of service without splitting-up of wagons at primary stations.

Information on reservation fee's account is available partly at VPE and partly at Infrastructure Managers' side. In order to perform impact assessment for the Performance Regime, Infrastructure Manager is obliged to deliver data to VPE concerning information on reservation fee on a monthly basis.

## **VII. Settlement of disputes, appeal**

There is a possibility for settling of disputes relating to the Performance Regime as follows.

### **VII.1 Settlement of a complaint: between the Infrastructure Manager and the applicants**

Principles of disputing of data used as basis of incentive element of the Performance Regime and disputing of penalties to be paid by authorised applicant upon invoices prepared by the infrastructure managers on the grounds of the Performance Regime:

- 1) Infrastructure manager is obliged to hand over information and ensure access for railway undertakings to any kind of information (basis of calculations, breaking down of the amount to be paid per train path and services) deriving from the application of the incentive elements of the Performance Regime as regards train paths and services required by authorised applicants.
- 2) Infrastructure manager and applicant are obliged to agree in the network access contract on possibilities to be used during the settlement of complains by parties concerned (possibility of an inside view of dossiers, making remarks, debating, corrections, etc.), what obligatory procedural times can be applied for certain phases of actions, feed-backs and commenting, and also time limit must be defined beyond which parties lose the right to complain if any procedural term are qualified as a term of preclusion.
- 3) When setting the rules of the complain-settlement procedure, it shall be unambiguously fixed how comments, feed-backs, debates and conciliation would happen.
- 4) It must be fixed in the rules, in which cases is it possible to debate data at the rail regulatory body, and also, in which cases data as the basis of the charge to be paid can be considered to be final (accepted), i.e. the charge that cannot be disputed any more in the framework of the Performance Regime.
- 5) The applicable legal consequences must also be defined in the rules of the complaint-settlement for cases when parties go beyond time limits, or fail to reply or fail to make feedbacks.

### **VII.2 Dispute: Authority of the Rail Regulatory Body**

Also a dispute may be initiated at the Rail Regulatory Body if any of the parties infringes the stipulation of the contract concluded as regards the open access to

the rail network, or if payment obligations based on the Performance Regime are settled contrary to regulations or the Performance Regime, or if the implementation of financial compensations or penalties fails due to the unlawful behaviour of the other party. After the finalisation, validation of data, data shall be delivered to VPE after the 10<sup>th</sup> day of the month following the month of finalisation, validation.

## **VIII. Method for publication or modification of the Performance Regime**

### **VIII.1 Modification of the Performance Regime**

With the involvement of Infrastructure Managers, applicants and the Rail Regulatory Body, VPE shall evaluate for every timetable period the experiences gained from the Performance Regime, particularly its impact on minimising the disruption of the railway network.

Based on the outcome of the evaluation, VPE may modify the elements of the Performance Regime. Should the incentive elements not reach the desired effect, they must be changed; if the incentive effect is successful, there should be possibilities for refining.

Procedure for modification regarding changes which arise from the analysis of effects of the Performance Regime on minimising the disruptions on the railway network, or which arise from amendments to legal rules or to the Network Statement:

- a) In order to ensure possibility for coordination, VPE is obliged to issue the draft of the Performance Regime on its homepage at least 30 days prior to its publication, at the same time electronically inform parties concerned by the scope of the Performance Regime about the issuing of the Performance Regime.
- b) Parties concerned may make notes, comments to the draft of amendments within 10 days after issuing the draft on the homepage of VPE. VPE shall take into consideration these notes and comments in the finalisation of the modification as much as possible.
- c) VPE shall publish this way finalized modification on its homepage mentioning also the date of its entry into force.

VPE shall record the fact of modifications with the date of its entry into force in the list of modifications which is an inseparable part of the Performance Regime.

### **VIII.2 Publishing of the Performance Regime**

After an evaluation carried out by VPE with the involvement of the Infrastructure Managers, applicants and the Rail Regulatory Body, VPE shall in every year prepare the draft of the Performance Regime.

Giving opinion on, finalization and publication of the draft of the Performance Regime

- (1) The draft of the Performance Regime shall be issued on the homepage of the VPE 30 days prior to publication of the finalised version of it in order to give possibility to those who are concerned by the scope of the Performance Regime

to give their opinion and make their notes to the draft. VPE is obliged to electronically inform those concerned on the issue of the draft of the Performance Regime without delay.

- (2) Parties concerned may make their notes and comments within 10 days after the issue of the Performance Regime. Rail Regulatory Body shall without delay be informed on the comments received, and on all the circumstances of the coordination process.

## **IX. Examination, analysis of other impacts affecting the optimal allocation of capacity**

### **Monitoring activity to detect default of timetable construction technology**

In order to detect, analyse connections between regular divergences from timetables and to discover their reasons, VPE shall after the identification of regular divergences, but at least once a month perform coordinating discussions with the involvement of infrastructure managers concerned. VPE shall inform applicants of the result of the coordinating discussions.

## **X. Provisional measures**

Continuous supply of data by Infrastructure Managers.

For a smooth operation of the Performance Regime, Infrastructure Managers are obliged to immediately transmit finalised data in connection with the train run to VPE.