

**FOR THE TIMETABLE PERIOD OF 2020/2021**

# **PERFORMANCE REGIME**

**Effective: from 24:00 of 12 December 2020  
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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)* rail regulatory body,
- d)* 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 RUs 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 RUs 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
- reservation fee.

**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.

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.

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, and the increase of railway transportation flexibility, which is a very important factor in 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 RUs.

Definitions of the terminology used in the Performance Regime can be found in Annex 3.

## IV. Elements of the Performance Regime

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

The main element of the Performance Regime is one of the most important quality indicators, namely the punctuality of trains defined in relation to the timetable of the allocated train path. Higher punctuality of trains enhances the capacity, raises the planning ability to a higher degree, which enable more efficient use of the existing sources, reduction of operational costs and improvement of the general quality of services provided on the railway.

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.

**Secondary delay:** When another train in delay causes delay to the particular running train irrespectively of the owner of the train path and the original reasons of the another train's delay. This type of delay is a consequence of constraint induced by another train.

### **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 2020/2021 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. The determination of tolerance for delays is minute-based.

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,
- intermediate accounting points

Intermediate accounting point can be appointed and accounted on the basis of custom agreement between the infrastructure managers and the railway undertakings.

### **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.

It is accounted from "Delay at accounting points" so that the value for tolerances of the product group, the secondary delays (no penalties shall be applied to secondary delays for parties since secondary delays do not come under the scope of the Performance Regime) and delays coded as force majeure are subtracted from the running fact-plan time difference calculated at accounting point.

After the subtractions, value of deviation from the remaining positive facts given in minutes is to be accounted and shall be linked to the causers of the delay in accordance with the split of all delay.

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, force majeure	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 undertaking's side	$y' = y / (y+z+w)$
from this, delays caused by reasons from the railway undertaking's side	$z' = z / (y+z+w)$
from this, non-coded delays	$w' = w / (y+z+w)$
	
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.

**Degree of incentive scheme:** Penalty to be paid for the delay is set on a minute-based accounting in a value of 20 HUF/minute. 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 possibility for coding a delay as a timetable compilation fault only in those cases, 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 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. In case of paths running on both infrastructure networks the calculation is separately conducted per infrastructure managers.

**IV.1.2 Hypothesis relating to the incentive**

The expected result of better punctuality is, that the average delay of trains with not instant train paths should not exceed the following target values in the particular product group at the destination station in the timetable period concerned.

Product group	Target value
Passenger trains	6 minutes
Empty trains	1 hour
Freight trains	3 hour 35 minutes

The average delay of train paths in the certain product groups at destination stations is determined according to the following formula:

$$\begin{aligned}
 &\text{The average delay of trains with not instant train paths in the certain product groups at destination stations during the timetable period concerned} \\
 &= \frac{\text{The sum of delays of trains with not instant train paths in the certain product groups at destination stations during the timetable period concerned}}{\text{The number of late trains with not instant train paths in the certain product groups during the timetable period concerned}}
 \end{aligned}$$

**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, as well as dispute right for VPE in case of the 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.

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 report. 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. Reservation fee**

Unjustified capacity reservation has significant role in determining available free capacity. Until its cancellation it blocks the allocation of other requests. To avoid this situation the infrastructure manager introduces a reservation fee.

The reservation fee shall be charged for those RUs who regularly do not use the train paths allocated to them. The regularly unused train paths are considered as a certain ratio of the total allocated but cancelled train paths for the examined month, as well as train paths concerned in cancellation failure for the examined month.

The followings are not counted in the cancelled train paths, as well as train paths concerned in cancellation failure:

- the partly used allocated train paths
- “technical cancellation” initiated by VPE because of infrastructure data changes during the request administration.

### **IV.2.1 The aim of the incentive scheme**

The reservation fee is an incentive, that promotes better use of the infrastructure. Undue path requests should not hamper the allocation of free capacity.

### **IV.2.2 Degree of incentive scheme**

Reservation fee is determined based on the proportion ratio of all train paths allocated for the examined month and all for the examined month allocated but cancelled train paths, as well as train paths concerned in cancellation failure. It will be set in percentage. Percentage determination applies rounding rules, it operates with whole numbers.

Reservation fee will be charged for the examined month if the ratio of cancelled train paths, as well as train paths concerned in cancellation failure reaches 60% within the sum of all allocated train paths having running day.

The reservation fee is 1% of basic service charges (not related to the mark-ups) of the paths cancelled, as well as concerned in cancellation failure.

### **IV.2.3 Methodology for accounting the incentive scheme**

RU is obliged to pay the reservation fee.

If the allocated and cancelled, as well as concerned in cancellation failure train paths affect both infrastructure managers, the number of train paths would be taking into account in both infrastructure managers' case.

If the ratio of cancelled train paths, as well as train paths concerned in cancellation failure reaches 60% within the sum of all allocated train paths in the case of the particular RU at the concerned infrastructure manager, the infrastructure managers count the reservation fee connected to the network part managed by own themselves, based on the ratio of basic service charges of concerned paths, which is determined as degree of the incentive scheme.

Reservation fee is invoiced by the Infrastructure Managers on a monthly basis as an invoice attachment in a way that it can be clearly identified.

In case of dissolution with legal successor, or companies merge, or if the RU transforms in such other way where the right of ownership - connected to the train path and service requests handled by it formerly - is designated unambiguously for another legal entity: it does not have to pay the reservation fee even if - because of IT facilities - it has to cancel its train paths and service requests ordered earlier and has to withdraw the submitted demands, so that the successor can submit them again.

### **IV.2.4 Procedure in exceptional cases**

In case of emergency, extreme weather conditions, or possessions for safety of operation Infrastructure Managers are entitled to withdraw train paths requested by the applicants and allocated by VPE. Withdrawal of a train path by the Infrastructure Manager due to emergency, extreme weather conditions, or possessions for safety of operation is not qualified as train path cancellation, rules of reservation fee in this case is out of scope. The same rule is to be applied in case of withdrawal initiated by Infrastructure Managers due to possession if it is implemented by VPE and not the train path owners cancel the affected train paths.

#### **IV.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.

#### **IV.2.6 Hypothesis relating to the incentive**

Expectation connected to the incentive, that the RUs' cancellation ratios per infrastructure managers should not exceed 60% on yearly basis (except those special values, which have explanatory reason).

## 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.

If a train comes from a non-open access network to the nationwide open access network the delays suffered shall be considered as secondary delays to which the Performance Regime does not apply.

If a train leaves the 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 nationwide open access network, further delays are not handled by the Performance Regime.

Connecting stations of MÁV Zrt and GYSEV Zrt can be seen for the timetable period 2020/2021 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 Reservation fee**

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.

## **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 RUs**

Principles of disputing of data used as basis of incentive element of the Performance Regime and disputing of penalties to be paid by RU 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 RUs to any kind of information (basis of calculations, breaking down of the amount to be paid per train path) deriving from the application of the incentive elements of the Performance Regime as regards train paths required by them.
- 2) Infrastructure manager and RU are obliged to agree in the network access, or equivalent 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 hypothesis analysis of the Performance Regime, 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 Procedure connected to the Draft 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.

- (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**

VPE endeavours to make analyses on deeper level, which can be the base of suggestions regarding quality development, and of elaboration of concrete action plans.

### **Minimising timetable errors**

Questions to be answered: Where did timetable errors occur? If it occurred at a train with more train paths: Was there delay in every cases on a particular service location? On which delay codes?

In case of justifiable 'timetable error' code: inside VPE examination procedure and feedback for editing practice.

### **Detecting failure of timetable construction technology**

In the sake of detection and analysis of connections between regular divergences from timetables and to discover their reasons VPE shall coordinate discussions with the involvement of infrastructure managers concerned after the identification of regular divergences, but once a month as the maximum.

### **Searching delay concentration points and detection of their reasons**

Determining the focuses on the whole network where the delays are more concentrated than other areas. Regarding these focuses: analysis of breakdown of the delay codes, measure of delays, causer, with optional extension to the service location, or network line.

Further planned analyses aiming at the problem solving: delay events, disputed minutes, network disruptions, duration time.

VPE shall inform applicants about the result of the analyses.

## **X. Other 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.

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*In case of any dispute, the Hungarian version shall prevail.*