Department of Transport, Tourism and Sport

Consultation Paper

Fourth Railway Package
proposed by the European Commission

June 2013
**Introduction**
This consultation paper is issued by the Department of Transport, Tourism and Sport.

The Department invites views and comments on the European Commission’s proposals for a Fourth Railway Package.

**Closing Date**
The closing date for receipt of submissions on foot of this consultation is 13 September 2013.

Please send your response in writing to:

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**Where documents are available**
A copy of this paper and copies of each of the European Commission proposals and associated impact analysis documents can be accessed through the Department’s website [www.dttas.ie/featuresList.aspx](http://www.dttas.ie/featuresList.aspx)


**Publication of Submissions**
Please be aware that the Department will publish all submissions received on its website. If you do not want your submission to be published please make this clear. However, you should be aware that the Department of Transport, Tourism and Sport is subject to the provisions of the Freedom of Information Act 1997 as amended and therefore has to consider any request made to it under this Act for information relating to responses made to this consultation exercise.
Purpose of this Consultation

The Fourth Railway Package proposals which were announced by the European Commission at the end of January 2013 is an ambitious suite of EU proposals involving further opening of domestic railway markets to competition, the mandatory tendering of public service contracts and an updating and streamlining of processes and systems for railway safety and interoperability.

The Department of Transport, Tourism and Sport is undertaking this consultation as part of the process of developing Ireland’s negotiation position on the proposals. More detail on each of the proposals contained in the Railway Package can be found in the Appendix to this document.
The Fourth Railway Package comprises 6 amending legislative proposals which can be grouped into 3 main pillars:

1. To establish consistent approvals procedures for rail interoperability and safety.
2. To open domestic passenger markets.
3. To create better structures and governance for infrastructure managers.

The 6 legislative proposals can be briefly summarised as follows:

This proposal entails a recast (i.e. a revision and consolidation) of the Railway Safety Directive (2004/49/EC) on safety on the Community’s railways which was adopted to provide a common regulatory framework for railway safety. The Railway Safety Directive established a framework for harmonising the content of safety rules, safety certification and the investigation of accidents. In relation to safety certification of railway undertakings Directive 2004/49/EC provides for a two part system known as the European Part A and Part B system of safety certification. The Part A certification applies Community wide and Part B is certification specific to a particular railway infrastructure.

This proposal to revise Directive 2004/49/EC was brought forward on foot of a report from the European Rail Agency (ERA). One of the recommendations in the report was that a single certificate system should be introduced to replace the Part A/Part B approach. In addition to providing for a single safety certificate, the proposed Directive will also give ERA sole responsibility for authorising the placing on the market of certain vehicle types. The proposal also aims to clarify existing provisions of Directive 2004/49/EC, add new definitions and make changes to reflect other legislative changes adopted since the directive came into force.

This is a proposal for a recast (i.e. a revision and consolidation) of the Interoperability Directive (2008/57/EC). The aim of Directive 2008/57/EC on interoperability of the railways of the Community was the interoperability of the rail...
network, in particular harmonisation of technical standards. Since the enactment of Directive 2008/57/EC lessons have been learnt as a result of the development of technical standards, and through feedback from stakeholders.

A number of amendments are now being proposed. In particular, these will revise the EU process for placing in service of vehicles; provide for greater harmonisation of technical standards; and give increased powers for the European Railway Agency to challenge Member States on rules that are perceived to be discriminatory or disproportionate.

The third proposal under this pillar is for a new European Rail Agency Regulation which will repeal Regulation 881/2004 which established the European Agency for Railways (ERA).

In addition to restating the provisions establishing ERA, the proposed Regulation provides for changes in a number of areas notably:

- to provide new tasks for the Agency i.e. issuing of safety certificates for railway undertakings, issuing authorisations for the placing of vehicles on the market, and authorisations for the placing in service of control and command and signalling systems;

and

- in relation to the administration of the Agency, the new regulation will provide for new sources of funding for its budget from fees and charges for authorisation and certificates.

Finally, the draft Regulation adopts a different structure to its predecessor which the Commission considers will make it more user friendly.

The proposal for a Directive to amend the Directive establishing Single European Rail Area (Directive 2012/34/EU) targets what are seen as the two remaining obstacles to the establishment of a Single European Railway Area.

The first obstacle to be addressed by the proposal is the access to domestic rail passenger markets - the distinction between international and domestic rail
passenger services will no longer be necessary. The unavailability of access to such markets is viewed as a hindrance to competition. The opening of the markets will increase competition and lead to an increase in the quality and quantity of passenger services.

The second obstacle to be addressed by this proposal concerns issues relating to the governance of infrastructure managers (i.e. managers of the railway network as distinct from providers of rail services) especially where the infrastructure manager is part of an integrated structure that includes the incumbent railway undertaking. Where Infrastructure Managers are part of an integrated structure they have a higher risk of conflicts of interest with regard to the non-discriminatory granting of access to infrastructure. Such conflicts of interest are viewed as a barrier to increased competition in the domestic market.

To address these obstacles the proposed Directive provides for greater openness of access to domestic markets for passenger transport services by rail. As regards the governance of infrastructure managers, the proposal will allow for vertically integrated undertakings within a holding company to maintain ownership of an Infrastructure Manager. However, such a structure will only be allowed where the Infrastructure Manager has independence of decision making. There will have to be safeguards to protect the Infrastructure Manager’s independence especially financial independence.


This is a proposed Regulation to amend Regulation 1370/2007 which sets out a framework for the awarding of Public Service Contracts and compensation for performing public service obligations by road and rail.

Most domestic rail passenger services are not provided on a commercial basis but performed under public service contract. Some Member States award the contracts directly and a smaller number of Member States award the contracts by means of a competitive tendering process.

The aim of this proposed Regulation is to set out rules for the mandatory tendering of public service contracts. The European Commission is of the view that mandatory tendering will provide competitive pressure on the domestic market and lead to an increase in the quantity and quality of passenger services provided.

It should be noted that this proposal is closely linked to the proposal on the opening of domestic rail passenger markets. The proposal allows for Member States to continue to award public service contracts by direct award during the period 2013-2019, with the proviso that any contract awarded in this period shall not extend beyond 31 December 2022.

The proposed regulation seeks to repeal Regulation 1192/69. The 1969 Regulation allows Member States to compensate 36 specified railway undertakings for payment of classes of obligations which it was considered did not have to be borne by other transport modes and as such imposed a competitive disadvantage on the railways.

The European Commission considers that the provisions of Regulation 1192/69 are either inconsistent and incompatible with other measures of Community law currently in force such as the State Aid rules or are redundant because the measures are provided for in other more recent legal instruments relating to regulation of the railways. Therefore it is proposal to repeal the Regulation.

While originally some fifteen classes of such obligations were defined, the Commission found that payments were being made only under three classes namely (1) loss or injury at work (2) pensions and (3) level crossings. Payments are being made by only four Member States (Belgium, Germany, Ireland and Poland).