

22nd November 2004

ASSESSMENT OF THE EC 3RD RAILWAY PACKAGE

Proposed Regulation on International Passengers' Rights

*Final Report for Department for Transport
Volume 2*

NERA
Economic Consulting

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1. INTRODUCTION

1.1. The Study

This is volume 2 of the final report in NERA's study for the Department for Transport (DfT) on the European Commission's 3rd Railway Package. This particular volume deals with the proposed Regulation on international rail passengers' rights and obligations.

The final report presents the evidence base for a regulatory impact assessment of the four legislative proposals contained within the 3rd railway package. The report consists of four volumes, one for each proposal, as follows:

1. A draft Directive concerning opening the market for international passenger services by rail;
2. A draft Regulation setting out the rights and obligations of international rail passengers;
3. A draft Regulation on contractual quality and compensation requirements for rail freight services; and
4. A draft Directive on train driver licensing.

1.2. The Proposal

The proposal on international passenger rights consists of a number of distinct components, of which the main ones are:

- The provision of information, tickets and reservations for international journeys by train operators and tour operators. Railway undertakings are required to offer tickets for international journeys from all main rail stations, where main rail stations are defined as being stations that have services of more than 100 km.
- Liability for injury, death and damage to luggage for train operators on whose services international journeys are undertaken, including strict liability for the first €220,000 per passenger for death or injury.
- Minimum compensation requirements for delay and cancellations of international services (Eurostar, Belfast to Dublin service); and liability for consequential damage on these services when the delays exceed one hour.
- Obligations on train operators to assist persons with reduced mobility.
- Operators have the right to claim compensation from infrastructure managers to recover compensation paid by operators to their customers.

- Enforcement of the Regulation by a competent authority in the Member State, and cooperation between those authorities.

1.3. Our Approach

NERA's project team consists of economists with extensive experience of working on studies in the rail sector and on appraisal / cost benefit analysis techniques. Our team has worked on a wide range of projects in the rail sector, including a large number of studies on the regulation of domestic rail passenger services in Great Britain and a study in year 2000 for the former British Railways Board on the market for rail passenger services to and from Europe from beyond London.

We held discussions with the following stakeholders with respect to this proposal, and are grateful for the considerable assistance we received:

- The Association of Train Operating Companies (ATOC);
- Department for Regional Development, Northern Ireland (DRDNI);
- Department for Transport (DfT);
- Eurostar UK Ltd;
- London Transport Users Committee (LTUC);¹
- Northern Ireland Railways (NIR);
- Office of Rail Regulation (ORR); and
- Strategic Rail Authority (SRA).

We also held brief discussions with air transport bodies, IATA and CAA, because there are certain parallels with the EC's proposal and the Regulation on air passengers' rights (Regulation (EC) No 261/2004).

¹ LTUC is the watchdog for users of Eurostar in the UK.

1.4. Structure of the Report

The report structure closely follows the standard structure for a regulatory impact assessment as set out in the Cabinet Office guidelines.² It diverges in some areas to reflect the fact that this is providing the evidence base for the RIA, and not the RIA itself (for example, the consultation is a separate process). Following the introduction, the report structure is as follows:

- Chapter 2 discusses the purpose and intended effect of the proposal;
- Chapter 3 provides supporting information that is used to prepare the evidence base for the RIA;
- Chapter 4 introduces the options we are considering to address the purpose of the proposal, including option 1 which is the base case to which other options are compared;
- In Chapter 5 we examine the business sectors affected by the proposal;
- In Chapter 6 we discuss the implications of the proposal for equity and fairness;
- In Chapter 7 we analyse the benefits of the proposal and other options;
- In Chapter 8 we analyse the costs of each of the options;
- In Chapter 9 we discuss the impacts of the options on small firms;
- In Chapter 10 we discuss the implications of the options for competition; and
- In Chapter 11 we summarise our findings.

² Cabinet Office (January 2003) *Better Policy Making: A Guide to Regulatory Impact Assessment*.

2. PURPOSE AND INTENDED EFFECT

2.1. Objectives

The European Commission are concerned that there have been substantial cutbacks in the provision of conventional international train services between a number of EC countries mainly due to their poor financial performance; and that there are risks posed to the future development of long-distance international services by the increasing competition from low-cost airlines.

The objective of the proposed Regulation is to provide better protection of passengers in international rail transport (passenger transport by rail is often excluded from the scope of EU legislation on consumer protection). It is also intended to address concerns on the quality and quantity of international rail services.

2.2. Background

European Commission transport policy, as set out in the 2001 White Paper, *European Transport Policy for 2010: Time to Decide* is heavily orientated towards development of the role of rail. "Revitalisation of the rail sector is at the heart of the Commission's sustainable mobility strategy." A core objective is to return rail mode share to its 1998 levels (6.2 per cent of passenger-kms, and 14 per cent of freight tonne-kms) by 2010.

2.3. Risk Assessment

The Regulation is intended to address the risks associated with monopoly provision of rail services: particularly, low service quality and poor consumer protection.

3. SUPPORTING INFORMATION

3.1. Statistics for International Rail Journeys

In the UK there are two sets of international services that are within the scope of this legislation:

- Services using the Channel Tunnel between Britain and France. All such services at present are operated by Eurostar;
- Enterprise services between Northern Ireland and the Republic of Ireland using the rail line between Belfast and Dublin, the only cross-border railway line that is still in operation. Such services are currently operated jointly by Northern Ireland Railways (NIR) and Iarnrod Eireann (IE).

As Eurotunnel is not a licensed undertaking, it is not within the scope of this proposed Regulation. Similarly, rail-ferry-rail services are also excluded. However, as much of the legislation concerns international journeys rather than international services, most domestic operators are to some extent affected.

For the 12 months to July 2004, Eurostar served 7.0 million passenger journeys through the Channel Tunnel (ie around 3.5 million outbound journeys). This represented an increase of more than 10 per cent on the previous 12 months, and is probably largely due to the opening of the first phase of the Channel Tunnel Rail Link (CTRL) in September 2003, reducing journey times by around 20 minutes. The second phase (CTRL2) is expected to open in 2007, and will reduce journey times from the London Terminal to Paris and Brussels by a further 20 minutes. We understand that a recent change to Eurostar's fares structure has also contributed to increases in traffic, though at a lower average yield per passenger.

We do not have data for the number of international passengers using the Enterprise service from Belfast to Dublin. There are around 8 services a day in each direction, compared to 24 a day for Eurostar.³

Some passengers will access the international services by train, for example by travelling from Reading to London, and the entirety of such rail journeys would be covered by the proposal. There are no official statistics regarding such passengers. The data we do have are as follows:

³ Calculated from timetables valid for weekdays Autumn 2004. Northern Ireland Railways served a total of 6.9 million passenger journeys in 2003/04 (Source: Northern Ireland Transport Statistics Table 6.6).

- Eurostar estimates that rail is the access mode to the Eurostar terminal at Waterloo for around 30 per cent of passengers (ie around 1.2 million outbound passengers will reach Waterloo by rail, though many of these will be short trips).
- In 2003/04, 175,000 outbound journeys were classified as being made from stations in Great Britain to “London International”.⁴ Tickets to “London International” may only be purchased if the passenger provides proof of their onward journey by Eurostar. Such tickets entitle passengers to certain rights under the Convention concerning International Carriage by Rail (COTIF).
- Through tickets integrating domestic travel in Great Britain and Eurostar are available from some operator travel centres and the Eurostar call centre; only 7,400 such tickets were sold in 2003.⁵

Also of interest is the extent to which UK passengers using Eurostar continue their journey by rail in continental Europe. Eurostar has argued that very few passengers make long onward connecting journeys, because the Channel Tunnel loses its competitive advantage relative to airlines in such cases. Eurostar has shown us confidential passenger data that demonstrate this.

3.2. Assumptions for International Rail Journeys

The estimation of costs and benefits of the European Commission’s proposal requires certain assumptions to be made concerning numbers of international passenger journeys. Below we explain the central case assumptions we have made, which, due to the absence of data in this area, can only be regarded as highly indicative. They apply to the do-minimum option, for the ten years following implementation of the Regulation, which we assume to be around 2008. We also explain the basis for these assumptions.

- We assume that on average 10 million passenger journeys a year are made on Eurostar through the Channel Tunnel. Compared to the 7 million passengers a year today, this makes a broad allowance for the generative effects of CTRL2 as well as general economic growth increasing passenger demand. *We do not have access to Eurostar or government forecasts of demand.*

⁴ Data provided by ATOC from analysis of ticket sales data from the LENNON database.

⁵ Data provided to NERA by Eurostar.

- We assume that 40 per cent of Eurostar passengers are UK citizens.⁶ This is a conjecture, based on the reasoning that around 50 per cent of single and return journeys will originate in the UK, but that a significant proportion of these will be made by citizens from countries not served by Eurostar.
- We assume that around 30 per cent of UK passengers purchase their international rail tickets by the Internet, compared to approximately 24 per cent of Eurostar revenue accrued through revenue sales today.
- We assume that around 10 per cent of UK citizens boarding international services in the UK will have accessed the station by train, excluding very local train journeys such as those made entirely within Greater London. This figure is more than that suggested by the data for purchase of tickets to “London International”, but is less than the 30 per cent who access Waterloo by rail: many of the latter will be making short local journeys.
- We assume that only around 2 per cent of Eurostar journeys made by UK citizens are part of a longer journey with a major leg in continental Europe (ie rail trips excluding frequent service local rail trips such as those within the Paris conurbation). The assumption of 2 per cent is broadly consistent with a limited amount of confidential sales data that Eurostar shown us, though is subject to high uncertainty.
- Approximately 250,000 requests a year are logged on the Assisted Persons Reservation System, representing around 0.025 per cent of all rail journeys. We assume that the same proportion of international travellers would require assistance, or around 2,500 Eurostar passenger journeys a year.

⁶ In accordance with RIA guidance, we do not assess impacts on passengers from other countries.

Table 3.1
Assumptions Concerning International Passengers
Average 2008 to 2017, Do Minimum Option

Measure	Assumptions		
	Lower	Central	Upper
Annual passenger journeys by Eurostar through the Channel Tunnel*	9 million	10 million	12 million
Percentage of Eurostar journeys made by UK citizens	40%	40%	40%
Percentage of international tickets purchased via the internet	25%	30%	60%
Percentage of international journeys from Great Britain involving a significant domestic rail leg	7%	10%	20%
Percentage of international journeys starting or terminating in Great Britain, made by UK citizens involving a significant rail leg in continental Europe	1%	2%	3%
Annual passenger journeys by Eurostar for persons with reduced mobility	1,000	2,500	5,000

*Note: these are NERA estimates, and are not based on formal forecasts.

3.3. Current Regulation of Passengers' Rights

3.3.1. Domestic rail services

3.3.1.1. Information

Domestic passengers in Great Britain can access timetable information prior to their journey either by telephone or by the internet through the service National Rail Enquiries. Station ticket offices will also provide the relevant information. The Rail Settlement Plan, a subsidiary of ATOC, maintains a single fares database for all domestic journeys in Great Britain. This is used by retail outlets including internet sites to provide fares information and ticket sales.

Details for journey times and connections on Northern Ireland Railways are available on the Translink website or by telephone; fares information for some of the main journeys in Northern Ireland is available through the Translink website, and fares queries can be made by telephone. Information is also available at stations.

Most UK stations use notice boards to display information concerning train delays and timetables of services. More detailed, real time, information is provided in many cases. Provision of information on trains tends to vary from service to service and even from train to train. It is common practice to inform passengers of delays to the service by loudspeaker.

3.3.1.2. *Ticket sales*

The Ticketing and Settlement Agreement (TSA) is a multi-lateral agreement between all TOCs that has been approved by the SRA and sets out how fares will be created, sold, honoured and settled. Features of this agreement are:

- The availability of through fares for all national rail journeys in Great Britain.⁷ For example, a single ticket can be purchased for a journey from Reading to Stevenage, a journey which would require travel on two separate TOCs and London Underground.
- Inter-available fares for all national rail journeys in Great Britain.⁸ For example, for the standard set of fares, journeys from Milton Keynes Central to London Euston can be made on either TOC serving that route (Virgin West Coast and Silverlink).
- A requirement for TOCs to provide accurate and impartial retailing. They must, for example, draw a prospective passenger's attention to a cheaper alternative, irrespective of whether it is offered by a competing TOC.
- Typically, larger station ticket offices are required to sell the full standard range of tickets between any pair of stations in Great Britain; smaller stations will typically sell all fares for journeys within, to and from their region.⁹ Ticket offices at smaller stations tend to have limited opening hours. A more limited range of tickets can be purchased on board some trains. Some train services, particularly those in the South East, operate a penalty fares regime for passengers who do not have tickets.

This level of integration requires a complex system of revenue allocation, including allocation between national rail services and regional or local transport authorities, notably Transport for London.

3.3.1.3. *Compensation*

Compensation for service delays and cancellations are specified in the passengers' charter produced by each passenger operator, as required under each franchise agreement. The minimum requirements are for a voucher worth 20 per cent of the cost of the journey for delays of one hour or more.¹⁰ Most franchise operators offer more generous compensation.

⁷ Strictly, fares are required to exist for each flow (origin, destination, route combination) for which British Rail had through fares in 1995, subject to any additions or deletions approved by the SRA from time to time.

⁸ Each flow is assigned a lead TOC, who sets fares on that flow; these fares must be accepted by all operators serving all or part of that flow. TOCs other than the lead TOC are free to set (discounted) fares for the flow that are valid only on their service. The exception is the flow served by Gatwick Express, whose tickets cannot be used on competing services or vice versa.

⁹ The requirement, specified in the TSA, is based on the tickets on sale at each station under British Rail.

¹⁰ There are separate arrangements for season tickets valid for more than a week; they are not discussed here.

In almost all cases, the compensation is offered in the form of a voucher to reduce the cost of future rail travel, rather than cash. For example some operators offer a voucher worth 25 per cent of the value of a single ticket for a delay exceeding one hour, and 100 per cent for a delay exceeding two hours.

Translink also pays compensation for delays to Northern Ireland Railways through vouchers. For its longer distance services, including the service to Dublin, Translink offers compensation on the price of a single ticket of 25 per cent, 50 per cent and 100 per cent for delays exceeding 30 minutes, 60 minutes and 90 minutes respectively.

Operators also pay compensation for passenger injuries/casualties and damage caused to luggage. TOCs are currently required to maintain £155 million of 3rd party liability cover.

3.3.1.4. Assistance for persons with reduced mobility

TOCs are required to establish Disabled Persons Protection Policies that are consistent with the SRA Code of Practice in this area.

Operators participate in the Assisted Person Reservation System. Under this system, operators will arrange assistance to disabled persons for all stages of their rail journey if they are notified 24 hours in advance. The register currently receives around 250,000 requests a year - approximately 0.025 per cent of all rail journeys - and this number is increasing broadly in line with rail passenger growth.

Translink also offers assistance to disabled passengers on Northern Ireland Railways, asking that the passenger notify their local station least 24 hours in advance.

3.3.2. COTIF

Certain rights for international rail passengers are established under the Convention concerning International Carriage by Rail (COTIF). The Convention was modified under the Vilnius Protocol of 1999, further extending the rights of international passengers. The Protocol is expected to come into force in 2005. The uniform rules concerning international passengers rights are set out in CIV, which is Appendix A to the Convention.

In this section we outline international rail passengers' existing rights, set out in CIV under the Vilnius Protocol. The relevant provisions for rail passengers on international journeys, which are expected to come into force in 2005, are:

- **Death and personal injury:** The railway undertaking that is carrying the passenger is liable for necessary costs.¹¹ The maximum compensation is £175,000 or in line with national law, whichever is the greater. The carrier's liability is waived if:
 1. The cause is unconnected with the operation of the railway;
 2. The cause is the passenger's own fault; or
 3. a third party is responsible.

- **Cancellations and Delays:** the railway undertaking is liable to pay compensation to international passengers in the event of cancellations or delays which cause the passengers' journey to be incomplete by the end of the day on which it was scheduled to be completed. The compensation due is intended to cover reasonable costs of accommodation and costs of notifying those expecting the passenger. This liability is waived if:
 1. The cause is unconnected with the operation of the railway;
 2. The delay is the passenger's fault; or
 3. The delay or cancellation is the fault of a third party (but not another railway undertaking using the same infrastructure).

- **Loss of or damage to hand luggage:** the railway undertaking is liable to pay compensation to passengers that are injured or killed for loss of or damage to hand luggage. Carriers are also liable if the damage or loss is their fault. The compensation is limited to £1,400. Liability is waived if:
 - the passenger does not conform to the requirements of customs or other administrative authorities.

3.3.3. Regulation on Air Passengers' Rights

In this section we provide a brief summary of the rights of air passengers that were published as Regulation (EC) No 261/2004 on 11 February 2004. The Regulation is due to come into force on 17 February 2005, though it is currently subject to judicial review. The purpose of this section is to provide a comparator to the proposed Regulation of rail passengers' rights. This Regulation will establish rights of passengers in a number of situations. We now outline each of these and the compensation that will be paid to passengers:

¹¹ In the event of the death of the passenger these costs include the transport of the body and funeral costs and in the event of personal injury the costs include transport and treatment costs and compensation for loss of earnings.

- **Denied boarding:** Passengers will be entitled to cash compensation and other assistance if denied boarding due to overbooking of the flight. The amount of compensation to be paid will depend on the distance that the passenger was due to fly and the jurisdiction of the destination.
- **Cancellations:** passengers will be entitled to cash compensation and other assistance unless the airline gave more than two weeks notice that the flight would be cancelled, or if less notice is given that passengers can be re-routed and their total travelling time changes little.¹²

In cases of denied boarding or flight cancellation the following schedule of compensation payments applies:

- €250 for flights of 1,500km or less;
 - €400 for intra-EU flights of more than 1,500km or flights of 1,500km to 3,500km to destinations beyond the EU; and
 - €600 for flights of more than 3,500km to non-EU member states.
 - Additionally, the passengers shall be offered reimbursement of the ticket purchased, a return flight to their destination at the earliest opportunity or re-routing, and meals, refreshments, hotel accommodation (if an overnight stay is necessary) and two free telephone calls, telex or fax messages, or emails.
- **Delays:** Compensation will be due for delays of two hours or more for flights of less than 1,500km, for delays of three hours or more for intra-EU flights of more than 1,500km or flights to destinations between 1,500km and 3,500km that are outside the EU, or for flights of more than 3,500km to destinations outside the EU that are delayed by four hours or more.
 - Passengers shall be provided with meals and refreshments, telephone calls, etc., hotel accommodation if an overnight stay is necessary, and a refund in the event of delays of more than five hours.

¹² If the cancellation is notified between seven and fourteen days before scheduled departure compensation is not due if the alternative flight departs no more than two hours before the original scheduled departure time and arrives not less than four hours after the scheduled time of arrival. If less than seven days notice is given the re-routed flight(s) must depart no sooner than one hour before the scheduled departure time and arrive no more than two hours after the originally scheduled arrival time.

- **Disabled Passengers:** carriers will be required to give priority to disabled passengers and people and service dogs assisting them. In the event of delays, cancellation or denied boarding disabled passengers will be entitled to meals, refreshments, and telephone calls, etc immediately.

In contrast to the proposal for international rail passengers, the Regulation for air passengers does not specifically address damages for consequential losses. There are, however, rights regarding liability for **consequential damages of delays** in the Montreal Convention. These rights are limited to 4,150 special drawing rights per passenger (Article 22 (1)), which is broadly equivalent to £3,600.

3.4. Railway Performance and Compensation

Eurostar currently offers a single free ticket or 50 per cent reduction on the next return trip for delays of over one hour, and a cash refund for delays over three hours for the affected leg of a journey. Its punctuality has improved since the opening of the Channel Tunnel Rail Link: it was 89 per cent from September 2003 to March 2004.¹³

TOCs offer different compensation packages with vouchers (see section 3.3.1.3). A summary of TOC performance is provided in Table 3.2.

Table 3.2
Performance Data for Domestic Passenger Rail Service in Great Britain

	Length of Delay		
	0 to 30 minutes	30 to 59 minutes	More than 60 minutes
All franchises	99.20%	0.69%	0.10%
Long distance franchises	94.83%	4.02%	1.15%

Source: Weighted averages by service, calculated by NERA using June 2004 data prepared by the SRA.

3.5. International Journey Information and Ticket Sales

International rail tickets are currently sold at around 30 stations in Great Britain, to a limited number of destinations. There are very few sales of tickets combining a domestic leg and Eurostar: around 7,400 in 2003. Eurostar offers through tickets to some destinations, in particular to any station within Belgium (which is included within the price of a ticket to

¹³ Eurostar Response – 3rd Rail Package Proposals from the European Commission, 1 June 2004.

Brussels), and through tickets using the Thalys service to the Netherlands, Belgium and Germany.¹⁴

Rail Europe is the main retailer of continental European rail tickets in Great Britain. Tickets are sold for a limited range of journey pairs. This service can also be accessed via the internet.

It is possible to buy tickets to all rail stations in Eire from any station in Northern Ireland. Tickets for services in the UK or on continental Europe are only available from one Translink travel centre.

Passengers may purchase international timetables for long distance services in book form, or examine timetables on the relevant state railway's website.

European railways have established a system for selling tickets for international journeys, organised by the international union of railways, UIC. The international passenger and baggage tariff, TCV, is used to compute fares on the basis of rates per km travelled. Revenue is reallocated to the service provider through UIC's Brussels Clearing Centre.

Major software projects commissioned by UIC are, however, increasing the integration of international rail information and ticket sales.

The MERITS project integrated the timetables of European railways. The project was then extended to include the HORSE search engine. As a result, since 2002 users can input an origin and destination pair in Europe and their time of travel, and the appropriate services and connections will then be displayed. All EU state railways are participating in this process, which ATOC joined in 2001.

The UIC has, on prompting by the European Commission, recently launched a further project, PRIFIS. PRIFIS is concerned with developing a fares information system, capable of computing complex fares, to be linked to timetables. The UK is participating in this project. The planned fourth implementation phase of PRIFIS consists of linking timetable, price and availability data (for the purpose of making a reservation).

¹⁴ Information provided to us by Eurostar.

4. OPTIONS

4.1. Summary of Options

Table 4.1 summarises the options that we have considered in this study.

Table 4.1
Summary of Options

	Brief description
Option 1	Base case: the do minimum
Option 2	Full implementation of the EC proposal
Option 3	Implementation of the proposal for international services only
Option 4	Implementation of the proposal with compensation at existing levels
Option 5	Implementation of the proposal without liability for consequential losses

We now describe each of these options in turn.

4.2. Option 1 - Base Case

The base case, with which all other options are to be compared, is a do-minimum.

Over the period that we would consider, there would be some changes under this option. Further liberalisation of rail passenger markets might occur, though this is likely to be slow and is likely to have limited impact in the UK. And the Channel Tunnel Rail Link would be complete, increasing the attractiveness of Channel Tunnel rail services. Existing Community legislation, including the First and Second Rail Packages¹⁵, will have been implemented in the EC Member States; and the 1999 version of the COTIF convention will have been brought into force, including its uniform rules on passenger contracts (CIV).

ATOC is already committed to UIC projects MERITS and PRIFIS, which over the next few years will result in integrated systems for querying European railways timetables and fares and for making reservations for rail journeys within Europe.

¹⁵ Directives 2001/12, 2001/13, 2001/14, 2004/49, 2004/50, 2004/51 and Regulation 881/2004

4.3. Option 2 - Full Implementation of the EC Proposal

Full implementation of the proposal would establish the rights and obligations of passengers and railway undertakings described in Section 1.2. A competent authority would be required to monitor and enforce those rights and obligations.

4.4. Option 3 - Proposal Restricted to International Services

As option 2 except the Regulation would apply to passengers travelling on international services rather than on all legs of an international journey. i.e. the Regulation would not apply to connecting domestic services.

Additionally, the definition of main stations would be limited to those that offer international services. In the UK, that would mean London St Pancras, Ashford, any other stations served on CTRL, Belfast, Portadown and Newry.

4.5. Option 4 - Compensation As Per Current Practice

As option 2 except:

- passengers travelling on high speed international services would be compensated for delays in vouchers (instead of cash) and the payment would be at the same level as is currently paid by Eurostar;
- passengers travelling on non-high speed international services would be compensated at the SRA minimum level - i.e. a refund of 20 per cent of the ticket price for delays of more than one hour.¹⁶

4.6. Option 5 - Removal of Clause on Consequential Losses

As option 2 except railway undertakings would not be liable for consequential losses.

¹⁶ See Table b) *The existing contractual system* in "Study on penalty systems in the railway industry", Landwell Associates for The European Commission - Energy and Transport DG.

5. BUSINESS SECTORS AFFECTED

Full implementation of the proposed Regulation (option 2) would have an impact on all passenger train operating companies in the UK. These include the 25 franchised TOCs, Hull Trains (the only open access operator), Eurostar and Northern Ireland Railways. Network Rail, CTRL UK and Eurotunnel would become liable to pay compensation for delays – at the rates set in the Regulation – to passenger operators for delays that they cause. The same businesses would be affected by the Regulation under options 4 and 5.

Under option 3 the Regulation would be limited to international services and the stations served by them. Eurostar and Northern Ireland Railways would be affected by the Regulation under this option. CTRL UK and Eurotunnel would be affected because they would be liable to pay compensation for delays that they cause to international passenger services that are consistent with the compensation rates set in the Regulation. Network Rail would only be affected, on a similar basis, if international services used its infrastructure. Domestic operators whose services delay international passenger services could also be affected by any consequential changes to performance penalty rates, though the Regulation does not explicitly require this.

6. EQUITY AND FAIRNESS

Passengers making international journeys will benefit if service quality is improved. They will also benefit from receiving cash transfers from operators and infrastructure managers if regulated standards (primarily punctuality) are not met. Disabled passengers might also receive more assistance than they currently do.

The costs associated with service improvement and the administration of the compensation scheme will be borne by the affected passenger rail operators and infrastructure managers. A proportion of the increases in costs is likely to be passed through to all passengers in the form of increased fares or decreased service provision so this would adversely affect them. Some of the costs may be borne by taxpayers. This does not raise issues of equity or fairness however because these groups do not disproportionately represent the poor or minority groups.

7. BENEFITS

We assess benefits on the assumption that any proposal is implemented in 2008. In accordance with RIA guidance, we have assessed the impacts of the proposal over a ten year period (2008 to 2017) and used a discount rate of 3.5 per cent.

7.1. Option 1 - Base Case

Option 1 is the base case, do-minimum. Benefits are measured relative to the base case.

The proposal consists of a number of regulations which may result in improved services for customers. The do-minimum has the advantage that it increases the flexibility of operators and Member States to tailor service standards to local conditions. Regulations have associated costs.

7.2. Option 2 - Full Implementation of the EC Proposal

7.2.1. Information and Tickets (Chapter II)

Passengers travelling within the island of Ireland do not benefit from the provisions in Chapter II of the draft Regulation, because information and through ticketing are already available. Hence we consider the impacts for passengers in Great Britain only.

We estimate that, following the opening of CTRL, there would be between 250,000 and one million international rail journeys a year made by UK citizens involving a significant leg in Great Britain.¹⁷

Such passengers would benefit from the provisions for information and ticketing required by the proposal, as illustrated by the following examples:

- Passengers that might, under the do-minimum option, book a Eurostar ticket by internet or phone and purchase the domestic fare at the station on the day, would no longer need to queue for a ticket at the station (though they may wish to retain flexibility and continue to do so);
- Passengers who might book both tickets by phone / internet would be able to forgo the post and packaging costs of a set of tickets, as well as achieve small savings in booking time;

¹⁷ These are our own estimates calculated from information given in Table 3.1. They are broadly in line with LENNON data on travel to and from London international, though comparisons are difficult because our figure consists of UK citizens only.

- Other passengers who currently purchase their Eurostar tickets by telephone or the internet might prefer the option of station retail outlets (though this would only be possible if domestic stations were required to sell such tickets: see discussion in section 8.2.1).

By considering the likely savings in time, postal and telephone charges in each of these examples, and using a standard value of time, we think that an average benefit of £1 to £2 per return journey is reasonable. Benefits would decrease over time as under the do minimum more passengers in any case would use internet facilities and e-ticketing. The total benefit for such passengers is then in the range £0.1 million to £0.7 million a year.

There would also be some disbenefits to other domestic passengers who are delayed in purchasing their own domestic tickets because the request for an international journey and reservation would take considerably longer to process. This would particularly be the case in smaller stations and on board trains. It is difficult to estimate the scale of this effect, but by examining the impacts under different scenarios (for example a single queue with few passengers, or a busy station with several ticket windows and a combined queue) we conclude that the benefits described above may be eliminated, and net benefits would probably be less than £300,000.

We estimate that between 40,000 and 150,000 international rail journeys a year are made by UK citizens that include a significant rail leg in continental Europe (see section 3.2 for details). However, the vast majority of these would consist of journeys for which Rail Europe and / or Eurostar already sell tickets in the UK.

For such journeys, the proposed Regulation would have little impact on information provision and ticketing. Passengers may gain benefits from more retail outlets in the UK, in the form of stations, but these will largely be outweighed by disbenefits to domestic rail passengers delayed from purchasing their tickets by the international passengers. Whilst the improved information required by the Regulation would assist passengers, it will largely be achieved by UIC projects MERITS and PRIFIS, which are already committed expenditure.

Many other passengers (for example those travelling to small stations in France) are already able to purchase tickets via the internet: several European rail operators, including SNCF and DB AG, provide information in English and already sell a wide range of domestic tickets which they will post to UK addresses. Only those passengers who would prefer not to, or are unable to, use the Internet would therefore benefit. We estimate that up to 6,000 return journeys a year could be in this category, and the benefit of being able to purchase the ticket in advance at a UK rail station could be worth on average up to £10 for such passengers (though additional queuing time would cause some disbenefits to domestic passengers). Therefore the benefits of improved information provision and retail could be up to £60,000 a year, though are likely to be substantially below such a figure.

We therefore estimate that the overall benefits to UK citizens of improved information and ticketing to be up to in £360,000 a year.

7.2.2. Liability, Damages and Compensation of Railway Undertaking (Chapters III, IV)

We calculate the levels of compensation likely to be paid to customers in section 8.2.2. These are not net benefits but transfers from railway undertakings and infrastructure managers to customers. We estimate the net additional payments to be between £2.5 million and £7.5 million a year for Eurostar; we have not quantified the impact for Translink.

Passengers would obtain additional benefits from the expectation that, should their service be disrupted, they should be adequately compensated. The effect would be limited, however, because Eurostar already offers compensation based on research concerning passengers' preferences and Translink also has a significant compensation package (see sections 3.3.1.3 and 3.4 for details).

The increase in compensation payable might be expected to incentivise performance, resulting in better services to passengers. However, this would only result in net benefits (with the benefits outweighing the costs of improving performance) if there were a market failure in the do minimum option resulting in operators providing sub optimal levels of performance. This is unlikely to apply to Eurostar, which competes directly with airlines and already has a significant compensation package. It is possible that Translink, as a state run service, does not respond appropriately to the market incentives provided by its compensation package. But if this were so, the problem would remain with a revised compensation package under the proposed Regulation. Eurotunnel does not currently experience financial cost for delays to Eurostar. Implementation of Art 11 of Directive 2001/14/EC (part of the do-minimum) will however require some form of performance scheme to be implemented, so this market failure would be corrected under the do minimum option.

We therefore conclude that there to be no net benefits from the compensation provisions under the draft Regulation in relation to UK based international services. In contrast, if certain international services between other Member States offered inadequate compensation, the proposal would serve to provide more appropriate levels of consumer protection, resulting in net benefits for the passengers affected. As stated above, we estimate the transfer payment to be in the range £2.5 million to £7.5 million for Eurostar, with additional costs for Translink.

7.2.3. Persons with Reduced Mobility (Chapter VI)

We understand that there would be no major changes to the provision of facilities to passengers with reduced mobility as a result of the proposed Regulation. At the margin there may be some benefits, but considerably fewer than 1,000 passengers a year would be

affected, and the benefits would not be material in the context of the proposal's overall impacts.

7.2.4. Growth in International Rail Passengers

The draft Regulation might encourage more UK citizens to undertake rail journeys in continental Europe, and this would have associated benefits. However, we do not consider there to be net benefits in this area. For, as we argue elsewhere, the benefits to passengers of the draft Regulation are outweighed by the costs of compliance; we would expect these costs to be passed on to passengers in the form of higher fares, making international services less attractive overall.

In addition, Eurostar's experience with the sale of through tickets and promotion of European rail travel (discussed in section 3.1) suggest that improvements in information and ticketing would not result in major changes to demand for international rail travel from the UK.

7.3. Option 3 - Proposal Restricted to International Services

Under this option, the benefits for UK citizens associated with improved ticketing and information provision as a result of the legislation would be minimal: the international terminal at London St Pancras and other international stations in the UK would be required to provide information about other international services, but few UK passengers would use such services (few passengers travel from Great Britain to Spain by train for example). And Eurostar already provides information and integrated ticketing for some connecting international services, notably Thalys.

The compensation payable under this option is calculated in section 8.3. As we explained in section 7.2.2, we understand the compensation paid by Eurostar currently to be well researched and based on passengers' preferences. On that basis, we do not consider the proposed compensation regime to have additional net benefits; indeed it may result in a less attractive overall service because customers would not get good value from the additional costs.

We understand that Eurostar's assistance to persons with reduced mobility would not change materially under the proposal, so would not have associated benefits.

Overall, therefore, we consider that this option would offer no material benefits to the UK, though there may be benefits to other Member States.

7.4. Option 4 - Compensation As Per Current Practice

The difference between this option and option 2 is with respect to the impact on compensation. Hence some of the additional transfer payments associated with

compensation would be removed under this option. As discussed in chapter 8, we estimate these payments, that would be forgone under this option, to be in the range £2 million to £3 million for Eurostar, with additional payments for Translink.

7.5. Option 5 - Removal of Clause on Consequential Losses

The difference between this option and option 2 is with respect to the impact on compensation for the consequences of delay. Hence the transfer payments associated with such compensation would be removed under this option.

As discussed in chapter 8, we estimate these payments, that would be forgone under this option, to be in the range £0.45 million to £4.5 million for Eurostar, with additional payments for Translink.

8. COSTS

We assess costs on the assumption that any proposal is implemented in 2008. In accordance with RIA guidance, we have assessed the impacts of the proposal over a ten year period (2008 to 2017) and used a discount rate of 3.5 per cent.

8.1. Option 1 - Base Case

Option 1 is the base case, do-minimum. Costs are measured relative to the base case.

8.2. Option 2 - Full Implementation of the EC Proposal

Option 2 is the European Commission's proposal.

8.2.1. Information and Tickets (Chapter II)

8.2.1.1. Information

Under this chapter, European railway undertakings are required to integrate their timetable, fares and reservation systems so that they can inform passengers about international journeys. They are also required to inform passengers of activities likely to disrupt or delay the service (such as engineering possessions).

The MERITS and PRIFIS systems, which we described in chapter 3, contribute to achieving these requirements because they provide information on timetables and fares, and phase 4 of PRIFIS should allow reservations to be made. The development costs associated with these systems are to a large extent sunk because ATOC has agreed to provide the necessary funding.

There are certain other miscellaneous information requirements with associated costs. One example is the requirement to provide passengers during the journey with information concerning main connecting services. This is common practice for many international services in Europe, but would be a large cost were all UK services required to comply, and is less useful at major centres such as London and Paris where there are large numbers of connections.

8.2.1.2. Ticket sales

Railway undertakings would be required to sell through tickets for international railway journeys in Europe between any pair of main railway stations. This imposes a major information requirement, and the software would presumably be built using PRIFIS / MERITS.

The PRIFIS and MERITS systems will not in themselves allow for international ticket sales. A system to account and apportion revenue would be required, probably building on current UIC practice for international revenue allocation. LENNON, the new system for accounting and allocating fares revenue in Great Britain, was introduced in 2003. The contract cost for design, build and operation of the system over a 17 year period was £80 million.¹⁸ A settlement system across Europe might have a similar level of complexity (it would, for example, involve a similar number of state railways as there are TOCs in Great Britain). In such circumstances, the cost to the UK might be around £0.5 to £1 million a year over the 10 years being appraised.¹⁹ There would also be one-off costs associated with establishing international agreements for such revenue allocation, including treatment of commission, but these would be of a smaller scale.

There would be costs associated with telephone and internet sales, but the set up costs would be quite small once other systems were in place, and ongoing costs would be closely related to the number of tickets sold, so their additional costs would be small.

By requiring tickets to be issued, and specifying the minimum information requirement on the ticket (Article 4), the Regulation effectively prevents the use of e-ticketing, a practice that Eurostar is keen to adopt. It might necessitate the additional printing and distribution of around 1.5 million tickets a year.²⁰ If this were to cost 50 pence per ticket (in administration, postage and packing or ticket issuing machines), the extra cost would amount to £0.75 million a year. However, the requirement to issue tickets is virtually identical to the provisions of COTIF 1999, which will be in force under the 'Do-minimum' option, so this is not a cost attributable to this Regulation.

Although Article 6.3 states that tickets for international journeys must be sold at ticket offices or telephone / internet, the French version of the draft Regulation requires sales at ticket offices *and* telephone / internet. Whilst we understand that the proposal was originally drafted in English, we agree with the observation by a stakeholder that other requirements in the proposal (not least Article 6.4 on sale of international tickets on the train) suggest that the French version reflects the Commission's intention. In the rest of this section we have therefore considered the possibility that tickets must be sold at ticket offices as a sub option.²¹

¹⁸ Source: ATOC press release, 28 August 2003.

¹⁹ This is calculated with regards to allocation of costs for other European rail systems projects.

²⁰ We have made this estimate on the basis of 10 million passenger journeys a year (discussed in section 3.2); this is then halved to allow for tickets issued on the continent and reduced further to allow for return tickets; we then conjecture that 50 per cent of tickets issued might be electronic – principally internet sales (see Table 3.1).

²¹ ATOC has suggested to us that this requirement might be achieved by offering the sale of international tickets at domestic stations, but that ticket would only be issued and collected at the international stations (typically St Pancras International), thus reducing costs associated with wide distribution of suitable ticket printers. As it is not clear that such an approach would be permissible under the proposal, we have not explored it further here.

We assume that the computer terminals staff currently use to sell tickets could be retained, with the appropriate software added. (The older ticket issuing systems in the UK, which could not readily be adapted, are in any case being phased out.)

The proposal appears to suggest that “selling machines” at all main stations must sell international tickets (Article 6.3), but this is not an issue that has been highlighted to us at interviews and we assume that the wording is sufficiently loose (it is preceded by the words “if available”) to prevent additional costs in this area.

The specification of the format for the ticket (Annex 2) is incompatible with ticket issuing systems used at stations and on trains in Great Britain (because conditions of use are not recorded on the ticket). Hence, a large number of compatible printers would be required to produce international tickets.

We assume that each printer costs £5,000, and one would be needed per main station, of which there are around 2,500 in the UK.^{22,23} The cost of these requirements is then £12.5 million upon implementation of the Regulation, or £1.4 million a year, expressed as an annuity. Allowing for different assumptions concerning frequency of replacement, and the extent to which these costs are additional to standard printer costs, we consider a reasonable upper and lower estimate of these costs are £2.8 million and £0.7 million a year.

Station staff would require training to be able to provide information and sell tickets for international journeys. As a minimum, two such staff would be needed per main station; 5,000 in total. Staff would need regular refresher courses, because few international ticket sales would take place at most stations so there would be limited opportunities to apply their knowledge. Allowing training costs of between £200 and £500 per member of staff per year, the total cost would be between £1 million and £2.5 million a year.

If ticket offices are closed, there is a requirement to sell tickets on trains. Rather than develop costly new machines for sale of international tickets on board (all) trains, we assume that the request to purchase an international ticket would be sufficiently rare that the train staff would obtain the necessary information from a central source (perhaps by making a priority call to a telephone sales service) and prepare the ticket by hand. Such an approach

²² This is based on our understanding that standard ticket printers cost between £2,000 and £3,000, but the larger printers required for international tickets would be more expensive. We assume that these are largely additional to existing printers, and have a useful life of 10 years with immaterial maintenance costs, on the basis that most would rarely be used.

²³ The definition in the draft Regulation is such that, with the exception perhaps of a few stations on short branch lines, all UK stations would be classified as main stations.

would be inconvenient – for example calls may be interrupted in tunnels – and would impede other ticket sales and revenue protection.²⁴

We therefore estimate the costs associate with this chapter to be in the range of £1.25 million to £1.75 million. If, however, the correct interpretation of the proposal is that international tickets should be available for sale at all main stations, then we estimate the costs would be in the range of £3 million to £7 million a year.

8.2.2. Liability, Damages and Compensation of Railway Undertaking (Chapters III, IV)

8.2.2.1. Liability for injury, death and damage to luggage

We understand that the requirements for compensation with respect to death, injury and damage to luggage are broadly in line with domestic provisions, so do not have major cost implications. We also understand that Eurostar does not anticipate significant costs associated with these requirements.

Currently each TOC is required to maintain £155 million in third party liability insurance. Under Article 7, railway undertakings would be required to have minimum insurance coverage of €310,000 per passenger. This proposed requirement does not appear more onerous: more than 700 international passengers would need to be affected on a single TOC's services for insurance levels to be inadequate.

It is quite possible that changes to legislation with respect to liability could prompt nervousness amongst insurers resulting in higher premia until the changing risk profile were better understood.

8.2.2.2. Direct liability for delays and assistance

Operators of international services will face additional compensation costs, which would benefit passengers.²⁵ Eurostar estimated compensation costs of £7 million a year, and have explained the calculation to us.²⁶ On this basis we calculate the additional compensation costs to Eurostar UK Ltd (ie excluding costs to the French and Belgium components) to be in

²⁴ We do not see that this provision would undermine the penalty fare regime: exceptions to the regime could be made for passengers wishing to purchase international tickets, which would cost a great deal more than penalty fares.

²⁵ Domestic operators would not have to pay compensation direct to passengers: although Annex III suggests that they would bear direct responsibility for delays to international passengers, the definition of delay and cancellation given in Article 2 means that only international services are affected.

²⁶ Eurostar, op. cit.

the range £2 million to £3 million.²⁷ These are transfer payments; for simplicity we assume that UK passengers' benefits are also in the range £2 million to £3 million a year.²⁸

We do not have sufficient information to calculate the additional compensation payments that would be made by Translink to international passengers.

Whilst Eurostar and Translink would bear some additional costs of processing compensation claims, these would be second order compared to the compensation paid because the operators already have comprehensive compensation regimes.

The right to claw back funds for delays caused by infrastructure managers (Article 24) would incur one-off costs associated with aligning payments with those of the compensation regimes.

Direct costs of assistance (hotels, refreshments and meals) are relatively small, and operators are already required to provide some assistance under COTIF. However, it would be physically difficult for all domestic rail services to comply with requirements concerning refreshments and meals, which may result in them being fined by the competent authority for a breach of the Regulation.

8.2.2.3. *Consequential damages of delays*

Under Article 11 railway undertakings are liable for consequential damages resulting from delays of more than one hour. The liability is unlimited. Given this, it is unlikely that such liability would be fully insurable on a commercial basis.

For many leisure passengers, a delay of one hour might mean a slight shortening of a holiday, and this will be adequately compensated for by the standard compensation rates. For those undertaking day trips, or those delayed more severely, the inconvenience could be greater.

We have examined a number of travel insurance policies to provide an indication of what levels of compensation passengers might consider reasonable (albeit probably for longer holidays with air travel). Typical travel insurance policies provide low levels of compensation for delays – for example £20 for the first eight hours of delay. They do, however, offer greater sums (for example £3,000 or £5,000) if the policy holder chooses to cancel their holiday after more than 12 hours, say, of delay on the outbound journey.

²⁷ We have made some adjustments to allow for changes to traffic levels and performance over the period we are considering, netted off do-minimum compensation costs (provided to us by Eurostar), and assumed that 45 per cent of such costs would accrue to Eurostar UK Ltd, in proportion to its share of services.

²⁸ A RIA is concerned with UK government, businesses and citizens, so strictly we should only consider the compensation charged to the UK component of Eurostar, and the compensation receivable by passengers who are UK citizens.

IATA provided us with an example of compensation for the consequences of delay being awarded in the air transport sector. In this sector there is limited liability for the consequences of delay under the Montreal Convention (see section 3.3.3). A Spanish court awarded a family compensation for the full cost of a three day holiday after a delay on an Iberia airlines flight caused the family to miss its connection, resulting in a cumulative delay of 24 hours.

These examples suggest that it would be very difficult to justify consequential damages of more than a few thousand pounds per passenger (perhaps only £1,000) for delays to leisure journeys, and that for most passengers and delays (given that Eurostar and Enterprise are frequent services, and alternative travel arrangements by road / air can often be made) the standard compensation rates would be adequate.

There may, however, well be examples for business travellers where the loss is greater. If a business meeting is missed, a company may fail to win an important contract, and have evidence to prove it.

It is not clear whether a court of law would be sympathetic to a large claim resulting from a one or two hours delay to a rail service – because if the consequence were severe it would be sensible and appropriate for the passenger to allow for such a risk. But the draft Regulation does not allow for such a consideration of proportionality, and indeed may well encourage passengers to make no such contingencies, thereby inflating the number of claims.

It is extremely difficult to assess the cost implications of this Article. But let us suppose that 2 per cent of passengers on Eurostar that are delayed by more than two hours make a claim for the consequences of delay. This would mean around 1,000 passengers making such a claim a year. We then assume that the average level of compensation paid under this provision is £1,000 per claim. The total paid under this provision a year would hence be around £1 million, or around £450,000 from Eurostar UK. There would also be significant administrative and, on occasion, legal costs, perhaps of the order of 5 to 10 per cent of the claim costs (because it would be in operators' interest to devote proportionate resources to scrutinising submissions to ensure that spurious or inflated claims were identified).

This calculation is derived from the assumption that only a few passengers a year would make such claims. This assumption is based on our understanding of experience in the air sector, where relatively few claims have come to court, and on the view that few passengers would have reasonable grounds for compensation above the standard provisions already offered. But we cannot be confident that this would necessarily occur. If 20 per cent of passengers delayed by more than an hour were to make a claim, say then the administrative costs of the claims alone would run into several million pounds.

As an upper limit we have supposed an average payout of ten times the lower limit: so the total compensation might be in the range £500,000 to £5 million a year.

8.2.3. Persons with Reduced Mobility (Chapter VI)

We understand that the requirements regarding persons with reduced mobility does not represent a major change in service from that currently offered, but that certain factors may serve to increase costs:

- The proposal is vague in its description of disability, and hence the number of requests may rise;
- We understand that the drafting is more prescriptive concerning the provision of service than under domestic arrangements; a new requirement is that assistance is provided on board the train in addition to boarding and disembarking from a train.

Eurostar would be unable to comply fully with Article 27 – prevention of refusal of transport – because Channel Tunnel safety requirements restrict the number of wheel chair users to two per train.

We estimate (see section 3.2) that between 1,000 and 5,000 persons with reduced mobility might use Eurostar each year. It is likely that significantly fewer than 1,000 would precede their Eurostar leg with a major rail journey. On the basis that four full time equivalent staff would be sufficient to carry out these duties, we estimate that the additional costs of this component would be less than £100,000 a year.

8.2.4. Enforcement (Chapter VII)

UK bodies, in particular the SRA and Rail Passengers Committees, already have responsibilities for assisting passengers in ensuring that their rights are respected for domestic services in areas that are similar in scope to those covered by this Regulation. In particular, if a passenger is not able to resolve the dispute with the TOC concerned, their RPC would provide an advocacy service between the customer and the TOC; if the dispute cannot be resolved, it is referred to the SRA, which has powers of enforcement under the Transport Act 2000 and through franchise agreements.

Whilst it might be supposed that this regime could be extended to international services fairly readily, aspects of the Regulation could serve to increase such costs:

- Under the domestic regime, the SRA is only required to enforce passenger rights if other attempts to resolve the dispute have failed; under the draft Regulation, the enforcement body would play a more proactive role. It is not clear, however, that this would necessarily increase enforcement costs; it may just result in a different distribution of such costs.
- The requirement that the enforcement body be independent from any infrastructure manager, charging body, allocation body or railway undertaking (Article 38). This prevents the SRA from carrying out an enforcement role. It may be that, under the

reorganisation being undertaken as part of the Rail Review, enforcement activities could be separated from these other roles, and therefore this problem could be overcome. If not, setting up a new enforcement body would be costly.

- The requirement that each passenger may complain to an enforcement body in any Member State. If co-operation between enforcement bodies is not effective, and the complaint relates to a service outside the UK, it would be costly to deal with the complaint.

8.2.5. Summary of costs for option 2

Table 8.1 summarises the costs for option 2. The impacts associated with the sub option, which assumes that international ticket sales are required from all main stations, are shaded in grey. The compensation payments are shown separately as transfer payments and are not included in the total costs.

The total quantified costs, excluding transfer payments, are £0.5 million to £1.6 million. If ticket sales were required at all main stations, the costs would be £2.2 million to £6.9 million.

Table 8.1
Costs of Option 2: European Commission Draft Proposal

Implementation Costs	Parties Bearing Costs	One Off Costs	Annual Costs	Total Costs (Annuity)
Enforcement	Government			Small, under certain conditions
Compensation claw back arrangements	Operators, infrastructure managers			Not quantified
Changes to international agreements (revenue allocation)	Operators			Not quantified
Policy Costs	Parties Bearing Costs	One Off Costs	Annual Costs	Total Costs (Annuity)
Establishing international sales system	Operators; travel agents		£0.5 million to £1 million	£0.5 million to £1 million
Retail (ticket printers)	Operators	£12.5 million		£0.7 million to £2.8 million
Retail (staff training)	Operators		£1 to £2.5 million	£1 to £2.5 million
Possible increase to insurance premia				Not quantified (may be temporary)
Administration – compensation for consequential damages	Eurostar UK Ltd		£45,000 to £450,000	£45,000 to £450,000
Assistance to disabled passengers	Operators		Up to £100,000	Up to £100,000
Transfer Payments	Parties Bearing Costs	One Off Costs	Annual Costs	Total Costs (Annuity)
Direct compensation for delays	Eurostar UK Ltd		£2 to £3 million	£2 to £3 million
Compensation for consequential damages	Eurostar UK Ltd		£450,000 to £4.5 million	£450,000 to £4.5 million
Compensation	NIR			Not quantified
Total costs (excluding transfer payments)				£0.5 million to £1.6 million + some costs not quantified

Note: Items may not exactly sum to the totals due to rounding.

The costs principally accrue to operators. These will ultimately be passed through to customers in the form of higher fares (including regulated fares, if the government thinks that is the most appropriate form of finance), and / or through state contributions, funded

by the taxpayer, and / or through reductions in service provision. Eurostar has indicated that it might need to take the latter course of action for some of its more marginal services.

8.2.6. Costs for a typical business

For Eurostar UK Ltd the proposal could amount to additional costs of between £2.5 and £8.0 million a year, most of which would consist of increased compensation payments. This is between 1.3 and 4.2 per cent of the company's turnover.²⁹

The extent to which TOCs would be affected would depend very much on whether there was a requirement to sell international tickets at all main stations (see section 8.2.1 for discussion). If there were no such requirement, the total cost of the proposal to such operators would probably be less than 0.02 per cent of turnover.³⁰ If it were a requirement, costs could be in the range £2.2 million to £6.4 million a year, amounting to up to 1.4 per cent of turnover.

Northern Ireland Railways would also be likely to bear significant additional costs, primarily related to compensation but also with respect to information requirements and retailing.

8.3. Option 3 - Proposal Restricted to International Services

Under this option, Eurostar UK Ltd would bear the same costs as under option 2. The cost savings would relate to the complexity of information and retailing systems required, and the additional costs associated with assisting disabled passengers would be minimal. TOCs would largely be unaffected by the option, relative to the do-minimum.

We estimate the overall costs to be in the range £0.1 million to £0.5 million a year, excluding transfer payments.

8.4. Option 4 - Compensation As Per Current Practice

The difference between this option and option 2 is with respect to the impact on compensation. Hence the transfer payments associated with compensation would be removed under this option. Eurostar UK Ltd would save (relative to option 2) £2 million to £3 million a year. The total additional costs, excluding transfer payments, would not differ substantially from those in option 2, ie £0.5 million to £1.6 million a year.

The difference between this option and option 2 relate to the size of the compensation rates and that under this option payments by voucher are allowed. Payments by cheque / cash

²⁹ Eurostar UK Ltd's turnover for 2002/03 was £191 million (Rail Industry Monitor 2004).

³⁰ Turnover derived from data in Rail Industry Monitor 2004.

tend to be more expensive than voucher, because vouchers are perceived to generate additional traffic (with benefits for both operators and customers). During the course of our interview programme, we did not find research to quantify the extent of traffic generation, though ATOC has provided us with some anecdotal evidence. In addition, around 11 per cent of vouchers for domestic services are not redeemed. There may also be additional administrative costs associated with preparing cheques rather than using pre-printed vouchers. We have sought to take account of such factors in our estimation of net additional compensation costs in option 2.

8.5. Option 5 - Removal of Clause on Consequential Losses

The difference between this option and option 2 is with respect to the impact on compensation for the consequences of delay. Hence the administrative and legal costs and transfer payments associated with such compensation would be removed under this option. Our estimate of the costs under this option, excluding transfer payments, is £0.5 million to £1.1 million a year.

By removing this Article, one of the major causes for uncertainty in the Regulation, with its implications for cost of capital and service disruption associated with bankruptcy, would be removed. It is very difficult to estimate the costs associated with this requirement, for which there is little precedent. We undertook an indicative estimate, which resulted in a cost for Eurostar UK Ltd of £450,000 (and an equivalent benefit to passengers making the claim). We also estimated administrative costs of around £45,000 in total (some of which would be borne by the parties making the claims). We have also reviewed some indicative estimates made internally by ATOC, and adopting some of their assumptions results in a ten fold increase in the estimate of costs to operators.

9. THE IMPACT ON SMALL FIRMS

There will be no direct adverse impact from this Regulation on small firms. There will be an indirect impact where small firms' staff make international journeys by rail. Such staff may experience improved performance and face higher fares. We do not expect this to have a material or disproportionate impact on small firms.

10. COMPETITION ASSESSMENT

The options considered in this report would lead to increases in the operating costs of the businesses identified in Section 4. These costs would be in line with the number of main stations operated (in the case of TOCs) and the number of international passengers carried. We would not expect any effect on competition between rail companies from differential cost increases across the industry associated with implementing new systems in main stations.

In so far as service quality may improve or passengers may become eligible for compensation we expect improvements due to the implementation of the proposed Regulation to be marginal. Combining this with small fare increases is likely to lead to no material impact on inter-modal competition.

11. SUMMARY

The estimated quantified costs, benefits and transfer payments for each option are shown in Table 11.1. A number of costs and benefits were not quantified, though are thought to be of smaller scale.

Table 11.1
Summary of Quantified Costs and Benefits, including Transfer Payments

Option	Total cost per annum (£ millions)	Total benefit per annum (£ millions)	Transfer payments per annum (£ millions)*
1 Base case: do minimum	N/A	N/A	N/A
2 Full implementation of the EC proposal	0.5 to 1.6	0 to 0.4	2.5 to 7.5
3 Proposal Restricted to International Services	0.1 to 0.5	0	2.5 to 7.5
4 Compensation As Per Current Practice	0.5 to 1.6	0 to 0.4	0.5 to 4.5
5 Removal of Clause on Consequential Losses	0.5 to 1.1	0 to 0.4	2.0 to 3.0

**Excludes compensation payments made by Northern Ireland Railways / Translink*

A large component of the impacts are transfer payments from operators (and infrastructure managers) to customers, in the form of compensation. Before consideration of the dynamic effects (see next paragraph), transfer payments have no net impact.

Table 11.1 shows that we estimate there to be significant costs and no material benefits for options 2 to 5, relative to the do minimum. There remains some uncertainty as to this conclusion, because not all costs or benefits are quantified, though these impacts are thought to be relatively small. The table also suggests that there is no difference in the net impact of options 2 and 4. The difference between these options is the major transfer payment of compensation. The dynamic effects of this transfer are also very important. The transfer would need to be financed through higher fares or other changes, and could result in a fall in international rail travel.

We also considered a sub-option to option 2, where all main stations were required to sell tickets for international journeys. Under this option, costs were in the range £2.2 million to £6.9 million (excluding transfer payments), and benefits were in the range £0 to £0.3 million. The additional costs fell on operators of domestic services.

