

## Shipping/Transport - Belgium

### Liberalization of Rail Sector

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May 18 2005

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#### Background

After months of intensive legislative activity, the main rules on the legal framework for liberalization of the Belgian rail sector have now been adopted.

Belgium launched its liberalization programme back in 2003 in order to implement the EU Railway Infrastructure Directives (91/440/EC, as amended by 2001/12/EC and 2001/14/EC). The main purposes of the royal decree of March 12 2003 (*Moniteur Belge/Belgisch Staatsblad*, March 14 2003) were: (i) to set up a new regulatory framework that opens access to certain rail infrastructure; and (ii) to entrust the management of the railway infrastructure to the Belgian state railway, the SNCB/NMBS, and thus to maintain the unity of the SNCB/NMBS.

However, as the European Commission expressed dissatisfaction with these measures, the Belgian authorities had to draw up another liberalization programme.

Although some characteristics of the new programme were described in a framework law of December 22 2003 (*Moniteur Belge/Belgisch Staatsblad*, December 31 2003), the most relevant rules were adopted in 2004, pursuant to the following acts:

- the royal decree of June 11 2004 laying down the conditions for the use of the railway infrastructure, which set up Infrabel and the Railway Infrastructure Fund (*Moniteur Belge/Belgisch Staatsblad*, June 15 2004);
- the royal decree of June 14 2004 reforming the management structure of the railway infrastructure (*Moniteur Belge/Belgisch Staatsblad*, June 24 2004);
- the framework law of July 9 2004 authorizing the king to set up a new subsidiary of the SNCB/NMBS to operate transport services and laying down rules on the organization of Infrabel (*Moniteur Belge/Belgisch Staatsblad*, July 15 2004);
- the royal decree of October 19 2004 laying down the articles of association of the new SNCB/NMBS (*Moniteur Belge/Belgisch Staatsblad*, October 20 2004);
- the royal decree of October 19 2004 laying down measures aimed at reorganizing the SNCB/NMBS (*Moniteur Belge/Belgisch Staatsblad*, October 20 2004);
- the royal decree of October 19 2004 laying down the articles of association of Infrabel (*Moniteur Belge/Belgisch Staatsblad*, October 20 2004);
- the royal decree of October 19 2004 laying down the conditions for Infrabel's maintenance and management of the rail infrastructure owned by the Railway Infrastructure Fund (*Moniteur Belge/Belgisch Staatsblad*, October 20 2004);
- the royal decree of October 19 2004 laying down the rules on the operation of the Railway Infrastructure Fund (*Moniteur Belge/Belgisch Staatsblad*, October 20 2004);

- the royal decree of October 28 2004 laying down provisional rules constituting the first management contract of the new SNCB/NMBS (*Moniteur Belge/Belgisch Staatsblad*, November 17 2004);
- the royal decree of October 28 2004 laying down provisional rules constituting the first management contract of Infrabel (*Moniteur Belge/Belgisch Staatsblad*, November 17 2004);
- the royal decree of December 30 2004 listing the liabilities and assets transferred by the SNCB/NMBS to the Railway Infrastructure Fund (*Moniteur Belge/Belgisch Staatsblad*, December 31 2004);
- the royal decree of December 30 2004 listing the liabilities and assets brought by the SNCB/NMBS to Infrabel (*Moniteur Belge/Belgisch Staatsblad*, December 31 2004);
- the royal decree of December 30 2004 amending the royal decree of October 28 2004 laying down provisional rules constituting the first management contract of the new SNCB/NMBS (*Moniteur Belge/Belgisch Staatsblad*, December 31 2004);
- the royal decree of December 30 2004 amending the royal decree of October 28 2004 laying down provisional rules constituting the first management contract of Infrabel (*Moniteur Belge/Belgisch Staatsblad*, December 31 2004);
- the royal decree of December 30 2004 approving the fifth covenant to the second management contract of the SNCB/NMBS (*Moniteur Belge/Belgisch Staatsblad*, December 31 2004);
- the royal decree of December 30 2004 laying down measures aimed at matching the SNCB/NMBS accounts with common law and adjusting them with its new structure (*Moniteur Belge/Belgisch Staatsblad*, December 31 2004); and
- the royal decrees of January 28 2005 listing additional assets and liabilities transferred by the SNCB/NMBS to the Railway Infrastructure Fund (*Moniteur Belge/Belgisch Staatsblad*, January 31 2005).

During the first quarter of 2005, intensive political negotiations resulted in the appointment of the directors of the new companies, and the government has just released new texts aimed at finalizing the legal framework for the liberalization process.

### **The New Structure**

Under the new structure, the SNCB/NMBS has been reshaped into a holding company, SNCB/NMBS Holding, which owns two subsidiaries. The first, the new SNCB/NMBS, is the railway undertaking carrier. The second, Infrabel, is vested with the management of the railway infrastructure.

A Railway Infrastructure Fund has been set up to take over and manage part of the SNCB/NMBS's significant debt (€8.3 billion), while the Belgian state will also write off part of the losses.

The new structure entered into force on January 1 2005. This required the adoption of several royal decrees on December 30 2004 to govern related issues, such as adaptation of the accountancy methods.

### **Infrastructure**

The rail infrastructure assets have been transferred by the SNCB/NMBS to the Railway Infrastructure Fund, which is vested with the acquisition, construction and renewal of the infrastructure. The fund is also vested with the task of managing and clearing the SNCB/NMBS's debts.

Infrabel - a company controlled by the state through SNCB/NMBS Holding and organized in the form of a public limited company which is owned and controlled by the public authorities - is vested with:

- the management and maintenance of the railway infrastructure;
- the management of the regulatory systems;

- the allocation of available capacity;
- the setting and levying of charges; and
- the certification of train staff and rolling stock.

The right to operate the Belgian railway network is vested in Infrabel for a duration of 99 years. Infrabel's provisional management contract rules are set out in the royal decree of October 28 2004, which was subsequently modified on December 30 2004.

In principle, the Railway Infrastructure Fund will receive the existing rail infrastructure and put it at Infrabel's disposal against payment. These payments should reduce the fund's debt, along with other financial means allowed to the fund (which has the right to issue or contract loans). However, the legal texts on power sharing between the fund and Infrabel were extensively modified throughout 2004 and several issues still need clarification.

### **Rail Operator**

The new SNCB/NMBS is 100% owned by SNCB/NMBS Holding. It takes the form of a public limited company owned and controlled by the public authorities, and has assumed the former SNCB/NMBS's duties concerning the transportation of passengers and freight by rail, including public service functions. The new SNCB/NMBS owns the operating licence and the safety certificate. Its commercial name remains SNCB/NMBS.

The new SNCB/NMBS's provisional management contract rules are laid down in the royal decree of October 28 2004, which was subsequently modified on December 30 2004. Another royal decree of December 30 2004 lists the assets and liabilities transferred to the new SNCB/NMBS, including its stakes in other companies operating in the rail carriage sector.

### **Rail Transportation Regulating Service**

The Rail Transportation Regulating Service is set up as a department of the Belgian Ministry of Transport.

Its main functions include:

- control of the allocation of railway infrastructure capacity;
- control of infrastructure services charges, to prevent discrimination; and
- control of negotiations between Infrabel and the operators applying for access to infrastructure.

### **Additional Legislation**


The new legislation will be supplemented by additional legislation, in particular relating to safety, which is now subject to political discussions.

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