



EUROPEAN COMMISSION



EUROSTAT

Directorate C: National and European Accounts

Luxembourg, 18 OCT. 2006  
ESTAT/C-3/LN/MW/mg D(2006) 30326

Mr Lambert Verjus  
President  
Institut des Comptes Nationaux  
City Atrium C, Rue du Progrès, 50  
B-1210 Bruxelles

**Subject: Methodological treatment of the operation of restructuring of the SNCB – ex-ante consultation of Eurostat**

**Your refs: T/C2/2006/014703 of 30 June 2006, T/C2/2006/018013 of 6 September 2006**

Dear Mr Verjus,

Following the discussion with the Belgian authorities that took place on 18 July 2006 in Luxembourg, your above-mentioned letters and further correspondence received in October 2006, I would like to inform you of the views of Eurostat on the above-mentioned case.

***The accounting issue for which a clarification is requested***

It is recalled that being informed on 19 April 2006 by the Belgian authorities of their intention to amend the SNCB restructuring with retroactive effect, Eurostat decided to express a reservation on the quality of the actual Belgian government data in the Press Release on the Provision of deficit and debt data for 2005 published on 24 April 2006.

In particular, you have now indicated to Eurostat changes in the legal position of FIF (Fonds de l'infrastructure ferroviaire) and other operational arrangements between different entities involved in the restructuring of the SNCB. Our understanding of the amendments is as follows.

Some aspects of the functioning of the entity FIF were reviewed and new solutions have been introduced:

- FIF has been given the status of autonomous public corporation under the law on the reform of certain public companies of 21 March 1991 (Loi portant réforme de certaines entreprises publiques économiques), retroactively as from 1 January 2005.
- FIF will have a complete set of accounts subject to audit.
- There will be no business relations between FIF and any other company of the SNCB Group, exception made for the contracts concerning use and management of the railway infrastructure to be signed with Infrabel.
- The remuneration paid by Infrabel to FIF for the use of the infrastructure will be determined on the basis of long-term contracts and will include a variable element based on the development of traffic.

- In order to balance the accounts of FIF, a part of its revenue will come from government, taking the form of an investment grant.
- FIF will manage its debt independently.

### ***Methodological analysis by Eurostat***

After having carefully examined the provided documentation Eurostat has reached the following view.

It is beyond doubt that on the basis of the provisions of the previous legal framework (Royal Decree of 14 June 2004 introducing the reform of management structures of the railway infrastructure - Arrêté royal portant réforme des structures de gestion de l'infrastructure ferroviaire), FIF was classified in the ESA95 sector of general government. This was also acknowledged in your previous correspondence, most notably in your letter of 30 June 2006 and in the attached note of the Secrétaire d'Etat des Entreprises publiques.

In order for FIF to be classified outside general government, it must comply with the conditions of being an institutional unit, i.e. to possess decision-making autonomy and to keep a complete set of accounts, as well as to be considered as a market producer (ESA95 paragraphs 2.12 and 2.68).

In particular, this would imply that the part of the access charges (redevances) which FIF receives from Infrabel would need to be set at economically significant prices (ESA95 paragraph 3.19). Eurostat observes that the level of the access charges received by FIF from Infrabel in 2005 was fixed at 300 mn euro by a Royal Decree of 3 July 2005 (e.g. apparently without relation to the amount of railway traffic). It is also not clear to what extent the agreed fee will be set in the future in the context of a commercial undertaking (instead of by way of administrative acts), given the relationship between FIF and Infrabel. It is questionable in this regard, whether the transaction will be undertaken at the economically significant prices.

Eurostat noticed that in the year 2005 FIF received 150 mn euro of investment grant from government, and at the same time reimbursed the debt principal for exactly the same amount. Furthermore, in 2005 the Belgian Treasury reimbursed directly a part of the FIF's debt for the amount of 1.8 bn euro. Such a link might indicate that FIF could be also considered as an entity engaged de facto in debt management activities.

There might be in fact doubts whether FIF is the real economic owner of the railway infrastructure, both under the previous and the newly adopted legal and financial arrangements. We have noted that, on the basis of the above-mentioned law of 14 June 2004 (chapter II, section 1, article 3, paragraph 1) Infrabel received the right to exploit the railway network and to manage the railway infrastructure from the SNCB, and not from FIF. According to this law Infrabel tasks are: acquisition, construction, renewal, maintenance and management of the railway infrastructure owned legally by FIF. However, Infrabel has not received from FIF any remuneration for its management services.

In the context of analysing the ownership of the Belgian railway infrastructure, one could also enquire whether in theory FIF could withdraw from Infrabel the right to use such infrastructure, and whether this would be permissible under the above-mentioned legal dispositions by which Infrabel has received the right to use the infrastructure from the SNCB.

In addition, as a general rule, while the legal manifestation of an entity or a transaction is relevant for the analysis of an accounting situation, it is a fundamental principle of the ESA95 system that

economic reality prevails over legal form. A legal change with retroactive effects does therefore not in itself have the effect of a revision of the accounts of the past, even if it may have legal consequences for the past.

### ***Conclusion***

Eurostat's preliminary conclusion is as follows.

In the accounts for the year 2005, the net lending / net borrowing of general government shall be adjusted by -7.4 bn euro of capital transfer, as indicated by Eurostat in its previous correspondence and during various meetings with the Belgian authorities. Concerning the debt level, the downward revision of 5.2 bn euro reported in the EDP October 2006 notification, received by Eurostat on 29 September 2006, shall be cancelled.

Moreover, as far as recent legal amendments are concerned, Eurostat considers that the change in the modus operandi of FIF described in the received correspondence will not imply the reclassification of FIF outside general government sector in year 2005. This is primarily because these legal changes are not of a nature which would lead to a revision of the accounts in the past and furthermore:

- with respect to autonomy of decision, FIF does not have enough de facto independence to justify considering it meeting the criteria for being an institutional unit,
- with respect to market / non-market criteria, Eurostat believes that as the level of the access charges received in 2005 by FIF was fixed by a Royal Decree, the amount of 300 mn euro cannot be treated as FIF's sales for the purpose of the 50 % rule test.

In relation to the accounts for year 2006, on the basis of the information provided so far, we consider that it is uncertain to what extent FIF has enough autonomy of decision, what is its exact activity, and whether the 50 % criteria is met or not.

I wish to stress that these views of Eurostat are based on the information provided by you and your services. If this information turns out to be incomplete, or the implementation of the operation differs in some way from the information presented, Eurostat reserves the right to reconsider its views.

Yours sincerely,



Laurus Nørlund  
Director