



Source: Railway Gazette International

## 7 The Netherlands

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**Area (km<sup>2</sup>) 41,526**

	<b>2008</b>		<b>2008</b>
Population on 1/1/2009 (million)	16.5	Freight tkm (billion)	7.0
GDP (€ billion)	595.9	Passenger-km (billion)	16.0
Length of line (1000 km)	2.9	Modal share – passenger (%) Modal share – freight (%)	9.1 % 5.3 %

Source: Eurostat, Statistical Office of the European Union, 2010

### 7.1 Introduction

Looking back on the period since the adoption of EU Regulation 91/440, one can observe that the Dutch railway sector has been submitted to several changes in regulatory approach. This chapter provides an overview of these developments in the Netherlands from 1992 to 2008. It provides new information by including the findings of a recent official evaluation of the 2005 legal reform in the railway sector. The document containing the government's position on this evaluation report that was sent to Dutch parliament in June 2009 (Ministerie van Verkeer en Waterstaat, 2009) is, together with its underlying reports, one of the main sources of information for this chapter. This chapter concludes with a few general remarks on the observed evolutions and the performances of the sector.

### 7.2 Initiation of the reforms in 1992

The rail sector has been in continual flux ever since the 1990s. Over the years, views on the ultimate objectives for its organization have changed. European legislation on market opening for rail freight was one of the drivers that started the restructuring process of the Dutch railway sector. Directive 91/440 required for an administrative separation between infrastructure management and transport of passengers and freight. This first step was meant to enable competition on the tracks in freight.

In 1992, the Wijffels Committee, appointed by the Minister of Transport, worked out how to apply the new European rules; and designed a new relation between the railway company and the state (Commissie Wijffels, 1992). The main idea of the reform was that passenger transport should become a non-subsidized commercial activity while building and maintaining the infrastructure remained a responsibility of the government. Dutch Railways (NS) was reorganized according to the recommendations of the Committee.

### **7.3 Railway reform and transitional contract in the years 1995–99**

The railway reform initiated in 1995 in the Netherlands aimed to increase the market share of railways in overall transportation and intended to lead to a lower burden on the public purse. NS undertakings were split up in 1995 (within the NS Holding) into a number of separate companies, each with its own account.

The split-up resulted in an organizational separation between the commercial activities – such as passenger transport, the exploitation of railway stations and development of real estate – and the infrastructure activities and infrastructure development and maintenance. The latter activities were placed in the so-called ‘task organizations’. The three task organizations created in 1995 were: Railned, NS Traffic Control (NS Verkeersleiding) and NS Rail Infrastructure Management (NS Railinfrabeheer). A unique aspect of the Dutch model at that time was the distinction between Railned and NS Railinfrabeheer. Railned was responsible for licensing train operators, for allocating capacity (passenger, freight and maintenance), for overseeing railway safety, and for providing infrastructure advice on investments and maintenance to the Ministry of Transport. NS Railinfrabeheer was responsible for constructing, maintaining and managing the railway infrastructure. NS Verkeersleiding was charged with daily traffic dispatching and real-time passenger information.

The costs of the three task organizations were covered directly by the Ministry of Transport even though these organizations were still part of the NS Holding. Passenger transport (NS Reizigers) and freight (NS Cargo) became separate organizations within the NS Holding. In 2000, the freight division was sold to the German Railion consortium, belonging to DB (Deutsche Bahn), being the state-owned rail operator of Germany.

This resulted in a contract between the state and NS, which aimed at giving NS more freedom to make its own commercial decisions. It should be noted that this reform did not involve a privatization of NS, since NS has always been a joint-stock company (‘naamloze vennootschap’) with all shares held by the state. It refers more to the withdrawal of subsidies. NS became an independent company, free of the direct control by the Ministry of Transport, even though the state remained as sole shareholder. The transitional contract between the state and NS for the period 1996 to 2000 was also meant to allow the development of a new railway legislation to replace the Railway Act of 1875. For this period, the transitional contract foresaw a gradual reduction of subsidies to NS and the possibility to stop operating non-profitable passenger services. This resulted in the separation of a number of non-profitable lines from the NS network. These were then, gradually, contracted out (based on government subsidies) to private parties. Since then, passenger growth and quality improvements on these lines have been realized. Additionally, in the first transitional stage up to the year 2000, the government decided to set the infrastructure charges at zero, which probably also encouraged new operators to enter the freight market.

## 7.4 Performance contracts in the years 1999–2001

In 1999, a policy document *De Derde Eeuw Spoor* ('The third Century of Rail') (Ministerie van Verkeer en Waterstaat, 1999) on competition and development of the railway sector was published by the Ministry of Transport. It chose to adopt competition for the tracks for passenger transport. According to the policy document, a 10-year concession contract was to be directly awarded to NS. This concession should include performance indicators with financial incentives on passenger growth and punctuality. It would contain conditions on minimum service levels, fare increases, integrated ticketing and access for people with reduced mobility. These proposals would be laid down in a new railway and concession legislation. To bridge the gap until this legislation would be finalized, a memorandum of understanding (MoU) was made up, which set performance levels for punctuality and passenger growth in peak hours. The targets for these performance indicators were proposed by NS and agreed upon by the state. However, there were further delays in the legislation process. These delays made it necessary to make up a second transitional contract based on the MoU. This contract set performance levels for a period of 6 months and was extended twice for an additional period of 6 months each time.

In 1999, a report by the National Audit Office (Algemene Rekenkamer, 1999) concluded that the Ministry had failed in its supervisory and steering role of the task organizations, which were responsible for building and maintaining the infrastructure. The independence of the task organizations from the NS Holding could not be guaranteed and adequate corrective action by the Ministry was overdue.

In the meantime, the level of train punctuality fell to a level that was not compliant with the second transitional contract signed in 2000 (see Figure 1). The Ministry concluded that there was insufficient focus on integral quality by the management of various railway organizations within NS (task organizations and passenger transport). At that time, there were also internal changes and plans to create a different type of operational groups for train operations. This would have meant that drivers and conductors would remain more closely bound to one geographical area, rather than operating through major parts of the network on various train services. These plans, however, received massive opposition from the unions, as this was

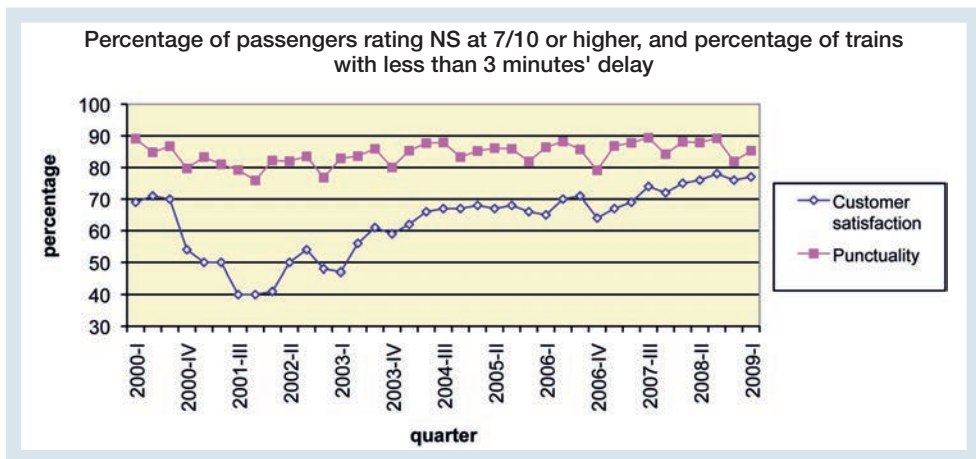


Figure 1: Customer satisfaction and train punctuality (2000–2009)

perceived to reduce the job attractiveness, and the company declined rapidly as many strikes followed. The urgency of the situation led the Ministry to introduce a policy change, called "*Herbezinning spoor*" (Railway reconsideration) in September of 2001. The punctuality target was reduced from 88% to 80% (based on a 3-minute delay norm, which is stricter than the norms of 5 or 15 minutes' delay used in many other countries). When NS, towards the end of 2001, failed marginally to achieve the 80% punctuality target, two members of the executive board and all members of the supervisory board resigned.

The railways' poor performance in 2001 and the unrest this caused led to a reappraisal of the previous reorganization plans. After this reappraisal, parties in the rail sector and the government focused on working more closely together and on remedying and improving the railways' performance.

## 7.5 Preparing for new legislation in the years 2001–05

Against this background, the second transitional contract was again extended for six months and subsequently for a period of one year as the new Railway and Concession acts had still not been passed. A full institutional separation between infrastructure management and train operations was implemented in 2002: all the infrastructure management tasks were separated from the other NS activities and these tasks merged into a new organization called ProRail in January 2003. This company is fully owned by the state, where the Ministry of Transport acts as shareholder and is thus entirely separate from NS. ProRail is responsible for rail capacity management, train path management, real-time passenger information, as well as the management of the passenger transfer spaces at the stations, and infrastructure maintenance and development. ProRail operates within the framework set by the Ministry of Transport, concerning general policy on track usage and network development.

In April 2003, the new Railway and Concession acts were eventually approved by parliament. However, final parliamentary agreement on the concession texts could not be reached before December 2004, allowing the new regime to come into force in 2005, five years later than the original reform plan. As a result, the current organization, with the relevant legislation, was only introduced in 2005 (see Figure 2). This organization combines directly awarded concessions to the national operator of passenger railway services (NS) and to the infrastructure manager (ProRail), both being publicly owned companies, with a series of competitively tendering concessions for regional railway lines.

The competitively tendered regional lines are mainly branch lines that were formerly operated by NS and that are now gradually submitted to competitive tendering by the regional transport authorities (provinces and city regions) but still on ProRail tracks. Several of them have been chosen for a multimodal contracting approach, where the operator is responsible for operating both the local branch line(s) and the neighbouring bus services, serving as feeders to the railway services. Most contracts are net-cost contracts, implying that the operator is in charge of service design and carries both cost and revenue risks after payment of a contract price by the tendering authority. These lines, representing 7% of the total number of passenger-km by train in the Netherlands, had an average growth of 2.75% per year between 2000 and 2006 compared to the national railway network with 0.9% per year. This is to a large extent due to the service improvements that resulted from the competitive tendering of these lines, such as an increased supply (early and late trains and week-end services), increased frequency, new

rolling stock and a better integration with the neighbouring bus services (Van Ooststroom and Savelberg, 2008).

The organization chosen in the Netherlands dovetails closely with European legislation and policy developments, which are aimed chiefly at opening up the market for freight transport and for international cross-border passenger transport. The Netherlands have always opposed opening up the national passenger market to open access competition because it is considered that one railway undertaking with exclusive rights for the provision of passenger services in a region will be in a better position to optimize these services and secure reliability with both acceptable travel and transfer times, especially in a densely used network such as in the Netherlands.

The Ministry of Transport has three distinct roles. Firstly it must oversee the public interest, secondly it awards the operating concession contracts and thirdly it is sole shareholder of ProRail and NS. As from January 2005, the formal shareholding of NS is transferred from the Ministry of Transport to the Ministry of Finance, such as to separate the role of principal from that of owner. The government sets the rules and acts as a regulator according to the railway legislation. The mutual responsibilities of the infrastructure manager and train-operating companies are stated in track access agreements. These arrangements are shown in Figure 2.

The intensification of the cooperation between the infrastructure manager and the train-operating companies is essential to the new regime. The quarterly meetings under the name

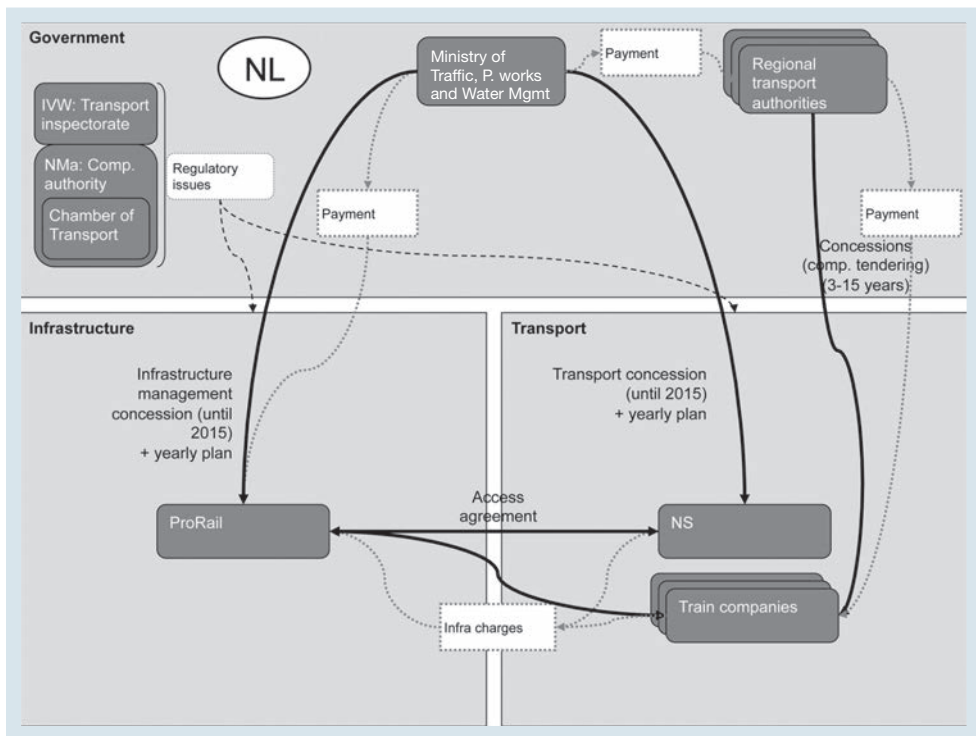


Figure 2: Current institutional configuration (van de Velde and Röntgen, 2009)

of Samensporen ("Tracking Together") between the directors of ProRail, NS, Railion and a representative of the other freight operators serve as an example of the forms of cooperation. To accommodate future growth, these meetings discuss interfaces between the parties and monitor the progress being made in better usage of capacity and the reliability of the entire railway system.

## **7.6 Building a new system: improving in the years 2005–08**

Ten-year concession contracts for NS and ProRail were drawn up and enacted in January 2005. These concessions set performance indicators for NS and ProRail. Every year, NS and ProRail have to propose improved values for these indicators in so-called transport and infrastructure plans. These values have to show continuous improvement or else NS or ProRail are required to explain why this is not possible in a specific year. Using yearly plans makes the system flexible and makes adjustment to changing circumstances possible. The government analyses and then approves these proposals. In a transitional period up till 2007, both companies were allowed to learn to work with this indicator regime. The aim was to get ProRail and NS ready for output steering after a few years. This was to be reached in 2008 and from then on penalties would be imposed if indicator levels were not met.

## **7.7 Encouraging growth, better performances and development for the years 2008–15**

The 2005 railway legislation required an evaluation of the regime in 2008 (Ministerie van Verkeer en Waterstaat, 2009). The four main conclusions of the final report of this evaluation were:

- The rail sector now has a decent structure, but it needs to be put to better use.
- The usage of the railways by the public is increasing.
- The transport operators and the infrastructure manager are primarily responsible for day-to-day management.
- The legal system could work better.

The government concluded that a radical reorganization is not required. However, the government has also come to the conclusion that the organization needed some improvements which were laid down in a policy document. It also concluded that the frameworks for user charges and allocation of capacity needed to be tightened up, improved and made more transparent, and that the position of regional authorities in the management of stations needed to be improved. Furthermore, the position, role and management of the infrastructure manager ProRail and NS needed to be made more transparent.

The evaluation found out that not all improvements required could be brought about through legislation. Equally important is the behaviour of the parties in the rail sector and especially the cooperation between them, since they are the ones who have to deliver services together. Cooperation between the infrastructure manager and the transport operators has improved in recent years, but it was perceived that cooperation had to be further stepped up. Moreover, the points for improvement listed in the final report of the evaluation indicated that existing instruments were not fully utilized.

The government then announced ambitious aims for the rail sector in the Netherlands. It identified four priorities for improving the quality and capacity of both passenger and freight transport:



- more frequent services on the busiest lines in and around the Randstad in the west of the country;
- an integrated regional public transport system revolving around rail transport;
- reduction of travel times to the various parts of the country;
- a strategy compatible with several future growth scenarios for freight transport routes.

In its 2007 coalition agreement, the government aimed for 5 % annual growth in passenger transport during its term in office. Until 2020, €4.5 billion was earmarked for investment in the rail sector through the *High Frequency Rail Transport Programme*. The government plans to achieve these ambitious aims by expanding the capacity and quality of the railways, and by making the organization of the rail sector, the rules and regulations applicable to it, and the distribution of responsibilities between the various parties more transparent and more effective.

In a follow-up to the evaluation, the government is also planning to present a clear, uniform policy framework for user charges, which should lead to more clarity and certainty. The main concern is for tariffs, and the principles on which they are based, to be clearer, and the costs and the system used by ProRail for user charges to be more transparent. The stability of the system, tariff development and better utilization of the railways are also major considerations.

The evaluation observed that NS and ProRail have improved their performance in the past few years. To keep them on track and stimulate further growth, the government felt it necessary to adapt its guidance of the two organizations in a number of areas and to take a more hands-on approach to providing direction to the two parties. In 2010, the government will explore how the interface between the concession for the main rail network and existing regional concessions can best be redesigned in the new concession for the main rail network that will enter into force in 2015. It will do so in combination with a re-evaluation of what share of the rail network should count as ‘main rail network’ – and thus fall within the national railway concession – as opposed to regional networks that are submitted to competitive tendering.

The government sees ProRail first and foremost as a provider of public services. As such, it should focus on implementing its statutory, public responsibilities. In order to ensure that ProRail fulfils this role, the government will bring more pressure to bear through its position as shareholder and awardee of concessions and grants. It will amend the company's articles of association, give the state legal ownership of the main rail network infrastructure and expand its array of enforcement instruments.

In view of the outcome of the evaluation and the government's aims, NS' concession for the main rail network will be modified. The government is planning to introduce a number of new performance indicators and expand its array of enforcement instruments. It has opted to press for more efficiency by charging NS for the right to operate the concession from 2009 onwards, and required NS to provide more detailed financial information. A Policy Document on State-Controlled Companies, will give the Minister of Finance, as NS shareholder, more forceful means to secure the public interest (Tweede Kamer, 2007).

On the basis of the evaluation, the government also concluded that the position of provincial and regional authorities needed strengthening. The government therefore plans to take statutory and organizational measures in a number of fields. Good regional public transport networks are an essential and integral part of the transport chain that brings passengers from door to door. The government regards rail transport as the backbone of integrated regional public transport systems, and is therefore in favour of more extensive cooperation with and between



the authorities responsible for providing services. The provincial and regional authorities will be represented by their umbrella organizations in advisory groups, giving them the opportunity to provide input in assessing the management and transport plans of ProRail and NS.

## 7.8 Concluding remarks

Looking back on the past decade or so of railway policy, one can see that the views on the ultimate objectives for the organization of the sector have changed considerably. Prior to 2000, competition on the track was foreseen combined with a possible privatization of the state-owned company NS. Around the turn of the century, however, the policy changed towards advocating competition for the track, starting with regional lines only, and the privatization aim was dropped.

One main observation is that the government has used several regulatory styles over the past decade. The changing roles of the players during this period of change seem indeed to have influenced performance. Summarizing the evolutions, one can observe that NS was granted a substantial level of autonomy in the first period of the reform (1995–99). This led to political pressures to make firmer arrangements to secure public values. These public values were then secured in ad hoc contracts which were prolonged several times, awaiting new legislation. After consultation, the government set clear performance indicators and intended to give penalties for performance breaches by NS. This, however, was not successful and performance dropped, leading ultimately to the replacement of the management of NS. Furthermore, the Ministry also concluded in 2001 that the institutional setting existing at that time gave insufficient incentives towards integral quality management to the various railway organizations, and that these organizations tended too much to pass the buck on to ‘the government’ rather than solving daily operational issues themselves. This eventually led to the current regulatory regime, with its focus on continuous improvement and increased cooperation between the railway organizations.

Another observation is that earlier uncertainties as to the final organization of the sector appear to have had a negative effect on investments and performance. For example, NS was reluctant to invest in new trains at the beginning of that period because of the uncertainty related to whether or not NS would be granted a renewed licence to operate in the forthcoming years and whether this would be in competition or not. NS’ reasoning was that the situation created too much uncertainty as to whether adequate return on investments could be realized in the next years. After launching a more long-term policy window in 2001 and providing assurance that NS would be granted a ten-year concession, one could observe that investments in new rolling stock were made again and that performance (such as customer satisfaction and number of trains that run on time) improved (see Figure 1).

The hybrid character of operators has also somewhat complicated the situation, as railway companies have conflicting goals, especially state-owned companies. On the one hand, they are seen as actors that should secure public values, such as customer satisfaction or travel times. On the other hand, they are also expected and want to improve efficiency and cut costs. For example, NS proposed to shut down train stations in more rural areas with a low number of passengers and suggested to remove toilets in some trains that run on short routes. Such conflicting goals have indeed led to political requests for increased public control. In this concrete case, intervention took place and the compromise was found

in keeping the stations open but allowing the operator to remove toilets from some trains in return for an increased number of toilets available at the stations concerned.

The new legislation introduced in 2005 differs from the previous periods in that it combines policy-making with a negotiation component as far as the national railway services are concerned. The government sets performance indicators but NS proposes the target values. Negotiations are then conducted between NS and the government before setting the targets. Breaches to fulfil these targets then lead to penalties. The negotiations that take place between train-operating companies and ProRail on track access and usage also fit into this negotiation model. The railway regulator plays a back-up role in case an agreement cannot be reached. Regional railway services are, contrary to the national services, more and more submitted to competitive tendering.

The sector has come a long way and the outlook now seems positive. Customer satisfaction and performance have improved and the number of people that travel by train is rising (from 14.7 billion passenger-km in 2005 to 16.3 in 2009). The government has deemed that the policy set out in 2001 does not need big adjustments and it appears that the development of a more long-term policy for the sector has brought rest and stability and room for continuous growth of passenger numbers. It now seems that a regulatory approach that includes negotiation has worked out well for the performance of the sector.

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