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**WORKING SESSION 1**

**WHAT FRONTIERS AND CHALLENGES FOR STRUCTURING AN EU  
REGULATED FRAMEWORK FOR THE TOLLING INDUSTRY?**

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**1. The tolled road sector is at the verge of an important transformation**

If we take into consideration most of the sector's experience to date, then traditionally, tolled roads have been seen as payments towards the construction, maintenance and operating of infrastructure such as motorways, tunnels, bridges, points of access to specific areas, mountain passes, etc.

In other words, according to most experience, the concept of road tolling has almost invariably been looked at within the scope of the concession contract existing between the State and a private business party, according to a public private partnership scheme which is today one of the most popular financing instruments in Europe.

Alternatively, we have had instances where public parties, agencies or authorities have been assigned responsibility for operating tolled infrastructure, but always within the scope of covering the relative costs of it.

Recently however – and not only in Europe, but globally – we have observed a transformation of this concept. This transformation has been triggered by financial, environmental and operating issues which countries have been urged to face.

Accordingly, the *one-time fee* payment to access infrastructure or a specific area is now more and more often used as a regulating instrument, or rather as a tool to implement specific policies, well beyond, therefore, the traditional boundaries of concessions and tolls under their traditional form.

We need only think of the increasing use of so called *road pricing* applied across many European cities to access central urban areas, with the primary aim of reducing urban traffic congestion and environmental pollution, or toll payments as a financing instrument for alternative transport systems required for modal transfer and re-balancing.

At the same time, a further phenomenon is observed in many countries: this is the increasing pressure to extend tolls to roads which have been built with state money and which have until now been free – or rather been subsidised – by the taxpayer. In this case it is clear that the aim of the toll is essentially to “increase” public finances: given the current squeeze on national budgets, there is a growing need to collect revenue from the users of all those assets whose running costs have become unsustainable for public finances.

This is what is happening in the United States for example, where the debate on the introduction of tolls is underway. States could once count on significant funding for infrastructural networks, but this formula is now no longer sustainable and needs to be changed. Many observers believe that the only way to meet the maintenance and repair costs invariably required by a motorway over time is the introduction of tolls.

## **2. Tolls are also central in the debate on sustainable development**

Likewise, tolls are central in the European debate on sustainable development. In this context, the EU Commission has defined taxation mechanisms to finance infrastructure or optimise traffic flow through “intelligent taxing systems” which should guarantee “revenues for future infrastructure investments, instruments to fight-off traffic congestion and discounts to reward environmentally friendly

vehicles and driving styles” (Communication of the Commission to the European Council and Parliament of 22.06.2006 “Keeping Europe on the move – a sustainable development for our continent. 2001 European Commission Transport White Paper Mid-Term Review”).

Recently the press has disclosed the European Commission’s proposal to revise directive 1999/62, the so-called Eurovignette directive.

The contents of the same clearly reveal that tolling is seen as an instrument to mitigate the effects that transport has on the environment.

### **3. New objectives mean new rules and new technologies**

If the objectives of tolls increase in scope, extending from infrastructure financing to instruments to support mobility and environmental policies, then this means that new rules for the sector must be drawn up, and these must be shared at a European level –within this new space and this market that runs and develops without borders- especially in terms of the application of new technologies for collection systems, which need to be based on criteria of operating fairness and effectiveness.

Within this scope ASECAP plays a fundamental role with its CESARE project (*Common Electronic Fee Collection System for A Road Tolling European Service*), which has, over the past ten years, studied the legal and contractual implications of the progressive application of European interoperability of automatic tolling systems. The CESARE project is supported by ten ASECAP members as well as the Stockholm Group, a forum comprising public administrations from seven European countries. The project is currently in its fourth phase and in compliance with the European Directive on automatic tolling is required to define a common legal framework for the building of the European Automatic Tolling Service, ensuring that this may be operated and coordinated at a European level.

Given the importance of the subject matter and the current interest in it, this Asecap meeting in Marrakech should not only cover technical issues but also be a session of focused debate on the European Electronic Tolling Service which EU Member States shall soon be required to introduce. In this regard, it is ASECAP's duty to illustrate certain common and harmonised positions, ensuring at once the necessary continuity with the existing and thoroughly tested framework, with a view on the solutions that, coming also from the tolled sector experience, will be certainly adopted.

Addressing technologies that are applied to tolling and harmonisation reminds us of course of the CESARE project, but also of the new EASYWAY programme which many ASECAP members are participating in and whose main aim is to support the interoperability, safety and reliability of the European network through the application and optimisation of innovative road transport technologies.

Interoperability, harmonisation of technologies, intelligent transport systems: all these concepts and applications ultimately have only one objective: guaranteeing a safe, effective and sustainable development of mobility for European citizens, in compliance with the fundamental rights of the EC Treaty, at fair prices and conditions.

#### **4. A development based on the socio-economic scenario**

These issues are not only European. As the members of the IBTTA - the International Bridge, Tunnel and Turnpike Association – know all too well, and whose Chairman Susan Buse shall tell us about later this afternoon, these same issues are a matter of debate in North America too.

It is no coincidence that the two most economically and socially developed continents in the world should be addressing these issues at the same time. In fact, the developments that are in progress prove that we are facing a clearly irreversible process; both continents recognise tolling as a necessary instrument for sustainability and fairness, both continents are moving quickly towards

automatic tolling, and both are converging – albeit from opposite starting positions – towards a mixed scenario formed of public and private parties coexisting in a new way: no longer a vertical separation based on a traditional power structure where the public party is the contractor/controller and the private party the material executor, but rather a horizontal coexistence on similar grounds, with the two parties potentially in competition with each other.

The fact that these scenarios are emerging in Europe and North America means that these are probably linked to the western development model and are the natural response to a common problem. These two continents have had a very different history in terms of the development of tolling, but are now both slowly converging towards complex policies which address common issues ranging from the infrastructure financing, fuel taxation, modal cooperation, collection methods, the legal status of the parties involved, their rights and obligations etc.

## **5. The road transport line of action adopted in Europe**

Within the aforementioned scenario, we must now ask ourselves what direction the European Union is taking. EU institutions have in the past been receptive to the importance of the role played by tolls as instruments to support sustainable building of large transport infrastructure works; many recommendations, communications and guidelines (we need only think of the White Paper on transport or the Green Paper on public private partnerships) have addressed the subject matter, whilst on a regulatory level we need only recall Directive 1999/62/EC addressing the tariffs of road freight transportation (the so called Eurovignette directive), whose process of amendment has recently affected us all. These documents have so far highlighted the central role played by cooperation among public and private resources as well as the principle of *pay per use* on which the tolling concept is based (in terms of its general understanding, both as a concession “toll” as well as a national “tariff” for the infrastructure’s use) for the large TERN networks. This cooperation appears destined to continue in the future

as well, and in fact to probably increase in both scope and application: as mentioned, the proposed revision of directive 1999/62 should open the door onto a new general tolling scenario for large interurban networks, and therefore be no longer limited to the TERN, availing itself of both the concessionary instrument as well as direct participation of the state in the infrastructure's operating. More so, the new proposal appears to be specifically built to introduce the principle of internalisation of the external costs generated by the road sector to the system, thus using the toll instrument also as a means to regulate mobility: a recurrent and fundamental element of the proposal is the absolute separation between "infrastructure costs" (construction, operating, etc) and "external costs" caused by its use (congestion, atmospheric and noise pollution, etc.), which are both recoverable through specific differentiated tolling. And differentiated tolling is indeed the novelty of the directive's revision – an absolutely revolutionary one – which we shall have to face in the near future. Tolls for external costs ("ideally" to be collected by means of automatic tolling systems) are expected to be highly variable based on elements such as the level of emissions of different vehicle types, periods of the year or times of the day, type of road, all of which are elements that current toll systems do not appear capable of managing. However, given the embryonic phase of the revision and the vast number of changes that this will trigger, it is currently impossible to say whether or not these possible future scenarios pose a threat or may rather be an opportunity for new future business.

## **6 . Asecap members in the European scenario**

There are therefore many questions being asked. What can Asecap do to answer or help answer these questions?

Asecap is the pioneering association for the European motorway sector and it is of course dedicated to protecting the original concept of tolls, which, in the association's very mission statement, are defined as the most effective instrument

to finance the construction, operating and maintenance of motorways and other main road infrastructure.

Asecap's mission to represent international tolled motorways is evident in the choice of its very acronym: the P in Asecap, stands for *Péage* (Toll), and clearly positions the Association and distinguishes it from other similar bodies, by virtue of the presence, within it, of other companies and concessionaries that operate tolling systems.

It is for these reasons that Asecap cannot afford not to give its contribution to EU institutions at this crucial time, when the European Commission is just about to propose a somewhat unexpected and drastic change to the directive on tariffs of road infrastructure for heavy vehicles.

Asecap is the only truly European representative of the tolling sector and wants to participate in an active manner. It must be emphasised that this is a sector which is essentially founded on concession contracts and long-term agreements. These contracts and agreements require protection and respect in compliance with the principle of certainty of rules and must not fall prey to arbitrary discussion, as has happened in certain EU member states, or to the unjustified unilateral legislative provisions introduced by National Governments.

In this framework the nation I represent, Italy, is not delivering a good example when, if on the one hand correctly promotes a regional granting body –in Lombardia, one of the most dynamic areas of Europe- on the other hand permits, and rather supports, the creation just beside –in Veneto- of a subject that is at the same time a grantor and a publicly owned motorway concessionaire; this subject is a publicly owned and wants to use public resources in order to enter the motorway concessions market, wants to enter without tendering procedures and wants, once in the market, to act as the controller of all the other concessionaires in the region.

All this further to the well known specific initiatives on the sector by the past Italian Government, initiatives that are keeping the Italia concessionaires and the developments assigned to them at standstill.

Asecap thus believes that its members are fully entitled to expect the respect and protection of what they stand for, not for themselves but because they represent an *asset* for Europe, a value to be exploited and not one to be destroyed.

## **7. What about Europe's programmes for other forms of transport?**

Asecap specifically represents the "road" mode of transport.

Now, whilst on the one hand the novelties introduced by the last proposed revision may perhaps create useful opportunities for the future, and therefore be considered beneficial in the long term even though difficult to implement at the present time, on the other hand an examination of the proposed revision (at least as it currently stands) shows a marked imbalance between the approach the European Commission has taken towards the external costs of road transport vis-à-vis those of other forms of transport. In this regard it should be noted that during the course of the first revision of directive 1999/62 – the one that resulted in the existing directive – the European Council and Parliament expressly asked that the Commission develop a method to calculate and internalise the external costs generated by the transport system as a whole; this methodology should then have been subsequently assessed, an impact analysis carried out, and, if deemed acceptable, been applied to each individual mode of transport.

However, what is currently taking place does not appear to comply with this line of action at all: if the above methodology, which is still under completion, would appear to rightly address (based on the first available drafts) the entire transport system with all its components, in terms of its application the only current proposal – contained in the Commission's proposal to revise the "tariff directive" – only addresses, as far as we are aware, the road sector. And the reasons for this appear unfortunately very clear if we consider the Commission's position, as this

is well expressed in the presentation of its proposal where we may read: *“Road transport plays a crucial role in economies and society. But road use produces 90% of all transport systems’ external costs on society in terms of health and loss of production caused by pollution and accidents, time and fuel wasted in traffic, and large scale environmental damage such as climate change”*. Such arguments, which allocate almost all external costs of the transport sector to road transport, have often been challenged by ASECAP and its members with research demonstrating how this is the result of only partial and incomplete analysis. These arguments further go against the European Parliament and Council’s requirement of preparing a method to calculate external costs common to all transport forms, precisely to avoid a measure confined only to road transport, which, without any specific fault of its own, supports almost all European transport. If we continue along this line we shall only run the risk of falling prey to what ASECAP has long feared: an artificial distortion of the market which, far from rendering more efficient and competitive any other mode of transport and/or rebalancing the weight of traffic on each of these forms, shall rather only result in a strong penalisation of the road sector, producing new extra costs for Europe on top of and in addition to those hefty ones that already exist.

## **8. Asecap members are ready for the challenge**

Asecap members certainly do not deny the opportunity and need for development. Rather, they have always encouraged development, introducing automatic toll systems for example; however, Asecap members believe it is necessary to analyse all aspects of the problems before “forcing” decisions that are not yet ripe, and which are perhaps just pushed forward for demagogic reasons or industrial pressures (whether legitimate or not).

Unfortunately ASECAP is often called on to play the role of “Cassandra” to quote Greek mythology in honour of our Secretary General and Vice President

Delimitos, that is to say, to underline difficulties, critical issues and problems, and to propose apparently complicated roadmaps to reach a solution.

But in Greek mythology Cassandra was no pessimist, nor a jinx, she was far-sighted and wise; ASECAP and its members base their forecasts on their better understanding of the sector. An understanding and knowledge which derives from years of study, practice and application, all of which enable ASECAP to better assess the complexity of a particular system.

To make users perceive and pay for the costs generated by different modes of transport is correct in principle, from an economist's point of view it is the healthiest way to balance the forces and interests of the elements at stake, but Europe is not an isolated system - Europe is an economic system which competes in a global scenario.

Global competition means, for example, having a dynamic rather than a weak internal market, and therefore any future tolls and extra tolls must not become an additional burden to the system, but rather must be transformed into positive investments. If the resources that are generated are not productively reinvested the only result is higher costs for Europe, with decreased rather than increased competitiveness.

Since the only instrument which today really ploughs the resources that are generated back into the system is the concession instrument, ASECAP members rightly believe they have something to say.

## **9- The borders and challenges faced by the system**

All that has been described above means that ASECAP and the entire public and private system in general need to meet and discuss specific forthcoming issues. But what are the borders and challenges faced by the system?

1. Infrastructural development to meet increasing demand for mobility and safety must take into due consideration the need to:

- *Build efficient infrastructures for Europe.* The concessionaires and the operators of toll motorways and roads are at present the most effective tool Europe has at its disposal for the completion and modernisation of a network that is the backbone of the main continental transport system and that will have to support EU development in the coming decades; of course these infrastructures will have to be designed and built bearing in mind their sustainability and their environmental performances.
- *Share and “promote” effective and long-lasting rules.* In this regard it is necessary that long-term contracts be protected and guaranteed certainty of application. Any change to the agreements must be the result of a process carried out by the parties. Furthermore, the rules must be such that they entice a virtuous cycle which encourages private investments through a suitable return of the same, whilst maximising the quality provided by the infrastructure service.
- *Make use of the International markets.* Today more than ever before, the complexity of projects and the significant capital requirements needed to carry them out means that it is necessary to be able to access financial resources available on the international markets.

It is important to underline the fact that regulatory certainty is an indispensable requisite to whet the appetite of national and international investors for the infrastructure market.

2. Directive 2004/52 provides for the entering into service of a *European Electronic Tolling Service*, for which technological interoperability and the use of common procedures among operators are essential requirements.

The process of introduction of the European automatic tolling service, although suffering a few delays, appears to be unstoppable and will certainly have significant repercussions on the sector, directly affecting all aspects (administrative, contractual, procedural/legal, fiscal and technological) which characterise the flow of toll collections.

Within this context, ASECAP and its members deserve to keep the key role which they have earned as the most interested and informed parties.

3. *The coexistence of public and private parties* in the operating and construction of tolled infrastructure in Europe has until today been based on contracts between the contracting state and the concessionaire company, with the state's role essentially being confined to that of controller.

In the near future Public and Private Parties may find themselves, as already happens in certain cases, competing against each other on a same level. They will become competitors in the market for the building and operating of tolled infrastructure.

It follows that the rules of the game must clearly define the rights and obligations of all interested parties, in order to guarantee a truly open and competitive marketplace.

## **10. From concessions to a wider framework**

European authorities actually appear to be clearly recognising the fact that the system's complexity may require that the schemes used in the past be changed.

This appears to be supported by the fact that together with the decision to intervene further in the tolling sector through an extremely invasive legislative measure, the European Union has decided not to proceed towards a sector directive for concessions, but rather considered an horizontal harmonisation of the application of the Principles of the Treaty. It is currently not possible to pass judgment on this decision, but ASECAP still believes that contracts which affect European infrastructure cannot, once they have been executed, be prey to the "creative genius" of national Authorities without a suitable assessment of the effect of such measures on the infrastructure from a European standpoint.

Under the new scenario, concessions, which are today the most popular tolling instrument across Europe, would become only one among many other instruments.

## **11. We must take one step at a time**

If the building of a comprehensive and complex scenario is necessary to set certain objectives, its application must however occur gradually, in line with the development of technologies and the time required to update rules and regulations. What we experienced with directive 2004/52, on automatic tolling, with deadlines that have long past elapsed and on which no agreement exists, must be avoided.

ASECAP and its members had formerly expressed their reservations on those dates, which were not reservations of principle but rather ones based on simple knowledge of the subject matter and the complexities involved. Now, the complexities shall only increase with the increase of the number and scope of the objectives to be achieved, and this may make things even more difficult, also in the light of a possible EU enlargement towards extremely and highly differentiated realities.

We must not be afraid of these difficulties, but rather accept them and face them in a rational manner, finding suitable and reliable solutions, because tolling means transactions and large financial flows. These transactions and flows require absolute reliability and credibility in the systems, the availability of guarantees, the need for safe systems which enable transactions that occur over a thousandth of a second to take place without any problem. These systems cannot be subject to the rules of ATM machines or telephony, where the telephone line becomes available only if there is a valid contract and the necessary financial resources are available. The road is by definition an available asset and it is the responsibility of the operator to verify the existence of the contracts and financial resources in those few thousandths of a second.

The introduction of rules to safeguard the environment and the management of mobility are certainly desirable, but need to be handled within the scope of a robust scheme, otherwise they may not work and may be rejected by citizens.

## **12. Europe as a World laboratory**

Europe has pioneered the tolling sector.

European countries were the first to introduce mass tolling. Italy, in particular, was the first country in the world to introduce a form of “pay for use” as early as the 1920s to finance the construction of motorways through the use of concessions.

Today Europe is the geographical region with the highest concentration of tolled road kilometres: the tolled infrastructure network operated by the 130 concessionaires in the 21 ASECAP member countries extends more than 26,000 kilometres. To this we need to add an additional 15,000 kilometres of network falling under different tolling mechanisms.

The largest tolled networks are in France and Italy but the concession instrument is extremely popular in Spain and Portugal too.

In 2004 Austria introduced tolls for heavy vehicles. Germany followed suit and the United Kingdom appears to be on the same road too.

In Northern Europe “tolls” are very common for the building of specific infrastructure (bridges, tunnels, urban ring roads, etc). Eastern European countries are using tolls as a form of finance to build and improve transport infrastructure. Africa, as proved by Asecap presence in Marrakech, has already adopted this tool in many of its nations, and it also foresees its extension.

But what we wish to highlight here is that this leadership position in terms of kilometres of tolled network runs hand in hand with a leadership position in terms of know-how and technology experience.

## **13. Europe can define exportable models**

We believe that all this intellectual and technological capital is a wealth that Europe must exploit. The know-how possessed by European countries certainly has scope to be exported outside the “Old Continent” and our operators may become the world leaders – as is happening for concessions. This is particularly

interesting if we only consider the infrastructural requirements of emerging countries.

We therefore believe that it is important that the ferment that exists in Europe for new tolling developments translate into exportable models, fit for application in many frameworks, included the African continent that is hosting us, and new market opportunities.

In order to achieve this Europe must believe in its “champions” and their experience, work with them closely, and build a set of suitable and non-penalising rules.

#### **14. Asecap as a representative of European know-how**

Asecap may first of all play a qualified role to encourage and spread awareness of European tolling know-how –not only European though, the Mediterranean basin gathers many nations of great history and experience- both in terms of technology as well as in terms of legal and financial requirements.

At the same time, we believe that the contents of the new legislative proposal and the future scenarios that these may lead to, needs to include the study that Asecap undertook some time ago and which is currently being finalised.

As you surely remember, this study is an analysis that we agreed to submit to European institutions in order to define the parameters and conditions that need to be considered as essential in order for the market to “respond” i.e. for it to allow for the development of a European transport network by attracting necessary private resources.

We shall start work on these issues from today’s meeting in Marrakech.