ASECAP summit. Venice 2008
A Motorway Network for Europe : market and conditions
Venice, 9 March 2008

Round Table on :
Sustainable growth and Trans-European Transport Network TEN-T financing

Minutes of speech by
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1. European growth, integration and cohesion and TEN-T

There is no European growth, there is no European integration, there is no European cohesion without a real trans-European transport network which :
a) links in technologically advanced modes, through having incorporated all possible technological progress, every relevant point A with every relevant point B in the European Union
b) links the entire network with the principal interchange points (ports and airports) in Europe with the rest of the world.

Objective a) has been an imperative part of the European debate since the early 1990s; objective b) is now emerging with the growth in external relations of the EU and through the assertion of a new world-scale production geography.

The need for technological modernization involves the rail mode in the whole of Europe, whereas modernization of the road mode is prevalently concentrated in the countries of the "new Europe", the countries of eastern Europe.

2. TEN-T, sustainability and response to climate change

There is no sustainable growth (nor integration nor cohesion) without a sustainable transport system (sustainability in respect to pollution, mortality, congestion, energy costs, in the course of redefinition in Europe from the perspective of response to the greenhouse effect and, more generally, to the causes and effects of climate change).

Transport sustainability has impacts at many levels (decoupling transport/production, modal shift, logistical optimization of ITS, better rail, better motors, better fuels). One of the most important, perhaps the one which can ensure the best results, is certainly that of the "modal shift" from road and sky to rail, sea and rivers.

The "modal shift" in Europe requires a massive level of investments in railway and inland waterways infrastructures to incorporate the necessary technical progress and to make these modes competitive with road and sky; it is for this reason that 75% of the 30 TEN-T Priority Projects defined by the EU in 2004 and to be completed by 2020 are devoted to railways and navigable waterways.

A time objective perfectly in line with the "20/20/20 by 2020" policies in response to climate change: 20% reduction in CO_2 emissions, 20% of energy demand satisfied by renewable sources, 20% increase in energy efficiency.

Realization of the 30 TEN-T Priority Projects by 2020 would represent a significant contribution by transport through the "modal shift" towards attaining the objective of the 20% increase in efficiency of use of energy resources (energy savings).

3. Cost of the TEN-T program and TEN-T Priority Projects

According to the 2004 EC estimates, the policy of modernizing and integrating the trans-European transport networks requires investments in the order (underestimated) of 600 billion Euros, of which 250 billion (amount now increased to at least 350 billion) for the completion of the 30 Priority Projects by 2020.
These sums are considerable but not dramatic, due to the objective abundance of capital involved in infrastructural investment in Europe despite the competition from other markets such as the United States and India, and other sectors such as health, education and research and public amenity services.

3.1. Availability of capital: funds for infrastructure

The availability of capital does not constitute a problem. On the contrary. In recent years the availability of private capital has significantly increased with the establishment of infrastructural funds, financed to a broad degree by pension funds and other institutional investors. The amount of private capital devoted to infrastructure is constantly increasing due to the requirement on the part of prevalently institutional investors to find greater investment opportunities, preferably low risk and long term, which ensure the capability of honouring the future financial obligations of an ageing population.
Under such conditions, the problem of TEN-T financing is easily resolvable if the conditions are created, because the infrastructural adaptation of the Member States of the EU does not necessarily need to be financed :

a) only with public resources
b) at the expense of the generality of taxpayers rather than of the effective users.

3.2. Limits to public debt in certain Member States

Where recourse is possible only to public financing, the problems originate in European States which have difficulty with their public accounts. A financial difficulty manifested, for countries in the Euro zone, through the strain which many of these experience in complying with the Stability Pact which sustains the single currency.
The constraints of the annual deficit are no greater than 3% of GDP and those of the public debt level no greater than 60% of GDP, which frequently constrain one or other Member State to draft its own debt profile based not on the investment requirements but on those of the (recovery or) public financing equilibrium. The consequences are frequent postponement of the investment expense in favour of current expenditure, with the accumulation of an increasing under endowment of infrastructural capital with long-term effects on growth.

The problem is particularly acute in regard to the railway and river sections of the TEN-T Priority Projects entrusted to Member States engaged in financial recovery programs and in particular those Member States required to make substantial investments due to the length of the internal sections under their jurisdiction.
Updated estimates ([1]), for example, value the investments in TEN-T networks to be made as equal to 62,000 billion Euros for Italy, 41,000 billions for France and 19,000 billions for Greece: all countries with public debts outside the Maastricht parameters.

([1]) European Parliament, Policy Department B, Update of the costs of the TEN-T Priority Projects, 2008 (publication in progress)

Apart from being acute, the problem is urgent because we are talking about works which, according to the commitments made at EU headquarters, are to be started by 2010 and concluded by 2020 and are characterized by a length also greater than ten years of gestation period. As of now, these works are ensured a financial cover which constrains their realization only to the technical times.

3.3. Limits to recourse to private capital

Where, instead, the infrastructural characteristics permit, because the works in question are capable of supplying services paid for by real prices (or by shadow prices), the problems only arise where it is not wished or not known how to organize financial circuits, under various forms of Public Private Partnership, of adequate length and capable of having the cost of the infrastructure and its services borne only or prevalently by their effective users.

4. Financing the TEN-T networks among PPP and public finance constraints

Even supposing, based on historical experience, that it is difficult to consider the realization of large rail and internal navigation infrastructures except through public financing, many other projects, typically road (motorway) and airport (and port), remain which have already been successfully completed by project financing and to which recourse might possibly continue to be considered in the form of Public Private Partnerships.

It can currently be said that the problem of financing the TEN-T trans-European transport networks is attributable, in order of priority, to the two problems of:

1) extending as far as possible recourse to Public Private Partnerships and thus to private financial intermediation in prices paid by the future user and costs incurred by the present implementer;
2) providing public financing of "cold" TEN-T projects, by charging to the generality of taxpayers those which are presently symbolically borne by the EU budget and substantially by the budgets of the individual Member States.

4.1 Responsibilities of the European Union and that of the Member States

Whose responsibility is it to solve these financial problems? Who has final responsibility for realizing the TEN-T trans-European network and, therefore, also for its financing?
Being an objective of obvious community value, the European Treaty is clear in entrusting to the Member States the responsibility for realizing the TEN-T network once the latter has been defined by the guidelines at community level.

The Union "concurs" in the realization of the trans-European networks and also "contributes" to their financing. But hopefully the story does not finish here.
In accordance with art.155, 2 of the Treaty, the Commission can take, in strict collaboration with the Member States, all the initiatives beneficial to promoting coordination of the policies developed at national level which may have a considerable impact on the realization of the objectives, defined in art.154, whose purpose is realization of the TEN-T network. And which political policy taken at national level would have a greater impact on realization of the TEN-T than those relating to their financing?

It is consequently obvious that, while recognizing that the basic decisions will be taken Member State by Member State, this does not mean that the European Union (and through this the Executive Commission) may be indifferent to the problem of coordinating the national financing arrangements; even if this implies, even perhaps individually for the latter, tackling the subject of the various state debt situations and the possibility that complying with the parameters of the Stability and Growth

Pact may in fact prevent some Member States from complying with their obligations to complete the sections of the TEN-T network in their jurisdictions within the planned times, thus throwing into crisis the entire programme and the promises made to the European citizens.

5. PPP and other innovative financial instruments for realization of the TEN-T trans-European transport networks

Although the mix of projects to be realized and the mix of public financing conditions of the Member States mean it is necessary to continue the works based on a combination of public financings provided by the States and private financings integrated from the (few) funds and other financial instruments provided by the European Union, an effective and efficient realization of the TEN-T programme has much to gain from a transfer of attention towards private financing in the form of PPP.

Recourse, as wide as possible, to the various forms of PPP, in fact allows:

a. grasping of opportunities offered by the increasing level of use of private capital, thus reducing the load on the public budget (including the Commission budget);

b. a reduction in the administrative burden weighing on the Member States by absorption of the Commission funds;

c. an increase in the possibility of a profitable realization of the projects, as the PPP are proving advantageous in economic terms, on condition that the projects are well structured and the risks adequately spread.

5.1. Favourable policy, certain legal framework and competent administration

In addition to political commitment in their favour, the essential conditions for success of the PPP come down to (EU and Member States) a legal framework favourable to PPP (certainty of the law and protection of legitimate expectation) and to the presence of a competent administration in a transparent institutional framework, Policy, legal framework and administration which enable selection, in each specific situation, of the most suitable form of PPP.

5.2. "Availability" PPP and "right of use" PPP

The principal choice is between PPP contracts based on “availability” or on “unitary payments” (DBFM: design, build, finance and maintain) and PPP based “on right of use” or “concessions” (DBFMO: design, build, finance, maintain and operate).

It has been observed ([2]) that the PPP model preferred by public administrations, particularly in the new Member States (excepting Hungary), seems to be that of PPP based on right of use, the concessions. This model involves transfer to the private sector of the demand risk, in addition to the construction risk. A risk profile which is less attractive for private investors, even when sustained by a guarantee instrument on the loan. It follows from this that the public tendering for PPP based on right of use (or DBFMO) is wide, whereas private demand for such projects is limited.

The opposite occurs for PPP based on unitary payment (or DBFM); here the public tendering becomes limited (practiced principally by Hungary, the Low Countries, Belgium and in various sectors of the transport infrastructures) and private demand high, essentially because the risk profile corresponds to the pension funds investment strategy.

([2])European Parliament, Policy Department B, *“New financial instruments for European transport infrastructure and services”*, Transport and Tourism Committee, June 2007

5.3. Community loan guarantee instruments and community availability guarantee instruments

The dependency of PPP private demand on the risk profile may naturally be reduced by guarantee instruments, community and non-community. If, in addition to the "loan guarantee instrument"([3]), which tends to reduce the demand risk, there is instituted an "availability guarantee instrument" which tackles the specific availability risk of each Country - the risk being linked to a contract which provides a "unitary payment" on the availability of the operating infrastructure - the use of the PPP would make securely consistent steps forward.

5.4. A task force for standardization of PPP financing projects

In addition to definition of the aforesaid guarantee instruments capable of reinforcing the project fundability, the study already quoted ([4]) suggests that the European Commission should concentrate its own efforts still more than it already has on the drafting of highly structural projects suitable to receive private financing. As new Member States in particular do not presently have the capacity within the range of the respective public administrations, to handle such a responsibility, it would be convenient to have a central task force equipped with skilled professionals entrusted with preparing and performing an agreed list of TEN-T projects in the form of Public Private Partnerships (PPP): a selection which would also introduce a useful standardization into the project strategy.

5.5. European harrmonization of PPP legislation and community law on public contracts and concessions

The other front on which it would also be helpful to be able to count on a more decisive intervention at European level is that aimed at some harmonization of the strained PPP standards to guarantee a certain legal framework.

From the viewpoint of a prompt realization of the TEN-T networks it would be convenient ([5]) for "the Commission to adopt a legislative instrument which establishes guidelines aimed at linking existing legislation and the principles, and basic definitions and concepts of the different types of Public Private Partnerships in Europe, applicable either to contractual PPPs or to institutionalized ones, so as to guarantee compliance with the principles of parity of treatment and uniformity among the Member States, leaving to the latter and their local authorities maximum liberty to define the details of the contractual or institutionalized agreements, in conformity with the principle of subsidiarity.

5.5.1 Certainty of law and principle of reliance

The discipline of the Public Private Partnership, the concessions or the availability PPPs entrusted for realization and operation or only for realization of the infrastructures must have no margins of uncertainty which have the effect of discouraging the free circulation of services, freedom of establishment and the free circulation of capital.
The principles of legal certainty and legitimate expectation which constitute fundamental principles of community regulation must be satisfied not only by the community institutions but also by the Member States in the exercise of powers conferred on them by the European directives.
In the typical case of concessions for the realization of toll roads we are not only in the presence of public concessions approved by state bodies. Here the arrangement, suitable to provide stability to

([3]) On 11 January 2008 the European Commission and the European Investment Bank (EIB) signed a cooperation agreement which institutes the "Loan Guarantee instrument" for trans-European transport network projects.
([4]) European Parliament, Policy Department B, *"New financial instruments*...., op. cit.
([5]) Transport and Tourism Commission of the European Parliament. *Considerations on Public Private Partnerships and community law regarding public contracts and concessions*. Speaker Paolo Costa. 31 August 2006

the subjective legal situations which are involved in the construction of works in regard to their operation, has provided the stipulation of a real and proper contract between the private concessionary and the public authority making the concession. This relies upon the maintenance of an unaltered contractual framework, namely on the absence of any conjecture of unilateral alteration to the contractual position by the conceding authority and that the private concessionary constructs the work and operates it for the period which the amortization approves.

6. Financing of the TEN-T networks in the Member States linked into financial recovery strategies

The usefulness of recourse to forms of PPPs should be obvious for financing infrastructures in those Member States in which recourse to debt to finance the necessary public contracts is greatly limited by current or potential deficit or excessive debt situations.

6.1. Recovery versus infrastructural investments?

The trade-off, at least for a brief period, between financial recovery and financing investments has historically resulted in loss of investments; an easier solution in comparison to containing current expenditure due to the fact, among others, that the infrastructural investments produce positive effects in the long term, frequently beyond the time horizon of every individual legislature and thus the responsibility of every given government.

The principle that financial recovery can be performed with a restructuring of public expenditure which releases resources for strategic public investments in the course of its pursuit is an established fact which continues to apply. It is sufficient to act with more decision in containing current public expenditure.

But what is to be done when compression of the public funds can only be operated gradually and the requirements for public investment are pressing, as in the case of those for the TEN-T networks for which the strategic objective applies of concluding the investments and rendering them operative by 2020?

Where there can be no total recourse to private financing (concessions or PPP on rights of use) the alternatives would seem to be only a postponement of public debt which does not affect the realization times of the works or a preferential loosening of the indebtedness constraint for a category of investments considered strategic.

6.2.Accounting outside budget of availability PPPs via the “semi golden rule”

Postponement of public debt is in fact currently favoured by the 2004 EUROSTAT regulation, by which the PPP is defined as a long-term contract in which the construction risk and availability risk (in the case of DBFM) or the demand risk (in the case of DBFMO) is transferred to the private sector. Any passive contingency deriving from such an agreement must be accounted outside budget. The availability PPP is the instrument which allows the financial burden and responsibility to be borne by the private partner for the whole construction period. The public partner must effectively sustain the payment of the passive contingency only at the time of verified availability. A wise management of this type of contracts can resolve the problem at least partially.

The preferential loosening of the indebtedness constraint (the golden rule discussed several times at European headquarters) is a solution which has not hitherto found consensus at EU headquarters; neither directly nor indirectly through the proposal to finance the TEN-T with Eurobonds guaranteed by the Union. The subject probably cannot be proposed anew. However, a mixed form of golden rule might be conjectured, applied only to half of the investment value on condition that the other half is sustained by a PPP contract.