

IN THE FACE OF THE SCANDAL OF THE MOTORWAY CONCESSIONS: TO THINK AS SOCIALISTS OF ALTERNATIVES TO THEIR DEVIOS MANAGEMENT

From the communists to the right and the centrists, the political unanimity that has emerged to note the anomalies that have marred the process of privatizing the operation of highways and to recognize the magnitude of the windfall enjoyed by the highway concession companies (SCAs) speaks for itself. The overwhelming findings of successive reports by several independent bodies (competition authority, Court of Auditors) are in the same vein.

After the poorly negotiated privatization in 2005-2006, at the cost of an estimated 12 to 50 billion euros in lost earnings, SCAs benefited from a situation rent that gave them record profitability, even though the "operating risk" that would have justified such remuneration seemed negligible from the outset. The operation was profitable from the time of privatization so that, according to the recent report of a Senate inquiry commission, SCAs paid out more than 24.3 billion euros in dividends between 2006 and 2019. Some concessionaires have paid out on average more than 100% of their annual profit to their shareholders, proof of the economic irrationality of this model. The historic concessions, representing more than 90% of the concession network, will already have achieved their profit targets in 2022, i.e. 9 to 14 years ahead of schedule.

Successive extensions of the duration of concessions; automatic annual increase in tolls unfair profit sharing to the detriment of public investment in infrastructure: there are many signs of a structural imbalance in relations between the State and concessionaires. This situation is rooted, on the one hand, in the obsolete nature of contracts that are almost identical to what they were at the time when the State, through semi-public companies, participated directly in the operation, resulting from a lack of control over the financial parameters of the concessions. In particular, the insufficient definition of the economic equilibrium of the contracts allowed the concessionaires to take advantage of advantageous compensation for carrying out work or for the neutralization of any tax measures specifically affecting their activity. On the other hand, the concentration of the market in the hands of a few players with dominant positions and greater legal and financial expertise than the State preserves their strong bargaining power. These are Vinci, Eiffage and Abertis, which operate more than 83% of the entire motorway network.

Faced with this situation, **public impotence has prevailed for too long**. The responsibility of socialists is twofold. We must seek and implement, as soon as possible, the means to prevent any further drift from the current concessions. We must also propose an ambitious vision of a new model for the future, albeit in the spirit of realism that characterizes us.

In the immediate future, **the damage caused by this harmful system must be limited**. We have already begun to explore all avenues to shorten the duration of concessions, as recommended by the Transportation Regulatory Authority in its September 2020 report on the *economics of highway concessions*. First and foremost, it is necessary to prevent further contract extensions, particularly the use of the "back-to-back" technique, which makes it possible to compensate for the work done by the SCAs by extending the concession term. Such a measure, under the so-called "Macron" law of 2015, should be subject to legislative authorization. The socialist parliamentarians are committed to federate the opposition if a proposal is put forward in this sense, in order to obtain its rejection. Vigilance is still required: when questioned in the National Assembly on 13 October 2020, the government stated that it was not currently in discussions with the SCAs, but did not clearly rule out the possibility of new endorsements.

There are many legal arguments to justify the termination of contracts without compensation to dealers or with limited compensation. Indeed, there are serious doubts as to the legality of certain clauses in historic concessions. Their excessive duration seems to us to derogate from the imperative of regular re-competition, which is so dear to the liberals. Increasing tolls indexed to inflation, which does not reflect the real increase in operating costs, could be illegal. The very legitimacy of resorting to concessions is uncertain, given the low risk associated with exploitation. Financially, the excess profit enjoyed by concessionaires is characterized. It constitutes a flagrant modification of the economic balance of contracts and could justify their early termination without compensation.

With a view to opening a formal renegotiation of all historical concessions, we seek to firmly establish the legitimacy in law of these arguments. For this reason, through a motion for resolution, we invite the government to seek the opinion of the Council of State on all of these grounds. It seems inconceivable that the government should reject this common sense approach and deprive itself of its most eminent legal counsel, even though the intervention of the latter would make it possible to dispel the remaining uncertainties and to begin the indispensable review of these contracts on a solid basis.

The current economic context has evolved and is particularly timely. A strong and mechanistic argument of neo-liberal economic theories has indeed just fallen: that of debt. For several decades, it had been understood that a public authority that was too indebted could not invest. As soon as a project required major investments, the private sphere intervened and intervened. In addition to highways, some port infrastructures and urban parking lots have suffered the same fate, with large stations becoming profitable more recently. It is a real depredation of profitable sectors of activity such as transport today or telecoms yesterday. Powerful tools and regulations have helped it: the "double till" mechanism in airports, unbalanced public-private partnerships... Economist Gaël Giraud describes this phenomenon with the concept of "post-liberalism".

Given the abundance of savings worldwide and the resulting negative interest rates, the strategy of using debt to finance our society's transitions and adaptation over the long term makes a lot of sense. It is not a question of financing the annual budget deficit, like revolving credit, but of investments that enrich us and increase our common assets: thermal renovation of buildings, modernization of our transportation infrastructure, regaining our sovereignty over everything that has been badly conceded.

We propose a policy of common sense and good management because in the long term it would increase our "net assets" and sustain the necessary financing. It is healthy to finance through debt the rehabilitation of the rail and river network to allow freight to take its place, as the tracks and canals have suffered from a cruel lack of maintenance. The same goes for the creation of a network of bicycle roads and bike paths.

We need to jointly **consider alternatives to delegated highway operations** as they are currently practiced and develop a new model. This involves managing freeways, which are part of our collective heritage, in a way that is more in line with the general interest, but also defining what we want for the development of tomorrow's France. Two issues are inextricably linked, and we need to tackle them head-on: the level of fares and the financing of infrastructure investment.

The high level of motorway fares is a major expense for many households as well as for the very struggling road transport sector. However, in our view, highways should remain subject to tolls, with the bulk of their profits being used to finance the ecological transition in transportation. This does not preclude a moderation of tolls. France's infrastructure is underfunded at a time when the climate disaster, already in our own backyard, is having an adverse impact on the environment.

doors, requires the forced development of sober alternatives to road transport, which accounts for 28.5% of France's greenhouse gas emissions.

If the operation is not necessarily public, the local authority must, of course, define the conditions for the execution of the contract. Two main options emerge:

1. The possibility of a new national public establishment to operate under the governance of a new national public establishment

It is possible to create a national public establishment, possibly assisted by regional establishments that would directly operate the highways through a public corporation. This was, for example, the model chosen in the United Kingdom with the operator "Highways England", which became a publicly owned company in 2015. The creation from *scratch* will impose a long and complex task, to be undertaken as far in advance as possible of the return of concessions to the State. It should be remembered that it is difficult for a public employer to gather the skills needed to manage a large infrastructure project on its own. However, we have real know-how in this field through the management of non-concession freeways, national roads and engineering recognized as being of very high quality (CEREMA). The transition to an operator status will require the recruitment of qualified professionals by offering sufficiently attractive salaries. However, this option is likely to raise objections with respect to European competition law, since it would enshrine the re-emergence of a public commercial monopoly and should therefore comply with Article 37 of the Treaty on the Functioning of the European Union (TFEU), which provides for "the adjustment of national monopolies" in such a way as to "exclude any discrimination between nationals of Member States". This new establishment would then constitute an economic service of general interest (SGEI) within the meaning of Union law (Article 14 TFEU) and would therefore be subject to special rules governing subsidies. It is nevertheless possible if the law so decides: it is necessary to give oneself the means, and to accept that the State once again carries out major projects that commit it for more than 10 years, that is to say beyond the borders of a single presidential five-year term.

2. Public service delegations operated by semi-public companies

It can also be seen that the condition of French freeways is excellent and that they are safer than those of neighboring countries, such as Spain, which operates free freeways under public control. From this point of view, both technical and non-financial, the balance between the quality of delegated management and the effectiveness of State control has been maintained.

A mixed public-private management allows to know the business well, to reinforce the know-how and to be able to delegate in good conditions.

On the basis of this observation, it is possible to make intelligent use of the legal means available to the public authorities to provide for new concessions within a revised contractual framework. The State could acquire a stake in the capital of the concessionary companies that would once again become semi-public companies. In this way, it would ensure direct control over operations and could oppose the excessive demands of private shareholders. It would receive a share of the profits, all of which would be used to finance carbon-free transport. The financial rule for toll increases would be revised to be indexed to real operating costs, and the clause that automatically and fully compensates for tax increases affecting these companies would be terminated.

It is possible to separate the management of the tolls, which would be the responsibility of the State, to delegate only the actual operation within the framework of a *régie intéressée*. The SEM or the private partner would then no longer bear the traffic risk. This model also allows the State to regain control over the allocation of profits by directly allocating a clearly fixed remuneration to the partner operator.

Overhauling the management of highways: this is nothing less than ensuring public control of our public services and our common goods!

Mobility, the ability to move around in good conditions to meet each other, is like a thread that connects us. In carrying out a project to overhaul the operation of freeways, we are also reaffirming our concern to support social cohesion and everything that preserves the unity of the French nation and enables us to become a society. We are also making highway transportation part of the ecological transition, which is intended to condition all public action. Whichever option is chosen, this project requires the State's ~~continued~~ commitment and a strengthening of its skills.

These proposals, offered for debate among militants, are intended to flesh out the program that will be carried by the Socialist Party and its allies on the occasion of the 2022 presidential election.

Signatories

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