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"ENVIRONMENT AND LAND TRANSPORTATION LAW"

REPORT: SPAIN

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A. TRANSPORTATION LAW

I..- EUROPEAN UNION LAW

.- What are the legal effects of the integration principle as far as transport law is concerned? Can the meaning of the principle be defined more precisely for this area?

The integration principle has far-reaching implications and, according to primary EU Law (ex art. 11 TFEU) environmental protection has to be taken in the design and implementation of all EU policies. Therefore, the integration principle may of course be applied in transport policy and law. The likely manifestations of such principle in the domain of transport may be diverse, and would depend on the imagination and willingness of politicians: (a) environmental analysis, screening and balancing of transport infrastructures networks, "strategic" environmental assessment for plans of infrastructures; (b) environmental impact assessment for individual transportation infrastructures (roads, airports, etc.); (c) establishment of taxes, charges, tolls and levies on almost all kinds of vehicles; (d) subsidies schemes for the substitution of highly polluting vehicles by other, environmentally-friendly ones; (e) imposing quantitative controls on traffic, time/volume restrictions or even plain bans on traffic for environmental protection; (f) establishing strong product regulation for environmental purposes: pollution from motor vehicles, noise from tires, noise for obnoxious motorbikes (like the obnoxious Harley Davidson ones!); (g) devising local public transportation networks and systems that respect environmental values, targets and goals (sound commuting, ecological local buses, car-sharing schemes, etc.) In our view, the only limitation for the full application of environmental criteria in the design of transportation policy and law resides in the principle of non-discrimination and the avoidance of barriers to the internal market.

.- Especially: Is it – from a legal point of view – possible to restrict the traffic volume as such? By which measures? Can the integration principle be interpreted in a way that such measures have to be taken at EU level?

-(A*) General approach*: In principle, it is possible for national authorities to restrict traffic volume as such, this is a "normal" regulatory power in the domain of the competent administrative agencies. Transportation is mainly a private activity that is completely subject to the regulatory powers of agencies. To begin with, some forms of transportation (railways) are in some countries completely run by governmental corporations or agencies in form of a monopoly. Furthermore, no transport can take place outside the public transportation network: you need a (public) road, highway or motorway to circulate, airplanes land in (mostly public) airports and cruise companies dock in public harbours. In most countries, those public

infrastructures belong to the government, they have the nature of "public domain", therefore the "proprietor" agency has very large powers to control what is going on on that infrastructure.

In addition, both individuals and firms do require endless number of personal and operational licenses, authorizations and permits just to go from point A to point B, it doesn´t matter if this is in your local area. Finally, the vehicle itself needs also to comply with several requirements and homologations to circulate legally

Thus, regulatory powers of agencies concerning transportation have a dual legal ground: the power to regulate transportation and traffic (as stemming from their general police power), plus, in addition, the "ownership" of the infrastructure on which transportation takes place. In the view of this structural patters, we don´t see major problems in the possibility for the agency to adopt a decision for "merely" restricting the traffic volume as such for environmental purposes (of course this measure should be proportionate, no discriminatory and grounded on sound reasons).

- (B) *Specific, EU Law approach*: The above "in abstracto" considerations must be naturally put in contrast with EU Law, namely the ECJ case-law on the subject.

It is evident from *Commission v. Austria* I (case C-320/03) and *Commission v. Austria* II (case C-28/09) that a national (or regional) absolute ban on transport on some infrastructures may be contrary to EU Law, as long as they have the equivalent to a quantitative restriction. However, that ruling was issued on the basis of a precise set of acts (ban on a major infrastructure which is vital route of communication between member states and for the international carriage of goods, no alternatives provided, etc.). Therefore, it should be understood that, as long as the national measure does fulfill the requirements considered by the Court in that case (and which were not met by the Austrian-Tyrol *Verordnung*), that measure could be compatible with EU Law

In any case, the "traffic volume restriction" as such may cristallise in different shapes and ways (based on tonnage; time limitations; types of vehicles banned; type of the road where the ban is issued). Each form of ban would deserve a careful consideration.

Finally, in our view the integration principle cannot be interpreted in a way that traffic restriction measures have to be taken at EU level. The controlling principle here is not integration, but subsidiarity

.- How can the polluter-pays principle be defined more precisely?

It is not clear whether this item of the questionnaire refers to the PPP in general, or to the PPP in the narrow transport area. The PPP is a very murky and debatable principle. Even in the latter case, the PPP can not be defined in a precise manner, for it allows for different types of devices and may crystallize in different ways. For instance, just identifying the "polluter" in the transportation world may be a murky question: ¿is it the truck manufacturer?; ¿is it the vehicle dealer?, ¿the transport company?, ¿the truck driver, who is the person actually pressing the accelerator and producing the pollution from the exhaustion system?; ¿the bus passenger, whose demands of travelling are in the very basis of the activity that produces the pollution?, etc.

.- In which way does secondary law take environmental concerns into consideration? Is the integration principle implemented sufficiently in secondary law?

Environmental concerns play some role in EU secondary law dealing with Transportation, although the *greening* of such sectoral EU policy could be of course improved. If one reads Directive 1999/62 (as amended by Directive 2006/38), its legal basis is not art. 175 of the ECT, but art 71(1). In the preamble of Directive 1999/62, it is clear that this rule deals with taxation (harmonization of levy systems), free competition (elimination of distortions) and internal market law. The substantive scope of application of the Directive (specified at art.1) does not refer to the environment. The integration principle (then at art.6 ECT) is not even mentioned. However, attention is paid to a fair amount of environmental aspects (see answer below). In our view, this is a sufficient implementation of the integration principle, but the room for the introduction of more environmental concerns is large at the policy level.

.- What is the legal framework in European Union law for national measures trying to limit negative environmental effects especially of road and air traffic? - What is the exact scope and objective of Directive 1999/62 in relation to vehicle taxation, tolls and user charges?

The key legal rule in this field is Directive 1999/62. As for the "green" provisions:

- Recitals 7 and 18 of its preamble mentions environmental protection in order to justify special regimes for taxes, tolls and charges.
- Art. 2(aa)(ii): environmental elements to be considered as part of the costs of infrastructure
- 7,2,c: possible derogations from the application of tolls or user charges for environmental reasons
- 7,10,a: combating environmental damage as a ground to introduce variations in the toll rates
- 7,11,b: combating environmental damage as a ground to add a mark up to the tolls of specific road sections
- 9,1,b: environmental protection as a ground for MS to introduce regulatory charges not covered by the directive
- In addition, less pollutant vehicles ("Euro II") may pay smaller user charges than those who are not, according to annex and art. 7.7 of the Directive.

.- What limits have to be drawn from the fundamental freedoms, in particular free movement of goods in view of the case law of the ECJ (C-195/90, C-205/98, C-320/02, C-28/09)? What is the discretion Member States have in implementing such measures?

In a nutshell, that case law stands for the proposition that, although MS do enjoy discretion as to implement environmental-friendly measures in the domain of transport, this must be done with due respect to the limitations of both primary law (free movement of goods, now arts. 28-29 TFEU, and TFEU provisions on transport policy, arts. 90 and ff.) and secondary law (for instance, minimum rates for taxes, Annex I of Directive 1999/62; maximum rates for user charges, Annex II of the same rule). On the other hand, the measures must be proportionate, non discriminatory and transparent. As a rule, those measures must be communicated to the Commission.

There will be certainly room for oral debate on this topic during the meeting!

.- As the Alps are concerned: which measures could be taken on European, International and/or National level in order to limit the transalpine freight transports by road?

This issue is addressed at the 13th recital of Directive 1999/62, and covered by art. 7.11 (mark-ups to tolls) and 7b (infrastructure tolls). Another legal ground would be the Alpine Convention, to which the EU is a party. Of course, the case law of the ECJ should be taken into consideration (*Commission v. Austria* I and II)

.- What EU measures have an impact on the construction of roads, and how could they be made more environmentally friendly?

The clearest examples of such measures are the structural funds (especially the cohesion fund). Allocation of cohesion and other EU funds to specific project is in fact subject to the fulfillment of environmental criteria and standards

.- What EU measures provide for product labelling concerning the transportation of a product?

Not to our knowledge

.II..- NATIONAL LEGISLATION

.1.- GENERAL QUESTIONS ON NATIONAL TRANSPORT POLICIES AND LAWS

-a) .- To what extent, environmental issues are taken into account in national transport policy? …

A traditional, distinctive feature of the national transport policy in Spain is that it has paid little attention to environmental issues. Apart from structural reasons (relatively low environmental awareness on the part of politicians and the population), this situation may be also explained by the way in which laws and regulations are drafted and enacted in Spain. At the national level, transportation laws, regulations and policies are drafted by the Department of Transportation (currently, "Ministerio de Fomento"), which is a traditional "sectoral" agency, with a narrow view, focused on its subject matter (*tunnel-vision*, as experts call it) . The top professional positions in the Department have been traditionally dominated by engineers (civil servants), who mainly "think as engineers". The "regulated industry" is powerful and important in the share of GDP, very clearly identified (the transport firms and companies) and organised, and the governmental role in this sector has been very important ("ownership" of infrastructures, government-run monopoly in railways and airports, etc). These factors explain that transportation policies and laws are just that, "transport law", with little considerations to other "alien" factors. On the other hand, the governmental structures aimed at ensuring inter-agency coordination have proved to be useless in ensuring the integration of environmental protection, which is "advocated" by another department (environment), now merged with contradictory forces like Agriculture or Fisheries.

In recent times, however, one may see some changes in this structural pattern, mainly due to the requirements of EU Law, although the overall situation is still unsatisfactory. Thus, for instance, the Council of Ministers adopted on April 30, 2009, the *Spanish Strategy for*

Sustainable Mobility. This strategy integrates the principles and tools to guide coordination and coherence in sectoral policies aiming at facilitating sustainable mobility. The objectives and guidelines are divided into in 48 measures in five areas: land, transport planning and infrastructure, climate change and reducing energy dependence, air quality and noise, safety and health, and demand management. There are general guidelines and also so-called priority measures, that a re described at different items of this paper.

At the regional level, several Autonomous Communities have also adopted different plans on sustainable transportation, for instance the Basque Country[1]

On the other hand, the national government has encouraged the purchase of ecological, electrical or less polluting cars, as long as the buyer eliminates an old (more than 12 years), polluting car at the same time. The now-in-force program was launched by the government in October 2012, under the name of "PIVE" (plan for encouraging the purchase of ecological vehicles). In total, the purchase of a new environmentally-friendly car is subsidised with 2000€, an amount that is shared among the government and the car dealer.

- What are the important constitutional law provisions?

There are no relevant constitutional provisions on Transport law, except in the field of allocation of powers between the State and the Autonomous communities (art. 148.1.5º-6º for the regions, art. 149.1. 20º-21º for the State). The key idea is the geographical scope of the transport or the infrastructure.

-c) .- What are the most important legislative acts in the field of road and rail transportation?

The key Statute in this field is the 16/1987 Act, of 30 July, on land transportation (*Ley de ordenación de Transportes terrestres)*, as amended. This piece of national legislation has been supplemented and developed by a number of administrative regulations, the most important of which (for the purposes of this questionnaire) is Royal Decree 713/2009, of 24 April, which, among other features, transposes Directive 1999/62.

The 1987 Act does not explicitly include environmental considerations among its guiding principles, nor are there structural mentions to environmental protection. The basic inspiring principles of this legislation (as set at art. 3 and 4) are alien to environmental protection: establishing and ensuring a national system of transport; coordination of the different administrative networks and infrastructures; "satisfying the needs of society in the most efficient manner and with the smallest social costs", etc.

Apart from this sectoral legislation, mention should be made to a key and cross-cutting recent statute, the **Act on Sustainable Economy.**

[1] See this plan at:
http://www.garraioak.ejgv.euskadi.net/r41-430/es/contenidos/informacion/2905/es_4076/adjuntos/plan_transporte_c.pdf

The Act nº 2/2011, of March 4, on Sustainable Economy (hereinafter, "sustainable economy act", or SEA) includes certain provisions concerning environmental sustainability. One of the basic principles is to promote transportation of lower energy consumption and also intermodal transportation. However, this national Statute is fairly broad and it does not provide clear cut time lapses for the implementation of its provisions. Therefore, it is to be seen as a compendium of principles and measures no one could not agree with, but lacking sufficient incentives for its practical implementation. This type of legislation has become frequent in recent years. They merely foresee long term objectives, whilst leaving to the public authorities their practical implementation. The SEA contains a set of rules regarding planning and efficient management of infrastructures:

- economic competitiveness through cost reduction, associated with high-capacity infrastructure, improved rail and road access to facilitate intermodality.

- sustainable and safe mobility in economic and environmental terms through projects producing an effective reduction of emissions and other environmental damage.

- more sustainable and efficient modes of transport, in particular those relating to rail freight.

Planning priorities for transport infrastructure include:

- Adapting basic network lines for transport of goods by rail, to enable freight trains over 750 meters long.
- Enhancing road and rail connections to ports of general interest based on their potential economic impact of existing problems and the opportunity costs.
- Promoting the creation and improvement of modal exchange centers and logistics activities that promote the reduction of operating costs of transport, improving intermodality and efficiency in energy consumption.
- Improving the connection of high-speed rail network with the conventional rail network.
- Encouraging the development of transport infrastructure and metropolitan railway platforms and bus reserved for high-occupancy vehicles and bus stations and interchanges intermodal parking decks deterrent.
- Promoting the development of railway infrastructure for the progressive improvement of infrastructure connecting to international standard width.

As indicated above, the SEA sets out a variety of principles concerning transport and general sustainable mobility. As in other cases, the Act lists a number of principles and measures but they are very general. In this sense, it requires public authorities to promote sustainable mobility policies respecting the following principles:

- Citizens' rights to access to goods and services under conditions of adequate mobility, accessible and safe, having the lease social and environmental impact as possible.
- Society participation in decision-making affecting the mobility of people and goods.
- Compliance with international treaties concerning climate protection and environmental quality, with respect to mobility and the adaptation to EU policies in this area.
- The establishment of new transport services should be subject to the existence of a level of demand consistent with the investment and maintenance costs, taking into account, in any case, the existence of alternative ways of proper quality, price, safety and the results of environmental assessment.

More specific measures concern the creation of so-called sustainable mobility plans and transportation plans for companies.

a) *Sustainable mobility plans* are defined as a set of actions aimed at the implementation of more sustainable forms of travel in the appropriate geographic scope, prioritizing the reduction of individual transport systems for the benefit of groups and other non-motorized modes of transport and those developing compatible economic growth, social cohesion, road safety and environmental protection, ensuring, in this way, a better quality of life for citizens. These plans must accommodate new initiatives and solutions that effectively reduce the environmental impact of mobility at the lowest possible cost. The plans may be applied at regional or municipal (or supramunicipal) level. Plans adopted by municipalities or groups of municipalities with a population over 100,000, as part of plans and programs for the implementation and improvement of air quality objectives under Law 34/2007, of 15 November, on air quality and atmospheric protection, are to be regarded as sustainable mobility plans. The content of sustainable mobility plans include at least, the diagnosis of the situation, the objectives to be achieved, the measures to take, appropriate funding mechanisms and procedures for monitoring, evaluation and review and analysis of economic, social and environmental costs. As of January 1, 2014, the granting of any aid or subsidy to regional or local bodies included in the State Budget and intended for urban or metropolitan public transport, will depend on the previous approval of a Plan for Sustainable Mobility, consistent with the Spanish Strategy for Sustainable Mobility.

b) The SEA also foresees the promotion of transportation plans of companies in order to reduce car use and polluting modes of mobility of the workforce. Joint plans for companies that share the same work center or building, or that develop their business in the same park or equivalent location may also be adopted. The Act foresees the appointment of a coordinator for mobility in companies with more than 400 workers to facilitate the implementation and monitoring of the adopted transportation plan, if needed. However, these plans are not compulsory and there are no incentive measures to promote them.

The SEA includes certain measures on technological modernization and efficient means of transport. Again, those measures could be regarded as mere guidelines, lacking binding effect on the public authorities:

- Improving the energy efficiency of transport fleets and implementation of training and evaluation plans in their efficient management.
- Developing the use of new technologies in fleet management with energy efficiency criteria.
- The development of energy certification of transport companies.
- The renewal of the fleet of vehicles of public transport of passengers and goods by incorporating energy-efficient vehicles.
- The development of training programs and information on energy efficiency labeling for vehicles and surveillance systems on labeling.
- Promoting the use of electric and hybrid vehicles.
- Promoting the use of sustainable packaging, to reduce the carbon footprint of transportation.

However, unlike other measures, the Law sets out several provisions concerning the purchase of efficient vehicles by the public authorities. Contracting authorities under Public Sector contracts and operators running public service obligations under a public service contract are

subject to certain conditions concerning the purchase of motor vehicles and their trailers, systems, components and separate technical units intended for such vehicles.[2]

a) They must take into account the energy and environmental impacts of the use of the vehicles during their lifetime and in particular the following aspects: energy consumption; CO_2, and emissions of NOX, NMHC and particulates.
b) The Act provides for a series of options for the fulfillment of its goals. For instance, the abovementioned authorities may set out technical specifications for energy and environmental performance in the documents needed for the purchase of road transport vehicles (for each of the impacts considered), as well as any additional environmental impacts. They may also include energy and environmental impacts in the award decision for the contract, so that those impacts are taken into account in the public procurement procedure.

.2.- INSTRUMENTS TO MANAGE AND REDUCE ROAD TRAFFIC

- Is there a national debate on the sense and nonsense of traffic tolls and other instruments to manage and reduce road traffic, and if so, has this led to changes or corrections of the regulatory framework?

No, in Spain there is not such a "national" debate. However it should be stressed that the national government supported a very clear position during the decision-making process leading to the adoption of Directive 2011/76, which amends once again Directive 1999/62 and which should be transposed by 16 October 2013. Spain was neatly against the initial proposal of the Commission and, joined by other MS, successfully managed to introduce amendments into the original wording of the proposal. Spain was in favor of introducing transitionary measures for some kinds of trucks, so that the most environmentally-efficient vehicle should not pay the "Euro-vignette" during some years after the entry into force of the new EU rule. Spain advocated for lighter and more proportionate user charges for vehicles complying with the so-called "Euro 5" standard for polluting emissions. In fact, these vehicles will be exempted from paying the "euro-vignette" until I January 2014. And, once the "Euro 6" standard will enter into force, the vehicles complying with this stringent standard will not need to pay the "euro-vignette" until 2018. Beyond this "environmental" reasons, it should be pointed out that there were also strong economic reasons backing the Spanish position. The truck transportation of goods is a very strong and powerful sector in Spain. A big share of exports (for instance, for vegetables and fruits) are carried out using this type of vehicles. In addition, the geo-political position of Spain is very disadvantaging, because Spanish trucks must drive many thousand miles to reach the main European markets (France, Germany, the Nordic countries). Therefore, the "euro-vignette" has been consistently seen by local politicians as an extra cost that would put this Spanish economic sector in a competitive disadvantage with other more central MS, and would trigger a raise in the final price of our products, then making them less competitive.

[2] Some vehicles are exempted: Vehicles designed and constructed for use principally on construction sites, quarries, port or airport facilities; vehicles designed and constructed for use by the army, civil defense, fire services and forces responsible for maintaining public order, and mobile machinery.

(a) .- Tolls and user charges

Directive 1999/62 was transposed in the Spanish legal system by Royal Decree 713/2009, of 24 April 2009.

Tolls have been consistently linked to the construction and exploitation of motorways, using the system of concessions. No other tolls or user charges exist.

The construction of toll roads in Spain dates back to the late sixties. By 1977, the length of the motorway network had reached 1,100 kms. In 1996 it reached 2,000 km and 3,000 in 2006. Nowadays, the motorway network covers 3300 km, of which 2,759 kms are concessions granted by the State and 548 km by the Autonomous Communities of the Basque Country, Catalonia, Navarra and Galicia. However, toll roads has approximately generated a deficit of roughly 3.8 billion € deficit, leaving nine concessions on the verge of bankruptcy. These nine companies obtained in 2010 an operating profit of 49.5 million, which cannot even pay the interest on the debt. This situation is particularly acute in the case of the motorways surrounding Madrid (so called radials or R). However, the government seems to be willing to provide loans to compensate for the loss of traffic.[3]

The debate is mainly focused on charging traffic tolls, as a source of revenue, and not on imposing traffic tolls to reduce traffic or for environmental purposes. Tolls are nowadays employed to collect a higher amount of funds to limit public debt, e.g., the increase of 7.5 % in July 2012 and a further surge due to increase of VAT in September 2012. Further tolls may be imposed on speedways to collect more funds. In principle, no environmental purposes are behind future tolls. Spain toll motorways have an alternative free-toll road, so that users have the possibility of choosing between a toll highway that offers a higher quality and shorter time to travel, and a road toll, which can be conventional road or motorway, and which offers them a lower quality and longer travel time.

Royal Decree 713/2009, of April 24, laying down the criteria for determining tolls apply to certain goods vehicles on motorways under concession from the State Highway network, transposes Directive 2006/38/CE, amending the former Directive. It should be noted that (among the different possibilities provided for in the Directive), this Royal Decree has chosen to maintain the current situation, in which only motorways operated under concession are subject to the payment of tolls. The Decree does not to introduce tolls in the State Highway network. In other words, Spain does not yet apply the *Eurovignette* and it is unlikely that it will be implemented in the future.

According to Royal Decree 713/2009, (art. 2) tolls are based on the principle of recovery of infrastructure costs. In particular, the amount of weighted average tolls shall be related to the construction costs and the costs of operating, maintaining and developing the infrastructure network concerned. The amount of weighted average tolls may also include a return on capital or profit margin based on market conditions. Pricing schemes based on forecasts of traffic volumes should have a correction mechanism by which tolls are adjusted periodically, in order to adapt any excess or deficiency in the recovery of costs due to errors forecast (Article 5(4) Tolls are charged on vehicles depending on their characteristics, e.g., trucks, cars or motorbikes.

[3] For a graph providing information on the actual situation of concessions, see the newspaper "El País": http://elpais.com/elpais/2012/06/25/media/1340616283_910642.html.

-(b) Emission Trading

An emission trading system on vehicles does not exist in Spain. Adaption of national law will therefore be necessary in order to introduce an emission trading system on vehicles, for instance by amending the 1987 Transportation Act, or by amending Royal Decree 713/2009, or by enacting a new one.

.3.- INSTRUMENTS TO PROMOTE RAIL TRAFFIC AND COMBINED TRAFFIC?

-(a) Is there any specific legislation promoting rail traffic and combined traffic, such as regulation, price control, subsidies etc.?

Transportation in Spain has mainly been based on (first) road and (secondly) air traffic Roads represent the basic means of transportation. During the last decades there has been an increase in the number of roads but also of railways and in particular high speed lines. In this respect,. It should be stressed that, since the nineties, Spain made a strong pledge in favor of train traffic, especially "high speed" trains. A comprehensive, radial-like national plan was approved by the government and the line Sevilla-Madrid-Barcelona, crossing the Iberian peninsula sout-west/north-East, was executed. In the following years, new lines were opened (Madrid-Malaga, Madrid-Valencia) and some infrastructures are still in process (Madrid-Galicia, Madrid-Alicante, the Basque network). According to some estimates, 45.000 million€ have been invested in high speed railways until 2010. However, the economic crisis has put a shade of doubt about the reasonableness of such ambitious plan. Furthermore, the attempt of many local and regional authorities to have a station nearby has lead to the design of expensive and not very efficient lines.

The acute economic crisis that Spain faces nowadays has exacerbated the debate concerning the need for such trains: some lines proved to be non-profitable and had to be closed (Madrid-Cuenca); the maintenance of the network implies skyrocketing and ever growing prices: currently, it is more expensive travelling from Madrid to Barcelona by train (standard price: 160€ return ticket) than going by plane (ticket available for less than 100€). On the other hand, the policy of focusing on high speed train lines - connecting big cities in the periphery with the center (Madrid)- has triggered the abandon of traditional, conventional lines, which has been criticized by experts and by environmentalists.

This consideration is also applicable to "phantom airports", that is to say, airports that have rarely (or never) been used: Castellón (no plane has ever taken off); Ciudad Real with one of the longest runways and with a capacity for 2,5 million passengers is closed; other airports: León, Lleida, Albacete or Badajoz have very few passengers despite their cost, etc.

-(b) How are infrastructure costs for rail traffic financed?

Theoretically, external costs are introduced as a part of the pricing cost of the train tickets, but the actual cost of the tickets depends of a variety of factors, some of them being clearly of "political" nature. It has to be reminded that, contrary to the UK for instance, the whole rail sector is a governmental monopoly. Therefore, pricing is subject to many different considerations (taxation, competitiveness with road and airplane transport, inflation, etc.) In any case, the prices do not reflect the huge investments made for the building and

maintenance of long-distance high-speed train lines, otherwise the prices would be unbearable.

4.- CASE LAW

In general, and setting aside the restricted community of specialists, the mentioned rulings of the Court of Justice have had little impact or relevance in Spain. On the other hand, to our knowledge there is no relevant national case law on transport issues where EU issues came into play.

B.- LAND-USE PLANNING AND ENVIRONMENTAL IMPACT ASSESSMENT

1. **Are there different levels of the planning of transportation infrastructure? …**
2. **If there is road construction planning on a higher level, are the different transportation modes (roads, railways, air transportation, waterways etc) weighed against each other…?**
3. **Concerning…**
4. **to what extent…?**

Yes, in Spain there is a multi-level structure for the planning for transportation infrastructures, both sectoral and territorial. At least for what concerns roads, there are at least four levels of decision making: municipalities (local roads); provinces (provincial roads); Autonomous Communities or regions (regional roads) and the central government (national roads). The same happens for air transportation (airports) and harbours, where both the national and regional bodies may decide the construction of such infrastructures.

Unfortunately, coordination among the different levels does not present an ideal situation, for each level does planning in an almost independent way, according to their own needs, political priorities, electoral promises, disposable monies, etc. The only exception is for long distance railways and roads, where the national government is the only one having competence and capacity to design and implement infrastructures. Therefore, there is no substantial difference as to how planning is made at the different levels. The result of this multilevel and discoordinated system of planning is in some respects very disappointed, as shown in the domain of airports (see, supra).

As said before, the central government is the only "higher level" with a real power to design and carry out different comprehensive and long-distance transportation modes (airflights, marine and terrestrial transportations) and therefore is the only one been able to perform a "national" balancing of options. Regions may also carry out such planning, but their territorial scope is more limited, and so are the types of infrastructures they may design (regional roads, airports and harbours not being of "general" or "national" interests, etc).

At the national level, the most important planning document in this domain is the "Strategic Plan on Transport Infrastructures" (*Plan estratégico de Infraestructuras de Transporte, "PEIT")*. The PEIT was approved by the national government in July 2005 and covers the period 2005-2020. This is the over-arching planning document for transport infrastructures in Spain. It devises a network of networks, with an intermodal vision. Although the Strategic Environmental Assessment for plans was not compulsory in Spain

until 2006 (transposition of Directive 2001/42 by means of Act 9/2006), this Plan was indeed submitted to such an (informal) strategic assessment.

This PEIT was later supplemented with other "strategic" although sectoral plans: Plan for Roads, Plan of railways transport, plan on airlines transport, among several others.

There was a balancing among the different strategic options (for instance, priority given to "high speed" trains). Different considerations take place in this balancing: the objective needs of the economy, the level of development of the several parts of the territory, the need to communicate remote or hardly accessible areas (like mountain areas), or just political objectives (having all the big cities in the region connected) etc. The environment had an actual weight in this balancing of different transportation modes (roads, railways, air transportation, waterways etc) but it was not the decisive ground for decision.

Besides the Strategic assessment of the PEIT, the approval of individual road construction projects is subsequently submitted to an environmental impact assessment (EIA) for the individual project.

Alternatives are of course taken into account, with the legal basis of SEA, EIA, Natura 2000 protection, they also include "other" projects (e.g. rail construction, instead of road construction). The zero "zero-option" need must be taken into account, but it usually plays a little role, if any, especially when an infrastructure has been an electoral promise of the winning candidate and there is a strong commitment of the government in force to carry out such project. There are no relevant provisions in national law, in addition to EU requirements (no "gold-platting"). However, some projects have been rejected on the ground of excessive environmental impact (like the motorway project between Toledo and Ciudad Real, in central Spain).

C.- PRODUCT LABELING (EXCURSUS)

1.- To what extent is long-distance travelling taken into account in the EMAS…??
2.- To what extent does national law provide for product labeling …?
3.- How can this labeling be done nationally without breaching EU rules…?

Long-distance travelling consideration might very well be inserted at point 2 of Annex I of Regulation 1221/2009.

As far as Spain is concerned, national law does provide little room of product labeling in order to reflect long-distance transportation.

In principle, any legal national initiative in this domain could be understood to be valid under art. 193 of the TFEU