

EDITORIAL COMMENTS

On the importance of subterranean connections

In the heart of the Swiss Alps a key element of the European Transport network is in the course of construction: the “neue Eisenbahn-Alpentransversale” (NEAT), or new transversal Alps railway. This time, the boost to European transport policy does not come from a legal construct such as the 1985 judgment of the ECJ¹ which declared that the Council had failed to meet its obligation to implement a common transport policy, but comes from an immense tunnel, 57 kilometers long. The construction of the tunnel will cost 14 billion Swiss Francs (approximately 10 billion Euro). An additional 16.4 billion will be needed for improvements in the tracks and the interconnections, as well as for measures to reduce the noise pollution. The preparations for the project started in 1996 and the completion of the final interconnections is foreseen for 2020.²

This is an enormous construction project, even for a country such as Switzerland whose mountains are riddled with tunnels, dozens of which are built every year. The NEAT tunnel will run parallel to the old “Gotthard Strasse”, the alpine pass that for many centuries formed the gateway to Italy. This pass was the route that people like Goethe and Schiller travelled Southwards to enjoy the renaissance culture of the Appenine Peninsula. Of course in those days, all travel was by stage-coach which left the mountainous environment relatively untouched.

The construction of the NEAT tunnel forms the apotheosis of years of arduous negotiations in the field of transport between the Helvetian Confederation

1. Case 13/83, *Parliament v. Council* (Transport policy), [ECR] 1985, 1513. It may be recalled that this case concerned the successful challenge by the European Parliament of the Council's failure to adopt a common transport policy. The ECJ gave the Council a *terme de grace* of an unspecified number of years to get its act together. But the Commission's White Paper on the completion of the internal market, COM (85) 310, soon set 1992 as the deadline for the completion for the internal market, consequently this was accepted by the other Community institutions. Indeed soon after the judgment, important progress was made in the area of maritime and air transport in 1986 and 1987 respectively. Measures in the road transport sector followed some years later in 1992.

2. The website of the project is: www.alptransit.ch

and the Community, which started with a Swiss ban on lorries weighing more than 28 tons. The Swiss Government enacted this rule in order to protect the fragile alpine environment. EC road haulers did not take the news well. The measure seriously restricted the use of major transit routes through the Alps, in particular since throughout the EC, the maximum permitted weight is 40 tons.³ Inevitably, the Swiss ban led to a diversion of road transport to the Austrian and French Alps, upsetting the people in those areas and causing them to demand that their governments take action against the Swiss Government. The serious accident in, and the subsequent closure of, the Mont Blanc tunnel between France and Italy in 1999⁴ as well as the damage to the toll road over the Brenner pass between Austria and Italy have only further highlighted the problem of diversion of the transit traffic. The problems of the haulers of the EC Member States had also been compounded when the Swiss Government introduced road taxes for all vehicles including foreign vehicles in transit. There are no such general taxes in the other Alpine countries, although there are tolls for the use of certain facilities.

Long and complex negotiations finally resulted in 1999 in an Agreement between the EC and the Swiss Confederation on the carriage of goods and passengers by rail and road.⁵ This agreement strikes an ingenious compromise between all the formerly opposed forces. With an admirable and unusual sense of understatement its preamble proclaims its purpose: "to ensure consistency between Swiss transport policy and the general principles underlying the Community's transport policy." The Agreement consists of four main elements:

- the gradual phasing out of the 28 ton maximum weight limit, replacing it with 40 tons;
- the gradual introduction of a road tax financing the construction of the NEAT tunnel and the new railway infrastructures;
- an increase of the road tax after completion of the tunnel to create incentives for combined transport, i.e. to promote the use of the rail link for all transit transport by lorries;
- a safeguard clause allowing further Swiss measures restricting road transport if the newly created rail link is not used sufficiently.

The overall objective of the agreement is to provide maximum incentives for a switch in the transportation of goods from road to rail, thus enhancing

3. However, it should be recalled that it took 14 years of hard-fought negotiations to enact the relevant EC Directive 85/3, O.J. 1985, L 2/14 as amended by Directive 86/364, O.J. 1986, L 221/48 and Directive 88/218, O.J. 1988, L 98/48.

4. It has also made the public opinion aware of the serious safety issues posed by tunnels. This awareness has only increased after further serious tunnel accidents, most recently the Gotthard road tunnel.

5. <http://www.europa.admin.ch/e/int/abindex.htm>.

the protection of the environment. On 29 November 1998, the Swiss population had approved the Agreement in a referendum, clearing the way for its signature and ratification by the Confederate government.⁶

It is also of interest to point out that the Community and Switzerland are engaged in negotiations for other major agreements: e.g. on the implementation of the Schengen acquis and the combating of tax fraud. The conclusion of these agreements is, after the September 11 attacks, of the greatest urgency. The President of the European Council Guy Verhofstadt noted that there needs to be much closer co-operation on security and asylum issues between the Community and Switzerland. The 1999 transport Agreement, together with the other agreements between Switzerland and the Community, will be discussed in more detail in a forthcoming article in this *Review*.

At this point a few comments would seem to be appropriate. The Agreement embodies, of course, a major step forward in the development of a truly European transport policy. Even more importantly, however, it has a symbolic value for the integration process in Europe far beyond the confines of the European transport policy. The fact that the EC and Switzerland have been able to reach such far-reaching solutions bears testimony to a well-developed sense of common interests. As such, the Agreement is a monumental sign of co-operation.

On a more general level, it is particularly worth noting that this enormous effort of common policy-making has gone largely unnoticed in the public opinion of the Community. It certainly has not gone unnoticed in the Swiss public opinion. The referendum approved the project with a 63% vote of approval. Many citizens, and in particular the environmentalists, especially in the canton Uri, voted against the project. The canton Uri is the heartland of German speaking Switzerland where the majority of voters opposed accession to the EEA Treaty. Even though the decision of the Swiss Federal Council is now final without the possibility of appeal, a substantial and very vocal group of citizens will continue to use the remedies available under the subsequent planning procedures.⁷

However, as far as the public opinion in the Community is concerned it is almost entirely a subterranean activity. And yet, it is the creation and development of policies such as this which lay solid foundations for further economic and political integration. It is regrettable that the media in the

6. The ratification process by the Member States has not yet been completed. As at 1 Oct. 2001, the ratifications by Belgium, France and Ireland are still pending. *Agence Europe* No. 8053.

7. This group runs a very lively website: www.raumentwicklung.admin.ch/uri_d.html

Member States fail to give these developments the attention they deserve.⁸ The underexposure of the positive results of European integration efforts in the media has the effect of diminishing popular support. The construction of Europe needs the continuous support of all those that depend on it for their day-to-day needs, needs which include efficient road and rail transport systems.

8. Even the specialists seem to pay relatively little attention to the EU's relations with Switzerland. Cf. the gentle complaint by Schwok and Levrat, "Switzerland's relations with the EU after the adoption of the seven bilateral agreements", (2001) *EFA Rev.* 335–354 at 335.