



Roads to Euro 2012
An Analysis of Poland's Road Infrastructure
Current Status and the Development Opportunities

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I. Introduction

In the history of each state the communication network has played the very important role of a blood circulation system, enabling the development of the country. Moreover, the level of transport infrastructure development has constituted one of the most important criteria of the appraisal of the socio-economic development of a state. It has also demonstrated the economic growth of a country. The condition of Polish transport infrastructure is not good and in the forthcoming years it requires

a number of measures to improve the situation, since inefficient infrastructure slows down the economic growth and decreases the competitiveness of the economy. The current condition of the Polish communication network (roads in particular) is far from the condition in neighboring countries.

“As a result of a debate regarding road and rail transportation, conducted for the first time since the changes of 1989, the Sejm of the Republic of Poland wishes to express its anxiety with the current condition of this section of the economy. The information concerning the outcomes of the audit on the functioning of the road and rail transport in the years 1990-2004, presented by the Supreme Chamber of Control, and the information concerning the condition of land transportation presented by the Minister of Transport and Construction indicate that the condition – resulting mainly from long-term insufficient financing – hinders the opportunities of social and economic development of the country and poses an increasing danger for the safety of the people. Having this in mind, the Sejm of the Republic of Poland recognizes the organization of an efficient transportation system as a fundamental task of the State in the forthcoming years. Furthermore, the Sejm assumes that in order to implement the task it is necessary to enhance the measures taken by relevant central and local government institutions to optimise the costs of the functioning of transport within the framework of a sustainable development of the country.”

An excerpt from a Resolution of the Sejm of the Republic of Poland of 24 February 2006 on the functioning of land transport

(...) having come two miles from Iwańska on a road excellently made and equal to those in foreign countries, having mounted horses [the King] rode for a quarter of a mile to see the palace that once used to be famous (...)

Bishop Adam Naruszewicz in a diary from the journey of King Stanisław August Poniatowski to the Krzyżtopór castle

Polish road infrastructure is not adapted to the standards of the European Union. Being an EU member we have to bear in mind that transport, and road transport in particular, plays a very particular role, as it becomes a system that connects all member states into one organism. The maladjustment of Polish roads to European standards is a vital obstacle to the development of international exchange both with other EU members and with other countries. Unfortunately, existing sections of motorways and express roads in Poland do not form a coherent network that would link the main municipalities and industrial areas of the country. A lack of a comprehensive motorway and express road system hinders the opportunities of foreign investment inflow and it does not favor the development of industry or services. It is also an essential barrier to workforce mobility and decreasing unemployment. This situation results in a slowdown of the improvement in the competitiveness of the Polish economy.

An additional factor, which has enhanced the meaning of the road network development in Poland recently, is the selection of Poland and Ukraine as hosts of the European Football Championships

EURO 2012. The organization of an event of this size requires the expansion and modernization of all infrastructure in Poland, and road infrastructure in particular. So far, the actions taken and their pace do not guarantee success. Therefore, it is necessary to analyse the current state, and

particularly the legal and organisational considerations, in order to be able to indicate the factors that hamper and obstruct the enhancement of the road network in Poland.

The document presented here diagnoses the barriers to the development of road infrastructure and comprises ideas for measures to improve the development of the transport network in Poland. The most important conclusion of the paper, besides pinpointing necessary changes in the law and improvements in administrative procedures, is the demonstration of a necessity to include private financing in the development of roads and motorways in Poland. They can be built in the way they have been so far, but achieving significant progress in this matter before EURO 2012 is impossible without the use of private capital.

II. Experiences in road development in Poland thus far

1. Financing – traditional forms, licensing

Polish episodes (it is difficult to use a different term for Polish achievements) as regards the construction of motorways, only commenced at the end of the 1970s. It seems virtually impossible to determine what led decision makers of that time to invest money in the selected sections of motorways instead of other sections. The selection was supported neither by geopolitical nor by economic reasons. During the last 10 years only 393 km of motorways have been constructed in Poland, and only a little over 200 km were upgraded. It is worth looking into the history of road construction in Poland, as it reflects all mistakes and omissions that resulted in such a feeble development of the motorway network in our country.

Name	Motorway section	Length in km	Period of construction
A1	Piotrków Trybunalski - Tuszyn	17,5	1978-1989
A2	Nowy Tomyśl - Września	100,8	2000-2004
A2	Września - Konin	47,7	1977-1988
A2	Konin - Stryków	103,5	2004-2006
A2	Zgorzelec - Krzyżowa	1,7	1992-1993
A4	Krzyżowa - Wrocław	109	1934-1936
A4	Wrocław - Nogawczyce	126	1997-2001
A4	Nogawczyce - Kleszczów	17,9	1997-2003
A4	Kleszczów - Chorzów	34,8	2001-2005
A4	Chorzów - Katowice	4,4	2000-2001
A4	Katowice - Kraków	65	1983-1996
A4	Kraków ring road	16	1990-1994
A6	Szczecin ring road	6	1998-1999
	Total	650.3	

Systemic changes initiated in 1989 demonstrated Poland's delays in the construction of motorways and express roads. The necessity to undertake radical action in this matter was recognized, yet commencement of real work was hindered by a belief that the means (particularly financial means) to deal with the problem were lacking. Therefore, following the experiences of other countries, on 27 October 1994 the Sejm adopted the Act on Toll Motorways, which permitted the use of licensing schemes for their construction. By virtue of the Act the Agency for the Construction and Exploitation of Motorways (Agencja Budowy i Eksploatacji Autostrad, ABiEA) was established. The Agency started preparations to implement its first projects.

Following the adoption of the Act, the Council of Ministers adopted a resolution, which extended the “Motorway Construction Program”, adopted earlier, and stated that 2600 km of motorways would be constructed by 2010 instead of the 1961 km as envisaged before. It was expected that within 15 years private investors would build the majority of the motorways, and they would collect tolls in return. In retrospect it is clear that such assumptions were overly optimistic, and even more so due to many mistakes made at the very beginning. Above all it was a result of delays and sluggishness in the adoption of 9 secondary regulations to the Act, lasting up to 30 months after the Act came into force. The protracted localization procedures also contributed to it. The ABiEA started its operations only 5 months since the legal act that established it had come into force – this is how long it took to pass a regulation by the Prime Minister on the statute of the ABiEA. Particularly damaging was a delay in passing a regulation of the Minister of the Protection of the Environment, Natural Resources and Forestry on the requirements for the assessment of motorway impact on the environment, agricultural and forested land as well as on cultural values subject to protection. The regulation went into force on 21 June 1995 and it was only since this date that elaboration of such assessments was possible. The assessments were necessary to apply for a localization indication.

The Act comprised also some solutions deviating from market practices. One of them was a requirement to establish a company in Poland with a capital equal to ECU 10 million (at that time – an equivalent of almost PLN 30 million) already at the stage of making an offer. It was also required to pay high license fees prior to the licensee obtaining a guarantee that a contract will be signed. A considerable obstacle included in the Act was a limitation of guarantees provided by the state to the subjects granting credit to motorway projects. This regulation created an artificial barrier unmatched to real market conditions, and its wording was not precise. This caused financial institutions to have serious reservations as regards engaging in the construction of motorways in Poland.

Problems resulting from the regulations of the Act added up to a lack of experience among the road administration officials. Investors had practically no opportunities to submit their own technical solutions, because the technical documentation of the designed motorways was overly specific. The traffic forecasts presented by relevant administration offices were too optimistic, and the financial analyses were superficial. The program presented by the government comprised the construction of three motorway sections of 338 km total length (A4 Cracow-Katowice, A4 Golnice-Opole and A1 Łódź-Częstochowa) using a traditional scheme (financing from the state budget and from credits from international financial institutions). However, due to negligence and delays, the planned tasks were not executed. Not a kilometer of the planned motorways was built by 1996, and in 1997 only a 61 km long section of the A4 Cracow-Katowice motorway was built.

By the end of 1997 the Ministry of Transport and Maritime carried out localization proceedings and granted licenses to the companies: Autostrada Wielkopolska S.A. (the construction and the exploitation of the A2) and Gdańsk Transport Company – GTC (the construction and the exploitation of the A1). Furthermore, Stalexport was granted a license for the exploitation of the built section of the A4.

In 1997 the new government reviewed the decisions of its predecessors regarding licensing and eventually accepted them, focusing on negotiating and renegotiating the legal and financial documentation connected to the licences granted. In the case of the A2 project between Konin and Nowy Tomyśl the negotiations resulted in a conclusion of both the licensing contract and all other agreements related to completing the financing of the project in November 2000. The contract with Stalexport regarding the exploitation of the A4 was altered and made more specific. On the other hand, the license for the construction and the exploitation of the A1 motorway was not realized. It so happened that due to relatively low traffic forecasts it could not be financed given the binding legal regulations. However, in June 1997 a new tender was successfully opened – a tender for the exploitation of the A4 between Wrocław and Katowice. Yet the tender was not resolved (the tendering procedure was halted in February 1999). One has to assess positively a consequent buyout and expropriation of land for the construction of

motorways as well as a creation of a competent team at ABiEA. The construction of motorways within the traditional scheme went slowly. At that time the General Directorate for Public Roads (Generalna Dyrekcja Dróg Publicznych) carried out the construction of 192 km of motorways (financed from public funds), most important of them being: the Wrocław-Nogawczyce section of the A4, the bridge in the vicinity of Torun, which constituted a part of the construction of A1 access roads, and the ring road of Poznan. Only 13 km of motorways were commissioned, namely a bridge close to Torun and a section of the A4 in the Katowice agglomeration. 70 km of the A4 between Opole and Wrocław were commissioned in the second half of 2000. Despite numerous attempts made, no localization was indicated for the A2 motorway in the vicinity of Warsaw.

One of the slogans of the new government, established after the 2001 election, was "Infrastructure is the key to development". The core idea of the program was the construction of toll-free motorways, financed from vignette fees. The plan envisaged the liquidation of the ABiEA and the inclusion of its responsibilities to that of the General Directorate for National Roads and Motorways. In retrospect it is clear that this was not a good idea, as the new structure did not allow for making use of the accomplishments and experience of the Agency. Moreover, the supervision over the licenses granted previously was weakened. Since the construction of toll-free motorways (financed from vignette fees) and toll motorways exclude one another, no new licensing was undertaken while the Sejm processed a new bill. However, the proposed changes not only did not accelerate the construction of motorways in Poland, but actually they caused a delay, as the Sejm rejected a modified program of motorway construction that foresaw an introduction of vignette fees. The GTC consortium, which held the license for the A1 motorway, awaited the result of the Sejm proceedings. It had negotiated the license contract with the assumption that the legal regulations will be altered to permit additional financing from the state budget. However, when vignette fees were not introduced, the investor withdrew from the negotiations.

It should be viewed as an accomplishment of this period that in 2003 a road fee was adopted in place of a vignette fee and that the act on toll motorways was amended in order to establish the National Motorway Fund (later renamed the National Road Fund), which resulted in the liquidation of a vital hindrance in access to financing. Furthermore, tenders for the construction (within the traditional scheme) of the A2 section between Stryków and Konin were resolved. In 2005 the licensing contract for the construction of a section of the A1 motorway was finally signed with GTC, and tender procedures regarding other sections of the motorway were open.

Following the elections in 2005, the government announced that it is opposed to pursuing the licensing scheme of motorway construction that had been used before. According to the government objectives, in the area of road infrastructure the priority should be to build expressways (in the public procurement scheme; approximately 5000 km of them were supposed to be constructed) as well as the completion of the construction of the A1 motorway linking Gdansk to the southern border of the country. The justification for giving up the licensing scheme used previously was that building motorways in the scheme was very lengthy and drivers using such motorways in the future would have to bear very high tolls. The government adopted ambitious targets as regards the development of the infrastructure in Poland (road infrastructure in particular). The government action plan for 2005-2009 envisaged savings of several billion PLN due to the abovementioned verification of the assumptions made in the motorway and expressway construction system as well as the carrying out of transparent tenders related to it. Another source of savings envisaged is a rationally calculated toll, introduced on roads constructed earlier using budgetary financing. In 3 years there will be less space for discretionary decisions in this matter, as a motorway toll uniform for the whole EU will be introduced (so-called "Eurovignette"). These are the most important challenges that the government faces. Land transport conditions have alarmed the Sejm so much that on 24 February 2006 it passed a special resolution on this matter. The resolution set out the necessity to undertake specific actions to change the negative situation and it also obligated the central government administration to present proposals for solutions to the Sejm. Unfortunately there is

still no action plan related to the development of road infrastructure, and documents describing only general objectives are just being published.

(Based on:

- *Information of NIK (the Supreme Chamber of Control) on the results of the implementation of the act on toll motorways and the government action plan for the construction of motorways in Poland, July 1998*
- *Information of NIK on the results of audits of motorway construction in Poland, April 2001*
- *Information of NIK on the results of audits of motorway construction in Poland, December 2003*
- *Information of NIK on the results of the safeguarding of the interests of the Treasury in the A2 and A4 motorway construction and exploitation, August 2006)*

2. Experiences of local governments

The regions of Poland are highly differentiated as regards the development of road networks. This results in a varied hierarchy of priorities – some regions' top priority is the maintenance and modernization of existing roads, while others' is the need for the quick development of road infrastructure. The analysis carried out shows that local governments of all levels deal mainly with the maintenance of existing roads. Only to a small degree (considering their scale) do they focus on building new roads.

a. Road investments

The most important new road investment that is currently carried out by a local government is the Drogowa Trasa Średnicowa (DTS), running in the agglomeration of Upper Silesia from Katowice through Chorzow, Swietochowice, Ruda Slaska, Zabrze to Gliwice. DTS is an intercity road, sometimes called "the urban motorway".

The road will bring about a considerable improvement in the traffic situation in this area. As it was calculated by the authors of the DTS, once it is completed, the road between Katowice and Gliwice will be shortened by 26%, while the travelling time will shrink by 76%, gas consumption will go down by 47%, the number of road accidents by 82%, exploitation costs by 39% and air pollution will be reduced by over 50%. The A4 motorway will also run through the Katowice agglomeration, but the two roads will play different roles in the communication system of the area. The fundamental function of the motorway is to service long-distance traffic, while the DTS will service mainly local traffic. Therefore the DTS will have 26 junctions, whereas the motorway will have only 6 within a comparable section of the road.

However, the history of the DTS shows that carrying out such investment projects does not run smoothly. The construction commenced in 1986. Initially it was assumed that the work on Stage I would be completed and the entire Stage I section of construction would be commissioned in 1993. In 1990, due to financial problems of the state and the region, the investment was practically halted. Until 1993 scarce funding allowed only for partial securing of the site. The problems resulted in a change of concept for the construction of Stage I: the decision was taken to concentrate financing on the most advanced sections and to commission them gradually, linking them to existing streets. Since 1994 the budget for construction grew systematically, but it was only the signing of a financial agreement between the government and the European Investment bank (EIB) that provided a guarantee of sufficient funds.

Since 1999, following public administration reform, the construction of the DTS is a shared responsibility of the government of the Silesia region and of the cities which the road runs through. This investment provides a very good example of cooperation between various levels of local government, but also of utilising the support of the central government to carry out a local investment project.

No such big and ambitious projects are carried out in other regions. For instance, in the Podkarpackie region most efforts are put into upgrading existing roads (there are 1600 km of

regional roads and 600 km of national roads in the region) and maintaining them. The longest new road built was 4 km long and it was an access road to the Rzeszow Jasionka airport.

b. Design-related barriers

The fundamental problem for local governments that bear responsibility for road infrastructure pertains to the practical aspects of investment management. Already at the level of working out the concept and the project for the investment there are obstacles that prevent a smooth carrying out of the investment. This is the result of a limited number of design offices interested in working on concepts and projects for smaller investments. Design offices are mainly interested in the largest investments, managed at the national level. There were cases in the Podkarpackie region, when a tender was not resolved due to a lack of bidders.

c. Land buyouts

Local governments approved the amendment of the act of 10 April 2003 on specific rules for the preparation and carrying out of investments on public roads (of 18 October 2006 and 10 May 2007). The change in the act extended specific rules onto all kinds of roads and thus facilitated land buyouts, since owner protests no longer halt the construction process for years. Presently the construction process may commence immediately after the issuance of the localization decision and owners' appeals are considered parallel to the ongoing construction process. However, while changing the act the legislator did not consider situations when land ownership is undecided. In the event that all ownership matters are regulated, the procedure is simple and clear, but problems occur when the land and mortgage register or other relevant documents do not confirm the right of ownership. There have been cases when the costs of possible legal proceedings exceed the worth of the plot in question. Regulation of this matter is necessary, also due to the requirements of EU legislation regarding investment financing. These acts stipulate that investment can be carried out only on the ground, to which one has the right of ownership. Otherwise, when it comes to an audit of the investment, a necessity to return the received funds might occur. Representatives of local governments have already discussed with members of Parliament the need to amend the act in this regard.

d. The problem of small plots

A real problem during investment preparation is the very small size of plots, e.g. in the Podkarpackie region there are 5 parcels of 1 ha, while in the Wielkopolska region one parcel covers the area of 2 ha. Such division of land protracts the investment process. A solution to the problem might be an integration of plots executed prior to the investment, but unfortunately it is a very costly process. Plot integration carried out in the region only in one village Grodzisk reached several million zloty. Local governments cannot afford such large expenses.

e. Archaeological research

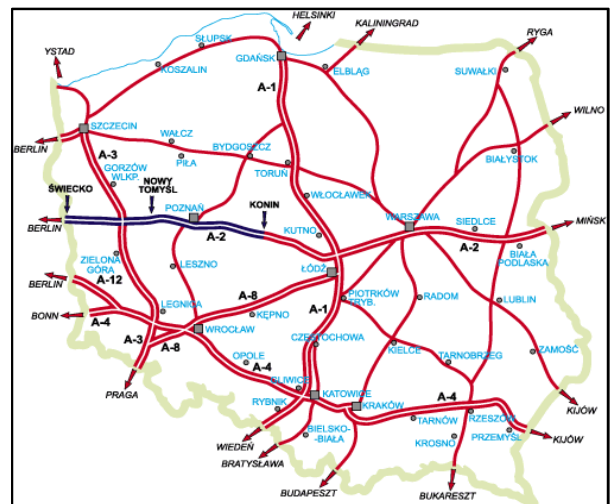
Archaeological research poses an important obstacle to road investment. The willingness to research and retain our historical heritage clashes here with the calculation of costs and benefits as well as with the pace of investment implementation. Very frequently investment projects are halted already during the construction, after archaeological research had been executed. This was the case of the road investment in Twierdza Warzyce in the Podkarpackie region, where the archaeological supervision inspector halted all construction work for 2 months in the best period for building – July and August. This makes the costs of the investment surge rapidly and clearly causes a delay in its completion.

3. Experiences from PPP implementation¹

a. A2 motorway

Motorway construction is the most urgent issue. Experts note short-comings in tender organization, land buyout procedures, communication between parties of road construction contracts and in the quality of designs and analyses prepared. The issue of motorways should be depicted in a practical rather than theoretical way, since PPP does indeed pose plenty of possibilities to build motorways. However, examples used by some experts as illustration of the efficient use of PPP (A1 and A2 motorways), are criticized by other experts. It is common knowledge that the use of private capital resulting from granted licenses only pertains to one project – the A2 construction between Konin and Nowy Tomysl (awareness of private capital participation in the construction of the A1 motorway is limited). The A2 motorway is the first toll road in Poland, built by private capital. The design work of the A2 motorway project lasted since 1993, when the Autostrada Wielkopolska S.A. was registered as a company established for the financing and exploitation of the toll motorway.

Wielkopolska motorway²



The GDDKiA, which also plays the role of a regulator, represents the public sector in the project. The private sector in turn is represented by sponsors as well as investment companies established by the investors, operating companies, lenders, contractors and the motorway users. Sponsors contributed EUR 115 million in capital assets. Other sources of financing were loans from the European Investment Bank (for the amount of EUR 275 million) as well as consortium credits provided by Credit Lyonnais and Commerzbank (for the amount of EUR 235 million in total). The fundamental premise of the licensing agreement was a minimization of the input of the Treasury, which was reduced to buying out land for the motorway. The Treasury is the land owner during the period of the license and it will therefore profit from the land lease as well as from income tax on the profit of Autostrada Wielkopolska S.A. (AWSA). After the licensing period is finished, AWSA will convey the motorway to the Treasury free of charge. AWSA has obtained the exclusive right to build and operate sections of the motorway covered by the license. Moreover, it holds the ownership of constructed assets for the licensing period. The Konin-Września section of the A2 motorway is the first example of a private infrastructural project carried out on a BOT (Build-Operate-Transfer) basis in Poland and having complete financing. The A2 project is a pioneer PPP project on the Polish market. Its execution still raises emotions. The main hindrance in its commencement, and later on in the realization, has been avoidance of application of the law and, as it seems, a lack of understanding for projects of this type among decision-makers and politicians. The project is highly vulnerable to political changes and public discontent.

b. Saur Neptun Gdansk³

PPP is used to implement projects in various areas of the economy. In Poland the best known and, in retrospect, seen as unambiguously positive example is the Saur Neptun Gdansk

¹ IDI interviews; www.sng.com.pl; "Public-Private Partnership – Premises, Opportunities, Barriers" K.Brzozowska, CeDeWu 2006 ; PPP – Public-Private Partnership

² www.geoland.pl

³ IDI interviews; www.sng.com.pl; "Public-Private Partnership – Premises, Opportunities, Barriers" K.Brzozowska, CeDeWu 2006

company, which was established on the basis of an operating and management contract used within PPP.

Operating and management contracts (O&M Contracts) comprise the commissioning to private entities the day-to-day management and rendering of public services, while at the same time the assets used for the activity remain publicly-owned. Such contracts usually last for periods of a few years (5-10 years) with an extension option. The selection of the private partner is based on the Public Procurement Act.

The Saur Neptun Gdansk company, established in 1992, renders water management and sewage related services in Gdansk, Sopot and the neighbouring *gminas* (local communities). Saur is a French company, one of the world leaders in communal service management, in particular in the area of drinking water production and distribution, collection and treatment of waste water and management of water supply and sewage related services as well as waste management. The contract between the Saur Neptun Gdansk company and the municipality was signed for 30 years. It contains a detailed description of conditions regarding the responsibilities of both partners: the Gdansk municipality, as the infrastructure owner, leases the property to the company, while the company undertook to manage and operate the water-sewage system on a commercial basis.

Charges are determined by both parties annually taking into account the needs of both the municipality and the company. There are no problems with the efficient collection of charges. Nearly 80% of water is supplied to individual recipients, over 7% to manufacturing companies, and the rest is supplied to other entities, whereas over 70% of waste water comes from individuals, 12% from industry, and 18% from other entities.

Division of tasks between the contracting parties⁴

SAUR NEPTUN GDANSK SA	GDANSK MUNICIPALITY
<ul style="list-style-type: none"> • comprehensive exploitation of the water and sewage system • assuring continuous and high-quality supply of services • observance of the norms regarding the cleanness and quality of water • guaranteeing required standards as regards waste water • comprehensive customer services and maintenance of customer relations • investment process supervision 	<ul style="list-style-type: none"> • ownership of the infrastructure • execution of major repairs of the existing buildings and network • making decisions concerning investment and their financing (based on proposals from the company) • determining water supply and waste water treatment charges (based on proposals from the company) • supervision of the operations of the company in line with the conditions of the signed contract

The company has good operational and economic results, including the following:

- 1) an improvement of water quality in Gdansk (90% of supplied water meets European standards),
- 2) efficient waste water treatment,
- 3) decrease of water losses in the network,
- 4) continual decrease of the costs in relation to inflation.

⁴ own surveys and "Public-Private Partnership – Premises, Opportunities, Barriers" K.Brzozowska, CeDeWu 2006

This form of co-operation has provided profits of approximately PLN 7.7 million, which the company could use for modernization. PLN 129 million turnover and an employment of 700 people are measurable results of combining public and private interests.

c. Millennium Bridge in Wrocław

The most spectacular example of efficient PPP-based co-operation is the Millennium Bridge in Wrocław. Such an efficient usage of the PPP scheme can certainly encourage other entities to run their investments in the same way. The tender was so successful that bids were lower than initially budgeted. The Millennium Bridge is the largest investment in post-war Wrocław and the first bridge in over 50 years built over the main riverbed of the Odra as a greenfield project in Wrocław.

The investment comprised not only the execution of the construction work, but also drafting all designs, obtaining the construction permit and financing the investment. It is worth stressing that despite the large scale of the project, the construction process lasted only a little over 2 years.

The Millennium Bridge in Wrocław⁵



⁵ www.skanska.pl

d. PPP – general remarks

There are three fundamental reasons why PPP-based co-operation between the public and the private sector occurs:

- 1) growing infrastructure investment needs resulting from economic growth and the surging pace of technological change,
- 2) dissatisfaction of users because the state and its agencies have the joint functions of investor and manager of infrastructure property,
- 3) insufficient resources and financial capabilities of the state budget to cover the costs of capital intensive infrastructure projects.

The most important and most frequently mentioned advantages of PPP are the following:

- budgetary savings (taking the burden of investment costs off the public sector),
- quicker commissioning of new buildings,
- transfer of new technologies,
- sharing investment risk,
- increased exploitation efficiency,
- diversification of public development financing,
- increased competition,
- increased budgetary income due to taxes and fees paid by the private investor.

Critics raise the question of lowered standards of services rendered, high transaction costs (the costs of hiring legal, technical and financial advisors). One may also come across an opinion that the use of PPP for infrastructural investments may weaken the position of the public administration.

The critical opinions are based on commonplace statements and do not prove to be accurate. It is easy to prove that they are not truthful by presenting sound arguments supporting the use of the PPP scheme. This is how you can present that:

- 1) the quality of services rendered can only increase (by utilising a simple competitive mechanism and selecting the best contractors according to chosen criteria),
- 2) even though this co-operation scheme may produce high transaction costs, the cost of not realizing an investment is incomparably higher, and high transaction costs may be made up for during the investment process by relatively lower total costs of investment within the PPP scheme,
- 3) the objection regarding the weakened negotiating position of public administration is also easy to counter, as public authorities have full autonomy concerning the decisions taken or requirements made during negotiations, and only the number of potential contractors determines the strength of the BATNA (*Best Alternative to a Negotiated Agreement*).

III. Current situation and plans of the government

1. The Act on Special Purpose Companies for road projects

The Act on special purpose companies for road projects, adopted by the Sejm on 12 January 2007 was supposed to be the remedy for the condition of road construction in Poland. In spite of some advantages of the Act one can raise doubts whether it can contribute to the change of the current situation in a significant way. Road related matters are managed in Poland by the Ministry of Transport and the GDDKiA, there are also a few private licensees. The local governments also play a role. And now there are also the special purpose companies for road projects.

The idea of the companies of special purpose arose as a response to the problems concerning the implementation of the motorway construction plan in Poland. According to the

authors of this solution, within the existing system it was not and it will not be possible to realize the government program of building a network of motorways and express roads in a short period. The road administration and the GDDKiA in particular, has exhausted the technical, organisational and financial capacities to carry out big investments within its current structure. The structure of the institution has not changed for years, while the bulk of tasks it is burdened with has increased considerably. This is a result of both the deterioration of national roads and the necessity to adjust our road network to the one existing in the European Union. The GDDKiA has not used the funds appointed to road investments annually *inter alia* due to limited budget funds allocated to its activities, which result in a lack of possibility to employ a sufficient number of highly qualified staff. A solution to this problem should be the possibility to establish special purpose companies for road projects, which are to become an additional element in the existing system of road and motorway construction. Their establishment is to accelerate the construction of motorways, express roads and other national roads, as well as the upgrading of the surface of the national roads located in the European transport network to bear the load of 11.5t/axis. The special purpose companies for road projects as additional entities (next to GDDKiA) entitled to use European funds are supposed to increase the absorption capacities of these funds. Moreover, these companies are expected to have the capacity to prepare and implement road investments due to the use of highly qualified staff and the managerial administration system.

The possibility to establish the special purpose companies for road projects is supposed to complete the traditional system with new organizational and legal instruments (road building and management by the road administration) as well as a system of road construction and management by private entities (in the system of the act on toll roads and on the National Road Fund or in the public-private partnership system). The structure of road administration, determined by public road legislation and therefore pertaining to national roads, remains outside the scope of this act. The act on special purpose companies for road projects is supposed to establish a complementary instrument for the implementation of the program of building motorways and express roads within a short period. The tasks of the existing road administration and the new companies are to be complementary and together these institutions will increase the capabilities of the state as regards road construction.

Is it possible that these optimistic assumptions of the Ministry of Transport will come true? The idea of the special purpose companies for road projects refers to the idea of the ABiEA. The companies are supposed to deal with the preparation of construction, including obtaining decisions on road location, buying the properties and organizing the tendering process. However, other than the ABiEA, they will be established for particular ventures. At the same time, the idea of the companies refers to the idea of licensees. They will conclude a kind of a licensing contract with the minister responsible for transport and they will carry out road projects, commissioning work to construction companies. Moreover, they can – even though they do not have to – collect tolls for using the newly built roads. Should they choose not to collect them, they will receive remuneration from the Treasury. The companies will be state-owned, but it is possible to sell their shares to private entities, and then they will act as regular licensees of roads.

Doubtlessly, an advantage of this project is the idea of focusing the activity of the special purpose companies for road projects on a particular venture, which can facilitate and streamline the execution of projects. However, establishment of a company and conclusion of a contract between the company and the minister responsible for transport is yet another step to be made in the investment process. Whether the investment execution period is shortened or extended depends on the efficiency of action in the initial stage, for negotiating additional contracts between the shareholders in public-private companies and possible conflicts between them may lead to extension of the investment process. This can transfer onto the management of the companies and can blur responsibility for possible failures. Furthermore, should the contracts concluded with the minister of transport give the companies sufficient independence, decisions will have to wait to be made at the ministry or the GDDKiA as long as they have to wait now. Company management boards will then not feel responsible for decisions they do not make. Moreover, it will be difficult to find highly qualified managers to run the companies, as their

salaries will be limited by the act on remunerating the management of state-owned enterprises (or the so-called “chimney act”).

As of now, the government is planning to establish only one such company, which is supposed to build the Warsaw road junction. It is supposed to be a pilot program, which will verify the first stage of the operation of such a company (its registration, selection of management and commencement of operations). The Ministry of Transport plans to establish more such companies in the middle of 2008.

2. European Union funds

On 26 November 2006 the Council of Ministers adopted the National Development Strategy for 2007-2015 (Strategia Rozwoju Kraju na lata 2007-2015, SRK). It was the first such document adopted by the Council of Ministers. According to the Ministry of Regional Development, which has prepared the draft, the National Development Strategy is a principal strategic document, which defines the goals and priorities of development policy in the coming years and conditions that should ensure such development.

The strategic priorities are:

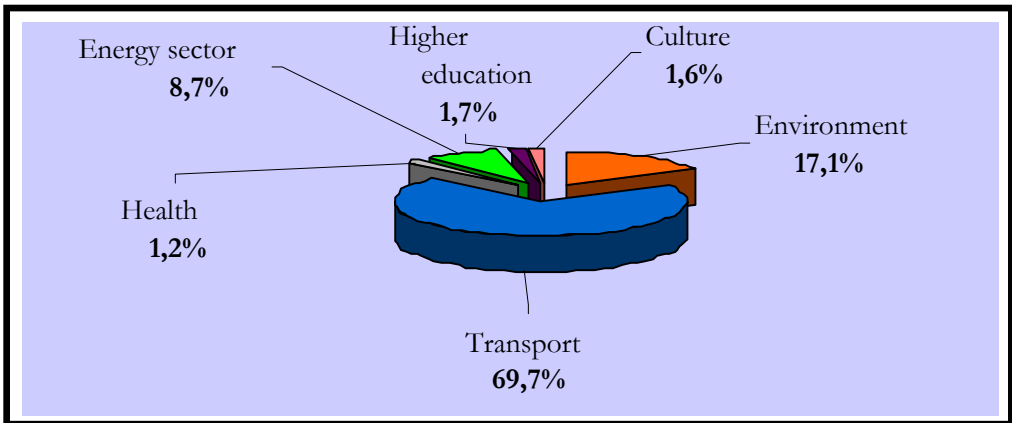
1. Growth of competitiveness and innovation of the economy
2. Improvement of technical and social infrastructure
3. Growth of employment and raising its quality
4. Building an integrated and safe social community
5. Development of rural areas
6. Regional development and raising territorial cohesion.

These priorities will be met via regulation and decisions of state authorities and public administration, as well as other entities of the social and economic life, and the evaluation of progress. The Strategy envisages that in the period 2006-2010 the economy will grow at 5.1% annually, while in the period 2011-2015 at 5.2%. This will lead to lowering the unemployment rate from 17.6% in 2005 to 9.0% in 2015. It will also allow the GDP *per capita* in 2015 to reach the level of 2/3 of the forecasted EU-25 average for 2015.

Realization of the Country Development Strategy will be financed from both national and foreign funds. The national funds will come from public and private sources. Among the public national funds the most important source of financing will come from the state budget, budgets of the local government units and other entities of the public finances sector.

An important part of the Strategy is the Operational Program for Infrastructure and the Environment. Transport infrastructure development projects are expected within the scope of this program which will use 43% of all available funds, that is EUR 36 410 million.

The funds are split between sectors as such:



3. The influence of EURO 2012 on the implementation of plans concerning roads

The government plans presented above are still subject to change as a result of winning the organization of EURO 2012 by Poland and the Ukraine. The Ministry of Transport is currently working on a document, which will adjust the 2007-2015 investment program to the opening of the championship. The document is supposed to be submitted to inter-ministerial consultations still in the first half of 2007. The modified plan envisions that 700 km of motorways and 1900 km of express roads will be built by the end of 2011. The acceleration should firstly encompass the A4 motorway, which is to be completed in whole, since it will constitute the main communication channel linking Poland to the Ukraine as well as with EU countries. Ministry plans envision the completion of the A4 to the Ukrainian border in Korczowa. The express roads S7 (from Gdansk to Warsaw), S5 (between Bydgoszcz, Poznan and Wroclaw) and S8 (Warsaw-Wroclaw) are also planned to be completed in this period.

IV. Practical barriers for the construction of roads

1. Legal

The existing legal solutions allow for various types of road construction. However, this does not stipulate that all legal instruments are perfect. Some of them cause substantial delays or even paralyze the process.

Amending the Public Procurement Act of 29 January 2004 seems necessary, since the act appears to be overly bureaucratic. Bidding regulations in this area extend the procedures of preparing road investments significantly. It is advisable to specify as short as possible time to finalize tender procedures. It is particularly necessary for the appeal procedure to be clearly defined to prevent long delays for the winning bidder to start the project, and at the same time to encourage investors to prepare projects properly. In a situation when price is the only factor in the selection of the winning bid, savings in project implementation are frequently made by skipping needed activities or operations. Therefore, regulations should be formulated to make the selection criteria more varied. Recent amendments of the act (of 7 April 2006 and 13 April 2007) appear to be steps in the right direction. The first one has simplified the procedure of announcing planned procurements and the description of the subject-matter of the contract. Moreover, it has introduced a new procurement procedure – competitive dialogue. The second amendment raised the basic threshold requiring application of the act and below which the so-called simplified procedure may be implemented. Furthermore, a National Board of Appeal has been established, which is supposed to accelerate the consideration of possible appeals. Still, work on the amendment of the law must be continued, because in 2005 alone 98 investments were stalled due to the Public Procurement Act, including the construction of the A4 motorway between Zgorzelec and Krzyzowa, the S8 express road (the Wyszow ring road), the S1 express road (Pyrzowice-Podwarpie) and the ring road of Hrebenne.

Other problems are generated by the unfavourable and burdensome regulations of the Environment Protection Act of 27 April 2001 and the act of 16 April 2004 on the preservation of nature, which make the procedures of road construction preparation more complicated and increase the costs of preparing and executing road projects considerably. The amendment of the Environment Protection act of 2005 added yet more requirements on road projects already being prepared, resulting in a necessity to introduce changes in the projects and forcing additional outlays on the implementation of projects prepared beforehand. A road construction investment cannot be viewed as an environment-damaging factor, as it is viewed presently. Furthermore, freedom of interpretation of the act undetermined deadlines for reaching an agreement with regard to environmental decisions and for issuing thereof, including areas covering advanced road investments in the Natura 2000 system which hinder the execution of road investments considerably. 65 investments were stopped due to the Environment Protection Act in 2005, including the construction of the S22 express road between Elbląg and Grzechotki,

the ring roads of Augustow and Wasilkow (national roads 8 and 19) and the A1 motorway from Strykow to the border of the Lodzkie region.

2. Financial

The fundamental problem is a lack of a homogenous, coherent model of financing of motorways and express roads. Neither the Ministry of Finance nor the GDDKiA have established such an instrument. Moreover, it seems hardly possible that any of the two institutions in their current structures can work out such a model.

There is also a risk of decreasing the domestic expenditure on the construction, repairs and current maintenance of roads in the years 2007-2013, which poses the largest threat to the enhancement of road infrastructure in Poland. Therefore the information that only PLN 4.7 billion were spent from the National Road Fund in 2006 out of the PLN 5.8 billion allocated for that year should be a serious warning.

Another problem can be the lack of financial resources as own contribution in road projects co-financed by EU funds. The reason is that in the coming years these funds will be the most important source of financing road projects. The bureaucratic requirements of projects co-financed by the EU pose a serious obstacle in their execution. However, it has to be emphasized that such obstacles are not wholly caused by the requirements of the EU, but they are also a result of domestic ideas and requirements. A good example of such an obstacle came up recently, when the GDDKiA warned that it may lack financing for the contractors. This problem was brought about by a cut in the National Road Fund budget from PLN 5.5 billion to 3.5 billion. The GDDKiA alerted that it did not have sufficient financing to cover bills and invoices that had already been issued, and the bank accounts of one of the regional subsidiaries were about to be seized. The problem stemmed from a lack of co-operation between the Ministry of Transport and the ministries responsible for finances and regional development concerning the use of funds from the so-called integration provision, which is assigned for the state budget co-financing of European Union investment projects. Red tape makes the process of obtaining these funds very lengthy. The Ministry of Finance promised the road administration that the funds can come from the integration provision. Applications for these funds are first drafted at the GDDKiA and then sent over to the Ministry of Transport. The Ministry of Transport forwards them to the Ministry of Regional development, where the applications are checked for correctness. In the end the applications are sent over to the Ministry of Finance for the final payment decision.

The GDDKiA applied to the Ministry of Finance for a simplified procedure of receiving the integration provision funds, but the request was denied in March 2007. This worried the GDDKiA officials that the Agency might become insolvent at some point. Therefore, the Ministry of Finance decided to transfer PLN 780 million in an emergency procedure to cover the liabilities of GDDKiA. The Ministry, headed by Deputy Prime Minister Zyta Gilowska, wishes to have influence over the funds spent so that they do not flow out of the public finance system to agencies and government funds, because this leaves the Ministry without any control over them. Hence the Minister of Finance suggested that a special department is established in the Ministry of Transport – the Office for European Transport-Related Projects, which would deal with the co-ordination and supervision of the disbursement of EU funds. This project is not yet implemented, and moreover raises the question, whether creating yet another department in the current structure of the Ministry of Transport can indeed bring about any improvement.

3. Organizational

a. The role of the Ministry of Transport and GDDKiA

It is necessary to make the role of the Ministry of Transport clearer in the whole infrastructure development process in Poland. Presently the role seems to be too large. The Ministry not only programs and plans, but it has also become the primary decision-maker. It is

the Ministry, not other public administration offices responsible for road infrastructure that one has to agree with on motorway signage or changes in supervision. The GDDKiA has been reduced to an executor of decisions made in the Ministry. Considering the bureaucratic ministerial procedures, it extends the whole decision-making process. At the same time the willingness of the Ministry to make all decisions, and to verify and approve all decisions made at the GDDKiA, causes the officials of the Agency to push away the necessity to make decisions and they refer all matters to the Ministry in order to avoid being exposed to the risk of accusations of making a mistake or favouring any private entity. Simultaneously, the decision-making process becomes considerably centralized. In many cases the regional subsidiaries of the GDDKiA do not wish to (or cannot) make decisions and refer applications to the head office in Warsaw. The accumulation of the applications and the abovementioned dependency between the Ministry and the road administration extend the decision-making process significantly.

b. Preparation of road construction investments

On the other hand, the GDDKiA claims that the primary cause of the problems concerning the construction and upgrading of roads are deficiencies in the legal system. It is only partly true. The road administration does not notice mistakes and omissions on its part. It is evident, that another obstacle to the development of roads in Poland is poor preparation of new road construction projects, in particular as regards express roads. An analysis of tenders for the construction of motorways and express roads organised by the GDDKiA within the last two years confirms this fact. The deadlines for submitting tender proposals are postponed repeatedly, and technical specifications are modified considerably not only due to specific questions asked by bidders, but also due to the poor quality of the tendering documentation and unskillful execution of tenders by the contracting institutions. The problem of inappropriate cost estimation made by the investor – the prices offered in the tender proposals in most cases exceeded those from the cost estimation. Tender cancellation is also common practice.

c. The use of EU funds

The proposal made by the Ministry of Transport that the Bank of National Economy (Bank Gospodarstwa Krajowego) instead of the Ministry deals with the implementation of the Transport and Infrastructure Operational Program is not a good solution. The idea was criticised even within the government. Beside those already existing, there would be yet another institution in the decision-making process, which would lead to further conflicts over the division of competences and would blur responsibility. The BGK should only play a technical role in the whole system of disbursement of funds from the National Road Fund or the EU funds.

d. Monitoring of licensing projects

A vital problem is also slow and unsatisfactory execution of motorway projects in the licensing system. Negotiations on the construction of the A2 section between Nowy Tomysl and Swiecko did not end up with any binding decisions. Proper monitoring of existing motorway licensing projects is essential, as well as particular care to take into account the interests of the state and society, not only commercial issues. A separate problem is the introduction of tolls on existing motorway sections.

e. Regional road network development programs

Poor co-ordination between particular managers of public roads does not favor the enhancement of road infrastructure. Regional road network development programs, which should be coherent, are lacking. It is vital that they are worked out. These programs must provide a basis for continuous activities which result in improved regional road networks. This requires co-operation between regional subsidiaries of the GDDKiA and the marshals of regions (*voivodships*). The programs must take into account the transport-related needs of *gminas* (local communities) and *poviats* (counties) located in the region. Programs worked out in this way

should finally be adopted by regional parliaments. It is yet another problem that in many regions particular local governments do not spend the whole road subsidy on road-related investments and current maintenance of roads.

f. Archaeological research

The issue of archaeological research, mentioned above in the section on the experiences of the local government poses an additional problem. The standpoint of archaeologists, emphasizing the necessity of saving and documenting the national archaeological heritage clashes here with the interests of the investor and the contractor of the road investment. Since the regulations that had been in force earlier (the act of 15 February 1962 on the protection of cultural heritage) were no longer valid, the act of 27 October 1994 on toll motorways and the secondary regulations thereto (the regulation of the Minister of the Protection of the Environment, Natural Resources and Forestry of 5 June 1995) were amended with relevant regulations to protect the historic and archaeological heritage.

It was the first time that the obligation of the investor to bear the costs related to emergency archaeological research and the analysis of their results was directly sanctioned in the law. The adoption of relevant legal solutions resulted in working out new systemic solutions. Hence, on 25 September 1995 the Minister of Culture and Arts established a new national institution of culture – the Center of Emergency Archaeological Research (which was later transformed into the Center for the Protection of Archaeological Heritage – Ośrodek Ochrony Dziedzictwa Archeologicznego, OODA). Its fundamental task was to work out, organize and implement a system of protective measures for archaeological relics endangered by a planned investment. The OODA was to work in co-operation with the Agency for the Construction and Exploitation of Motorways. Following the establishment of the OODA, its scope of tasks was increased by the implementation of the state policy pertaining to the protection of archaeological inheritance, organization of all types of archaeological research, elaboration and implementation of new protection methods as well as building up among the public the awareness of the need to protect the ancient inheritance.

The necessity to preserve the historic heritage of the country, including the archaeological inheritance, is clear and obvious. Unfortunately, the interests of an investor and of the archaeological supervision often collide. Therefore it is worth considering, what would be the proper scheme for quick and efficient resolution of conflicts, with respect for the interests of both sides. In the future this will avoid disputes that stall investment projects.

4. Technical and staff-related

The improvement of road infrastructure encounters barriers caused by the human factor. Specialized staff preparing and executing road ventures is insufficient. The level of remuneration offered by the operators of public roads is relatively low and does not ensure the employment of highly-qualified staff. It is necessary to provide the enhancement of the existing road administration – this pertains both to the central and to the local government administration. This will require the increase of the salary level and the introduction of a motivational remuneration system that favors the employment of highly-qualified staff. It is the mid-level managerial staff and skilled workers that are lacking the most. These problems concern the country-level road administration as well. If both requirements and salaries at the GDDKiA are not raised, the Agency will not be able to employ competent professionals, and thus it will not be able to fulfil the tasks assigned to it.

5. Political

Political instability also does not favor the fulfilment of tasks in regard to the development of road infrastructure. Projects tend to be “one term.” There is no common program, and consecutive governments deal mainly with holding their predecessors accountable for mistakes

and questioning their decisions before they come up with a positive solution. It is evident that there is no across-the-board program which would be free from political changes.

V. Recommendations

1. The National Program of Road Construction

The building of road infrastructure in Poland will not succeed if it does not become a national program, unchanged even when governments change. The program must be free from political fluctuations and trends. It is only in such circumstances that consecutive governments will not deal with holding their predecessors accountable for what has not been done, but they will be able to continue the work. Moreover, it can not be a program of only the minister responsible for transport, who will have to make way with road-related needs to the problems of other branches. Therefore it seems advisable that a **government plenipotentiary for the development of infrastructure** is appointed, who will coordinate all matters related to the issue on the level of the government. Recent misunderstandings between the Minister of Transport and the Ministers of Finance and of Regional Development proved clearly that such coordination is lacking on the level of the government. This poses a danger of implementation paralysis. It is vital that such a plenipotentiary is affiliated outside of the Ministry of Transport, preferably at the Chancellery of the Prime Minister, with a position high enough to be a real partner for ministers. The function of a Government Plenipotentiary for the Construction of National Roads and Motorways, situated at the Ministry of Infrastructure as a secretary or undersecretary of state, has existed before, but the results of his work were unsatisfying. It was not a radical improvement, but only an introduction of a new name, for the plenipotentiary was also supposed to be the Director General for National Roads and Motorways (it was later altered by an amendment to the regulation of 4 October 2004, which separated the two functions). The function of the plenipotentiary was established by a regulation of the Council of Ministers of 1 July 2003, yet even though his scope of tasks was appropriate and clear, his weak political position prevented him from dealing with the problem in a real and efficient way. Hence, the mistake should not be repeated and choosing a different affiliation of the plenipotentiary should be considered. The fact that Poland has been selected as an organizer of the EURO 2012 is a good chance for that. Perhaps it is not the Prime Minister, but rather such a plenipotentiary in the rank of deputy prime minister who could enforce appropriate decisions and measures efficiently.

2. Legislative changes

a. Public Procurement Act

Amending the Public Procurement Act of 29 January 2004 appears essential. According to its current regulations it is possible to file a protest for reasons utterly irrelevant from the standpoint of the fastest resolution of the tender and commencement of the investment (subjects of protests can be for example: that key staff, including foreign staff, is required to have higher education and a certificate of not having been sentenced by the law; the difference between the word "a bridge" and the phrase "a bridge complex"; the difference between "0.29 tons" and "292.6 kg"). Bidders complain about the:

- overly bureaucratic approach to the assessment of contractor's qualifications,
- overly bureaucratic approach to the assessment of the tendering proposal,
- protracted procedures,
- lack of flexibility as to the description of the subject-matter of the contract.

It should be considered whether the next amendment to the act could include an implementation of a legal solution used successfully in other countries. The idea is to include a so-called **bonus system** into investment tenders. The system would promote the most reliable contractors representing the private sector, giving them bonus points for high-quality and timely fulfilment of their contractual obligations. This would give them a more favorable position in consecutive tenders. Such a solution has been used successfully in tenders for road infrastructure investments *inter alia* in numerous regions of the U.S. The discussion on the practical functioning of the act, which has commenced in Poland, definitely facilitates the introduction of changes that would streamline investment execution mechanisms (from the call for bids to commissioning).

b. The act on public-private partnership

Changes must also be introduced in the act of 28 July 2005 on public-private partnership. An amendment to the act has already been announced by the Ministry of Economy.

The draft act is currently undergoing inter-ministerial consultations and should be sent to the Sejm within a month. It is supposed to entourage small and medium-sized enterprises to participate in public-private partnerships as well. To facilitate it, investment of up to EUR 50 000 are to be executed according to very simplified procedures. The Ministry of Economy expects that even local governments of small communities will be able to implement important ventures in co-operation with private companies. The procedures used in larger investments are also supposed to be simplified. Companies executing such projects will be relieved of the obligation to carry out numerous analyses prior to concluding the agreement. This should facilitate the selection of partners and of the form of partnership.

“The act on public-private partnership, which is in force at present, has been designed so that only the largest companies are able to take advantage of it.”

Marek Kuchciński, the President of the PiS Parliamentary Caucus, during a press conference at the Sejm on 9 May 2007

The scope of investments where the PPP scheme can be used is also going to be widened. It will contain *inter alia* construction investments, preservation of historic monuments, scientific research, undertakings related to education. However, it would be sensible to skip creating another catalogue of investments where the PPP scheme can be used, but leaving the freedom to choose to the commissioning parties. What investment they would like to use the PPP scheme for should be left to their discretion. It will also be possible to use European Union funds to finance public-private contracts.

c. Environment Protection Act

Another change in the law must entail the Environment Protection Act of 27 April 2001. The elements of the act that hinder road construction investment are the following:

- arbitrary interpretations of the provisions of the act,
- undetermined deadlines for reaching an agreement with regard to environmental decisions and for the issuance thereof,
- the method of qualifying investments for environment assessment procedures,
- the scope of environmental impact assessment reports.

d. The act on the protection of nature

The act of 16 April 2004 on the protection of nature comprises elements that not only hamper, but actually disable the construction of road infrastructure. We were all able to witness it when the construction of the Augustow ring road through the Rospuda Valley was blocked. The EU program Natura 2000 poses an additional problem, since its right intentions to protect

areas with high-value nature are used to block transport-related investment. In 2004 the Minister of the Environment passed a list of 184 areas of special protection and 72 areas of special bird protection to the European Commission. Moreover, there are areas not present on the list passed by Poland to the European Commission, which meet the criteria of Natura 2000 areas. The European Commission was notified of these areas by non-governmental organizations on a so-called Shadow List. In accordance with the standpoint of the European Commission, the procedure regarding the environmental impact assessment of an undertaking or plan on the Natura 2000 area must be applied to all the areas. Furthermore, a permit of the *voivod* (the representative of the central government in a region) must be obtained according to the act on the protection of nature. However, environmental organizations still consider the areas covered by the Natura 2000 program insufficient. A comprehensive list of areas that should be protected comprises 336 areas of habitat protection. According to the organizations, current identification of the national resources of natural habitats and species is still unsatisfactory and hence, as they are recognized in greater detail, there is a need to add new areas to the program.

Such an assumption blocks many investments, road-related in particular, or at least questions their realization. Moreover, a communication scheme is lacking between the relevant offices of the government administration (the Ministries of Transport and of Environment in particular), which might facilitate an efficient resolution of problems related to environmental protection. The government plenipotentiary for the development of infrastructure, as suggested above, could be the person, who would solve arising competence conflicts and who would co-ordinate the co-operation of all institutions and government agencies in this area.

e. The act on particular rules for the preparation and realization of investments concerning public roads

There is one provision in the act of 10 April 2003 on particular rules for the preparation and realization of investments concerning public roads that needs to be amended as well. It pertains to the problem of investment procedures in the case of land plots of undetermined ownership. The legislators omitted this in a recent amendment.

f. The act on urban development planning

It also seems necessary to continue working on the amendment to the act of 27 March 2003 on urban development planning. These proceedings were carried out by a special team established at the GDDKiA, but were not finalized by an amendment to the act. The team analysed the existing provisions of the act and their match with the needs of the road constructing industry. Hence, it is essential to draft an amendment to the act, which should gain support among relevant government officials and should be passed to the Parliament to be adopted as soon as possible.

3. Administrative changes

In the area of administration and management it is vital to consider the mutual relation between the Ministry of Transport and the GDDKiA. It is obvious that their actions are inefficient in the current formula. It only increases the administrative burden, postpones decision-making, while efficient planning and supervision are lacking. GDDKiA in its present structure has exhausted the capability to execute big investments. Therefore deep reform of the GDDKiA is crucial. The reform should entail staffing, increase of salaries, but above all increase of independency from the Ministry of Transport. The Directorate cannot be incapacitated and be reduced to the role of one department in the Ministry. The project comprising the conveyance of the obligation of current road maintenance onto local governments, which has been proposed by Mrs Zyta Gilowska, Deputy Prime Minister and Minister of Finance, is worth considering. The GDDKiA would then only deal with the organization of the investment process concerning the construction of new motorways and national roads. Such a division might lead to an efficient use of the potential of the road administration.

In addition, neither the Ministry of Transport, nor the GDDKiA are able to devise a homogenous model of road investment financing in Poland. Without the model we shall still deal with chaos in this area. Experiences hitherto, also from other countries, show that outsourced advisory services work best to design such a set of financial instruments.

The existing rules of financing the construction and maintenance of road infrastructure in Poland are defective and dysfunctional. National road construction and maintenance are financed parallel from three different financial plans: the state budget, the National Road Fund and the material and financial plan of road construction, which often overlap. Each of them has a different scope, even though hypothetically they pertain to the same subject. Such a structure does not favor transparency, and the functioning of three plans is expensive and difficult to program. It is vital to decouple the financing of road construction from the maintenance of roads and from the preparation of the investment process. The ideas of the reform of public finances, which entail a change in the financing method used hitherto, should be supported. According to the assumptions, three separate funds are planned:

- 1) funds for investment preparation (accounted for in the state budget in the section of the Ministry of Transport),
- 2) funds for the construction of roads, concentrated in the national fund,
- 3) funds for the maintenance of roads, which would be transferred to entities responsible thereof (the best solution would be to transfer the funds to regional and local governments)

The national fund mentioned above would be a state earmarked fund focused on the absorption of EU funds. Such a structure of the national road program would therefore gain a status of a stabilized annual fund, in accordance with the suggested establishment of the National Program of Road Construction. In this way supervision over the funds will be sustained, and funds for the construction will be spent only on tasks accepted by the Council of Ministers.

There is clearly a lack of communication between administration officials responsible for the development of infrastructure and investors. Perhaps this could be worked out within an advisory body set up by the plenipotentiary. The advisory body would provide space for exchange of views and opinions as well as drafting appropriate solutions or regulations. Previous ideas of establishing such a body at the Chancellery of The President of Poland, to communicate and voice investors' concerns were not successful. A solution to the problem could be to set up such a council at the plenipotentiary.

4. The promotion of the PPP model

The scope of challenges Poland faces in the area of transport infrastructure development is huge. Even if all necessary amendments in the law and organizational changes are carried out in time, it is doubtful that all plans can be realized in a short time. Therefore, all models that can improve the situation should be used and disseminated. One of the most successful models is the PPP scheme, used seldom thus far and quite unjustly having a bad reputation among decision-makers. Only its active use in all forms and types (BOO – *Build-Own-Operate*, BOR – *Build-Operate-Renewal*, BOT – *Build-Operate-Transfer*, BLT – *Build-Lease-Transfer*, DBFO – *Design-Build-Finance-Operate*)⁶ stands a chance of success in the form of completion of all infrastructural projects. The analysis conducted shows unambiguously that the fundamental obstacle to the use of PPP is a lack of communication between public entities, private partners and decision makers, as well as a lack of detailed knowledge as to the practical use of the solutions proposed.

⁶ See page 37

Public sector benefits from the PPP scheme named by experts are:

- *gaining funds for investment, which are lacking in budgets,
- *short period between the design and the execution of investment
- * an improvement of the transport infrastructure is a greater comfort for travellers, but also an engine for economic development (increase in number of investments – also greenfield; increase of employment, the development of various branches of trade and industry; and finally, GDP growth)
- * high quality of work delivered by the private partner (bonus system)
- * bypassing of the procedures, which have blocked infrastructure investments so far
- * diversification of sources of financing for investment projects (more funds obtained)
- * bypassing inefficient mechanisms and the institutions, which create the environment for investments in Poland

Successful PPP projects in the world

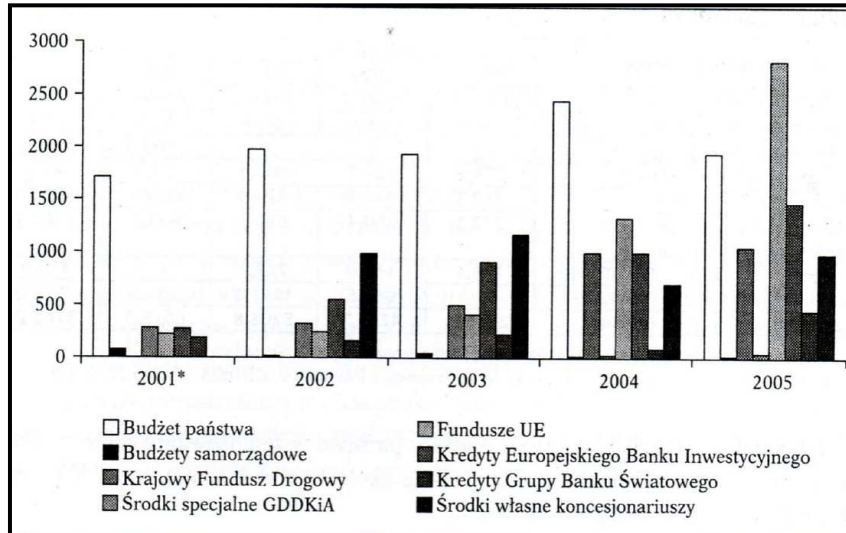
Beside the aforementioned Polish experiences in applying the PPP scheme, plenty of examples from other states can be mentioned where the use of PPP brought about positive results. The presentation of projects executed efficiently poses an excellent argument for PPP being a good form of co-operation between the private and public sector. Investment examples presented below offer a chance to spread the model in Poland and to liberate political will among decision-makers that is vital to introduce PPP on a wider scale.

So far, co-operation within PPP was not only controversial, but was also viewed as inefficient and unnecessary. However, a more comprehensive approach to this form of co-operation requires the research on a larger sample of cases. Such research proves not only that PPP or PFI (Project Finance Initiative) is used on a large scale (from the Arsenal FC football stadium in London to city lighting in Cracow), but shows also that it is an instrument without which catching up with other countries in the area of infrastructural investment will be difficult.

PPP is one of the tools of development that is commonly used in many countries worldwide. The shortages in road and transport infrastructure should be eliminated using all available means, so that Poland becomes a country not just approaching the average European countries, but rather competing with the European leaders. The rejection of such measures and blocking all PPP initiatives brings about huge alternative costs (costs of lost opportunities).

As it is presented on the chart below, the use of funds other than those from the state budget to finance road investment in Poland increases every year. Changes to the structure of financing road development are inevitable. This is determined, above all, by the dynamics of economic changes (larger number of cars, increased regional and international transport, innovative solutions in transport management in other European countries).

Sources of financing for road investments in Poland, 2001-2005⁷



[State budget

[Local and regional government budgets

[National Road Fund

[Special purpose funds of the GDDKiA

EU funds]

Credits from the European Investment Bank]

Credits from the World Bank Group]

Own funds of the licensees]

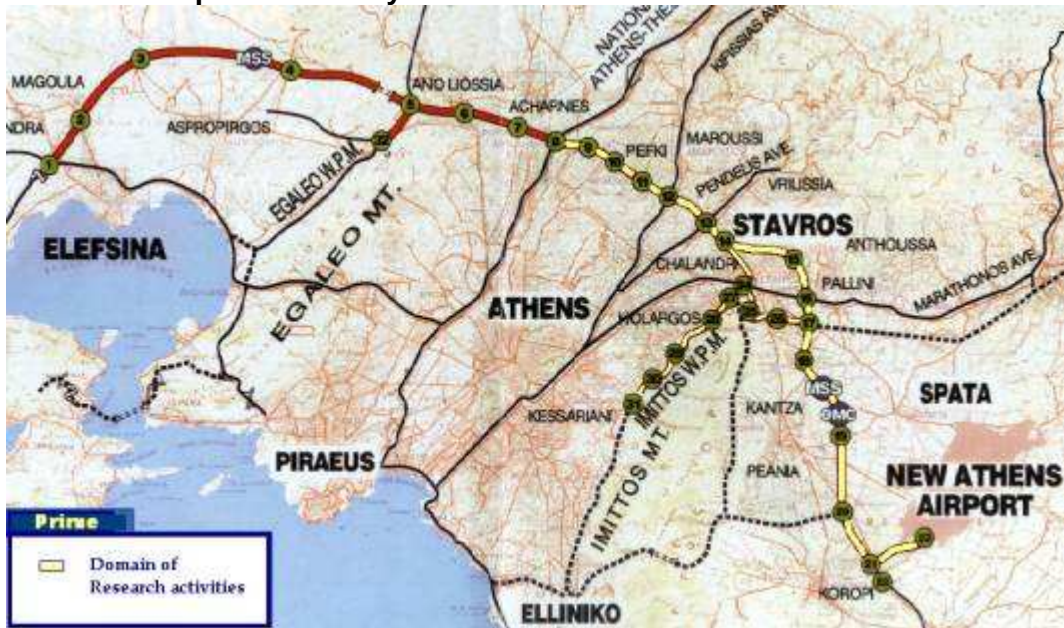
A good European example of efficient co-operation with private partners is the ring road of Athens. The project worth over EUR 2 billion entailed a DBFO-type license for a 65.2 km long section of a motorway. The need for the north ring road of Athens, from the west to north east of the city, was identified already in the 1960s. Due to plans of building a new international airport for Athens, the planned road was extended to the airport situated in the vicinity of the town Spata. The work on the project first commenced in the second half of the 1990s.

The selected method of project implementation was public-private partnership, with two aims:

- to decrease the share of public funds to 34% of the project's worth;
- to allocate most of the risk to the private side. The Athens ring road was one of the first ones realized with the use of the PPP method in Greece.

⁷ "Public-Private Partnership – Premises, Opportunities, Barriers" K.Brzożowska, CeDeWu 2006

The Athens-Spata motorway⁸



The construction period first agreed was 6 years. However, a court decision forced a change in the route and the execution of additional work due to negative environmental impact assessment of the road. Therefore, the period was extended to 7 years. The road exploitation by the licensee company will expire in September 2024 or at the moment the licensee obtains the worth of return on equity determined in the contract (whichever of the dates occurs earlier).

The PPP structure allowed most of the risk to be transferred to the private sector. The only risk left on the side of the Greek government was the risk related to taking over of the property, connected to the problems foreseen during the acquiring of land in a city like Athens. The public party was better fitted to take this risk due to its legal authority to take over land. The risk related to the project and the construction as well as the risk related to the exploitation and to the traffic volume was transferred to the private partner.

Pursuant to the signing of the concession contract, the Greek government applied for co-financing of the project from the structural funds of the European Union. The Athens ring road was included in the project list of the "Roads, Ports and Urban Development" Operational Program for the years 2000-2006 and it was co-financed from the European Regional Development Fund. The decision to support the project was taken by the European Commission in 2001.

⁸ www.trg.soton.ac.uk/prime/attiki_odos/

Athens-Spata⁹



The merger of private financing with the grant from the EU was a key factor of the project's success. The inclusion of the EU funds provided the public party with the means necessary to attract private partners to the project. The Greek government was not able to finance the project with its own public resources due to the condition of the budget deficit at that time. The Athens ring road project helped to reduce traffic and air pollution in the city centre. It was also an important element of the transport network for the 2004 Olympic Games. Even though the process of project preparation was delayed, using hybrid PPP allowed the Greek government to realize an infrastructural project despite a lack of state budget funds and without a necessity to give up available EU funds.

In Germany, on the other hand, at some point decision-makers responsible for the development of road infrastructure became convinced that expenses for this purpose are an excessive burden for the state budget, meaning that the state is not able to carry them on its own (in spite of inflow of gigantic EU funds). Since 1994, motorway construction in Germany is executed with the use of one of two financing models: the act on private financing of the development of roads (*Fernstrassenbauprivatfinanzierungsgesetz*), adopted this year, comprises a possibility of construction, maintenance and exploitation of the motorway by private owners.

A promotion of the concept of including the public sector into the design and execution of infrastructure investments has been carried out. According to the concept, private capital bears the costs of the investment, which are refunded by the state within 3 years after the investment has been completed. The state or local government emits obligations in order to obtain means to repay the costs. Private funds are to play an important role at financing ever increasing investments in the public sector. In 1998 one of Berlin's airports was sold to a private consortium. In 2003 a tunnel under the Warnow River in Rostock was commissioned, which is exploited on the basis of a license granted to Warnowquerung GmbH company for 30 years.

Good examples of benefits stemming from the efficient functioning of the PPP scheme in the process of investing in infrastructure are tunnels in Germany:

⁹ www.mottmacpettit.ie

EngelbergBasisTunnel (a section of the A81 motorway)¹⁰



The fourth Elbe-Hamburg tunnel¹¹



¹⁰ de.structurae.de/photos/

¹¹ fhh.hamburg.de/stadt/Aktuell/behoerden/stadtentwicklung-umwelt/bauen-wohnen/4-roehre-elbtunnel/

The A55 route in Ireland is one of the main roads on the British Isles. Its construction also used a PPP-based co-operation model.¹²



Another communication facility on the British Isles, developed with the use of PPP, is the Dundalk ring road.¹³



¹² www.anglesey.gov.uk/.../image/g/i/n/road

¹³ www.nuremore.com/.../Image/Belfast%20Map

It is worth mentioning that there are numerous examples in Europe where co-operation with private partners was used in an efficient way, including the following:

- Spain (motorways: Leon Astorga, M45 A&B, A6 and AVLA)
- Portugal (motorways: Chaves, Costa de Prata, Leiria)
- Ireland (M4 motorway)
- Greece (ESSI motorway)
- Great Britain (A1 DBFO motorway)

In the U.S., in order to encourage local governments to develop infrastructure, tax relief for municipal bonds was introduced in the federal income tax. Such a solution facilitates securing funds to finance infrastructure investments, and at the same time lowers the cost of acquiring funds for local governments.

Research carried out in the U.S. shows a difference in costs between public utility enterprises and private companies, which carry out an undertaking. In the energy sector public companies generate operational costs higher by 40-75% and investment costs higher by 40%.

VI. Summary

A necessary condition for the efficient development of infrastructure is a change of logic prevailing in the public debate on this subject. First of all, stereotypes dominating the debate and disabling the use of existing instruments for the development of road network in Poland must be overturned. Each of the permitted solutions is acceptable, provided it is used efficiently and a clear and transparent framework is established. This entails both the legal framework and the implementation of projects in practice.

However, overturning these stereotypes is not the only condition necessary to improve the situation in the area of infrastructure. It is essential to work out a positive action plan, which will not only be another document describing failings and shortages, but will also be a real instrument for the improvement of the current condition of road infrastructure in Poland.

The organization of the EURO 2012 European Football Championship in Poland and Ukraine facilitates the formulation of such a positive action plan. Needs as to transport infrastructure force the search of additional mechanisms for the financing of infrastructural investment projects. Such a need is also perceived by current decision-makers. Not taking advantage of this chance and trend would be a serious omission and could delay the process of infrastructure development in Poland. Therefore, creating the National Program of Road Construction seems to be the best solution and a response to challenges Poland is facing at the moment. There has been no such comprehensive, positive program so far, and this has resulted in instability and inconsistency in the implementation of the program of motorway and express road construction in Poland.

The most urgent challenges that Poland faces indicate clearly that the most important decisions as to the development of the road network (motorways and express roads in particular) in Poland will be made at the level of the central government administration. Local and regional governments, even though they participate in the process (since according to the regulations in force an investor of a road of higher rank is obliged to link it to roads of lower rank, which are roads administered by local and regional governments), will not be the primary player in the nearest future as far as the construction of new roads is concerned. However, they are an ally in influencing and exerting pressure on the central government administration and the central road administration to keep on developing the road network. This is because they do not have any doubts that transport infrastructure is of key importance for the development of their regions. However, the most important decisions concerning the preparations for EURO 2012 will be made by the Polish government. Therefore it seems rational to convince the government administration officials responsible for road infrastructure that any opportunity for the improvement of this condition should be used, including the participation of private funds.

So far, reality has shown that it is possible to go on with the implementation of the motorway construction program in Poland in the same way as it is done now. This means carrying out projects in a traditional way, financed from the state budget, EU funds, and loans from international financial institutions. Motorway projects realized in this way will be completed sooner or later. Yet considering the challenges Poland will have to face in the nearest future, it cannot afford waiting for the development of road network for a long time. **Therefore it appears necessary to utilize all available instruments and systems.** The opportunity to take advantage of them is rendered by public-private partnership in all its forms and shapes (BOO, BOR, BOT, BLT, DBFO). High quality roads and motorways will eventually be built in Poland, but if we want to manage to complete the key projects by 2012, one must admit that it is impossible without the use of private financing and the engagement of the private sector. **Only co-operation between the state and investors can lead to success in this area.**