

The background of the slide is a grayscale photograph of a modern bookshelf. The shelves are filled with books of various sizes. In the foreground, the back of a white chair is visible. The overall aesthetic is clean and professional.

URÍA MENÉNDEZ

International Workshop

Regulation of the Transport Sector:

Institutional Aspects of the Regulation of the Transport Sector

Adolfo Menéndez Menéndez



Adolfo Menéndez Menéndez

Partner

+ 34 91 586 04 50

adolfo.menendez@uria.com

Adolfo Menéndez Menéndez joined Uría Menéndez in 2004 and was the head of the Real Estate, Planning and Environment Practice Area until 2006. Adolfo is based in the Madrid office where he is currently part of the Public Law and Litigation Practice Area.

As a highly reputed specialist in administrative matters, Adolfo has advised on some of the most important matters in regulated sectors including the defence industry, transport, construction and infrastructure financing, the pharmaceutical and health industry and sporting sector. Adolfo has also been involved as an expert in the development of both Spanish and European legislation in those sectors. Adolfo has been a director in various leading Spanish companies.

Uría Menéndez, Partner, in the Public Law and Litigation Practice Area. Member of the Spanish Confederation of Business Organisations (CEOE), the Commission for Infrastructures and Urban Planning, and Former Vice-Secretary of Spain's Ministry of Transport and Infrastructure (*Ministerio de Fomento*)

Challenges



Challenges

- Global vision, multimodal approach
- Full and fair integration of regional infrastructure and transport policies and regulations (EU)
- Seeking stability and continuity, avoiding a sectoral, territorial or partial approach
- Predictable legal framework adapted to:
 - the progressive liberalisation of transport services
 - meeting the model's financing needs

Institutional Format in the Management of the Sector (1996–2012)



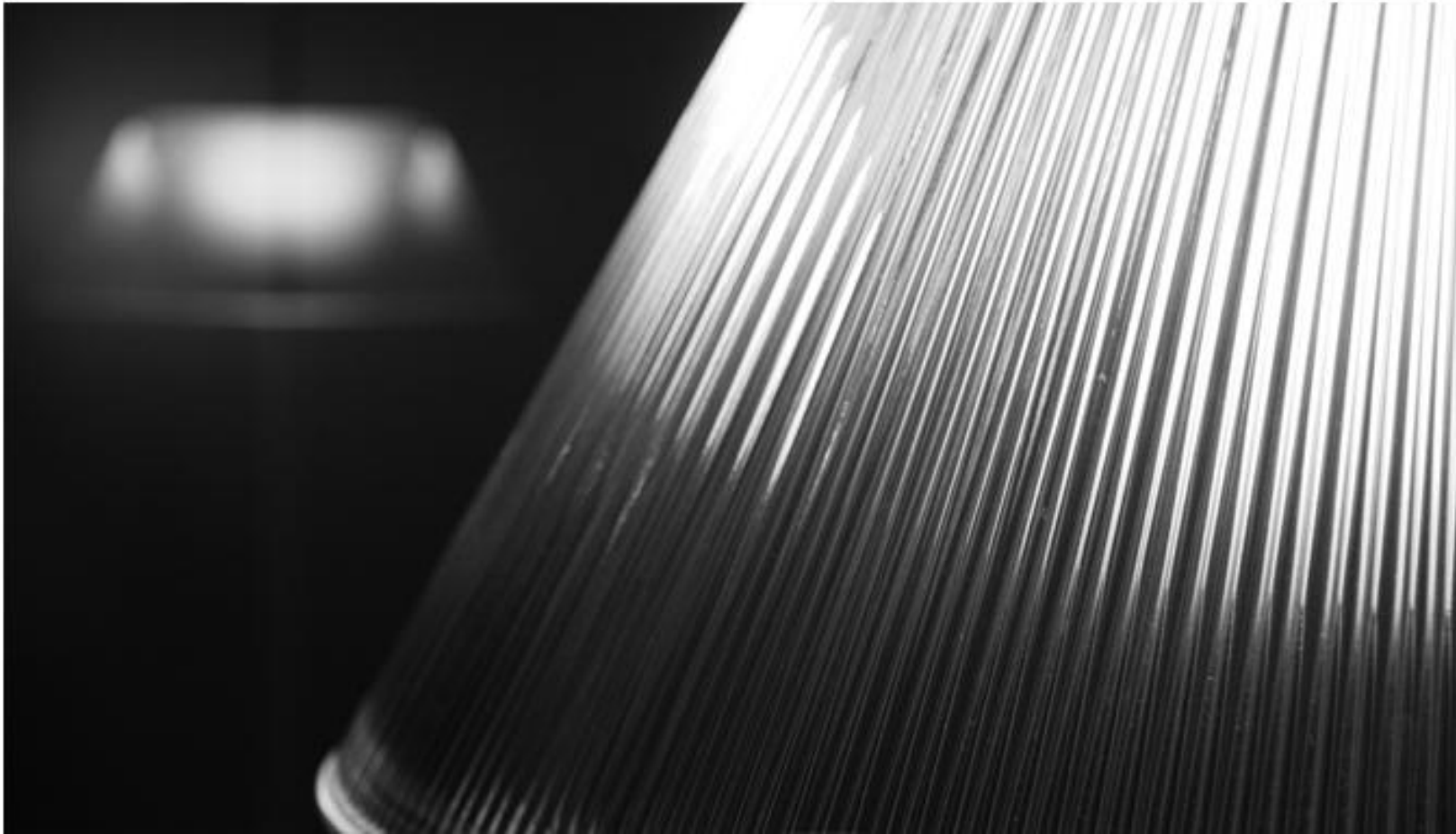
Institutional Format in the Management of the Sector (1996–2012)

- Why 1996–2012 as a reference period?
- Centralised vs. decentralised
- Planning, financing, contracting, monitoring at the level of the central government
- Peculiarities in the management of specific modes of transport: roadways, railways, ports and airports
- Relationship between central and regional governments

Institutional Format in the Management of the Sector (1996–2012)

- Relationship between (i) planning and execution and (ii) licensing and monitoring
- Basic legal framework

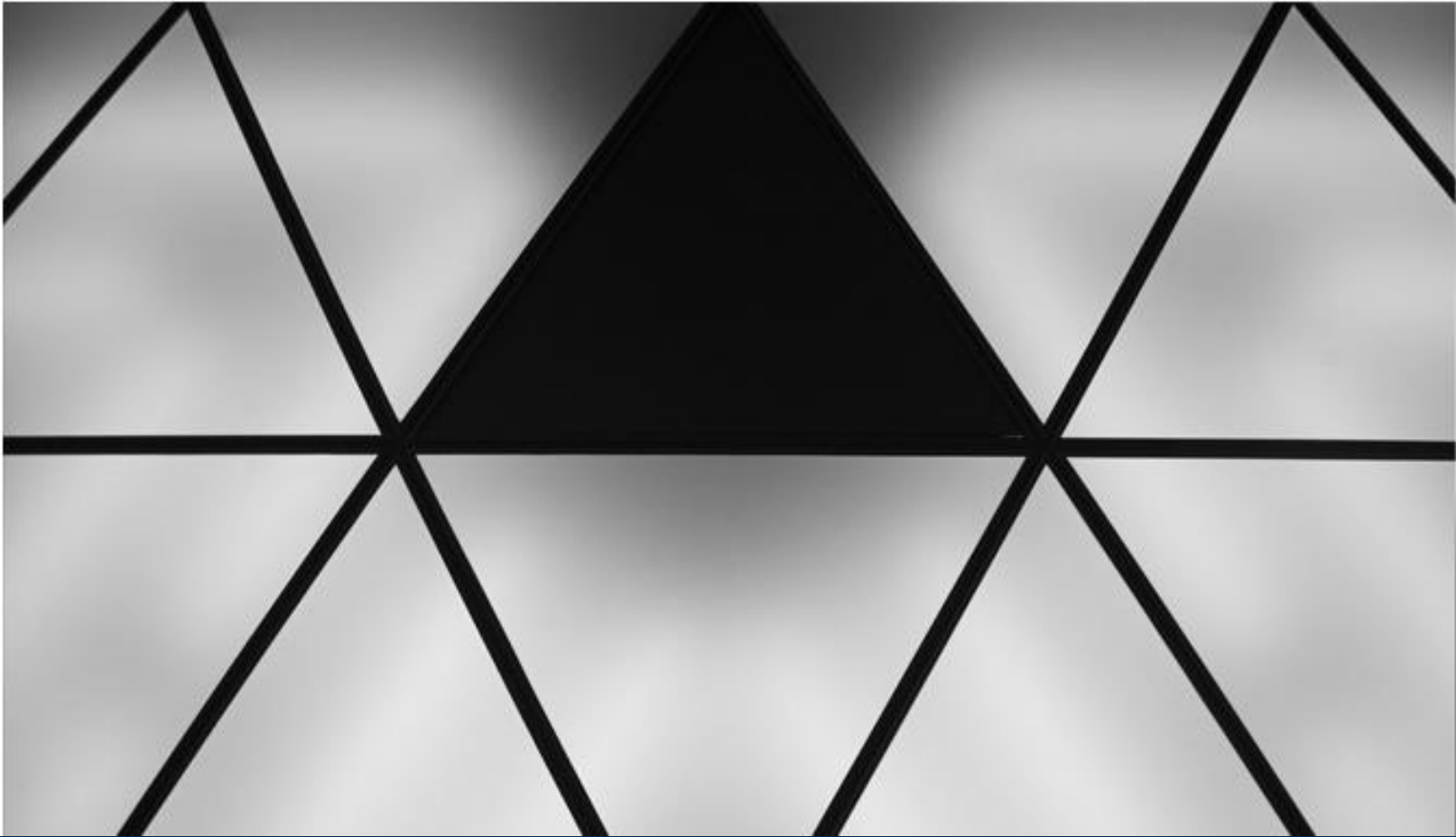
Why 1996–2012 as a reference period?



Why 1996–2012 as a reference period?

- Cycle of economic growth and investment
- Significant progress toward a single transport market in the UE
- Significant progress toward a uniform and transparent regulation on public procurement in the EU
- New regulation of transport services and concession contracts (PPP) in Spain

Centralised vs. Decentralised



Centralised vs. Decentralised

- Spain is a decentralised country
- Decentralisation does not imply disorganisation
- Four levels:
 - European Union
 - Central (*Estado*)
 - Regional (*Comunidades Autónomas*)
 - Local (*Diputaciones, Cabildos Insulares y Ayuntamientos*)

Centralised vs. Decentralised

- The distribution of powers depends on the territory in which the transport service is provided or in which the infrastructure is built

Spain – Regions (*Comunidades Autónomas*)



Spain – Provinces (*Provincias*)

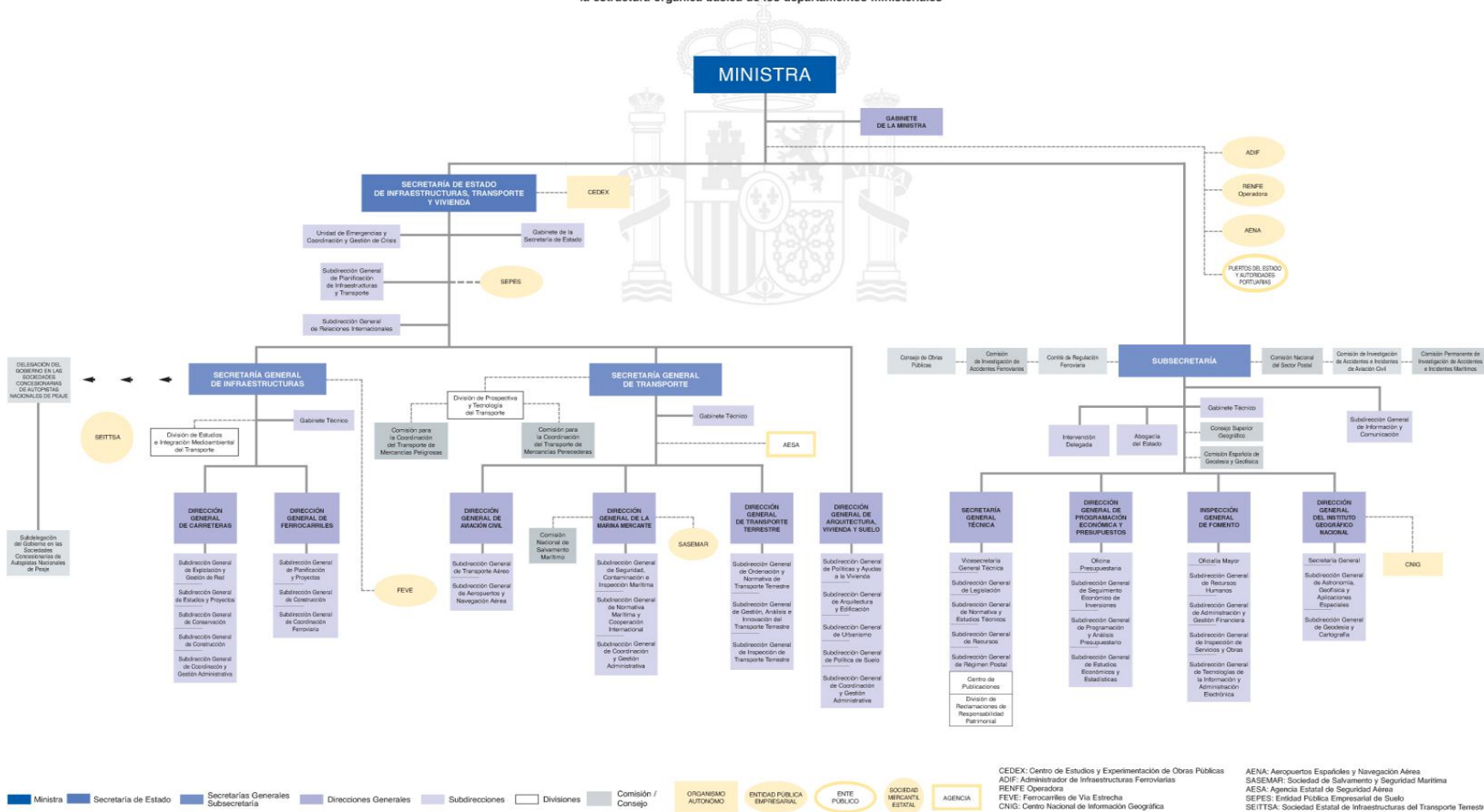


Planning, Financing, contracting & Monitoring to Central Government level



ORGANIGRAMA DEL MINISTERIO DE FOMENTO

Real Decreto 452/2012, de 5 de marzo, por el que se desarrolla la estructura orgánica básica del Ministerio de Fomento y se modifica el Real Decreto 1887/2011, de 30 de diciembre, por el que se establece la estructura orgánica básica de los departamentos ministeriales



Ministra
Secretaría de Estado
Secretarías Generales Subsecretaría
Direcciones Generales
Subdirecciones
Divisiones
Comisión / Consejo
ORGANISMO AUTÓNOMO
ENTIDAD PÚBLICA EMPRESARIAL
ENTE PÚBLICO
SOCIEDAD MERCANTIL ESTATAL
AGENCIA

CEDEX: Centro de Estudios y Experimentación de Obras Públicas
 ADIF: Administrador de Infraestructuras Ferroviarias
 RENFE Operadora
 FEVE: Ferrocarriles de Via Estrecha
 CNIG: Centro Nacional de Información Geográfica
 AENA: Aeropuertos Españoles y Navegación Aérea
 SASEMAR: Sociedad de Salvamento y Seguridad Marítima
 AESA: Agencia Estatal de Seguridad Aérea
 SEFES: Entidad Pública Empresarial de Suelo
 SEITSA: Sociedad Estatal de Infraestructuras del Transporte Terrestre

Planning, Financing, Contracting & Monitoring to Central Government level

- Planning is broadly indicative
- Each government has its own plan: PEIT
 - 2005–2020: *Plan Estratégico de Infraestructuras y Transporte* (PEIT)
 - 2011: *Nuevo Plan Estratégico de Infraestructuras y Transporte* (PEIT) (finally not passed)
 - 2012: *Plan de infraestructuras, transporte y vivienda* (PITVI)
- There is continuity between plans/governments

Planning, Financing, Contracting & Monitoring to Central Government level

- There is no service or transport infrastructure that is free of charge
- You pay taxes or you pay tolls
- Current issue: one way or another, you have to pay the full price

Planning, Financing, Contracting & Monitoring to Central Government level

- The authorities still provide some transport services directly (e.g., RENFE or postal service) or by concession (e.g., passenger transport by road). The carriage of goods by road has been completely liberalised
- Generally speaking, the authorities do not construct transport infrastructure. They contract out construction (public works contract) or construction and management (public works concession contract)

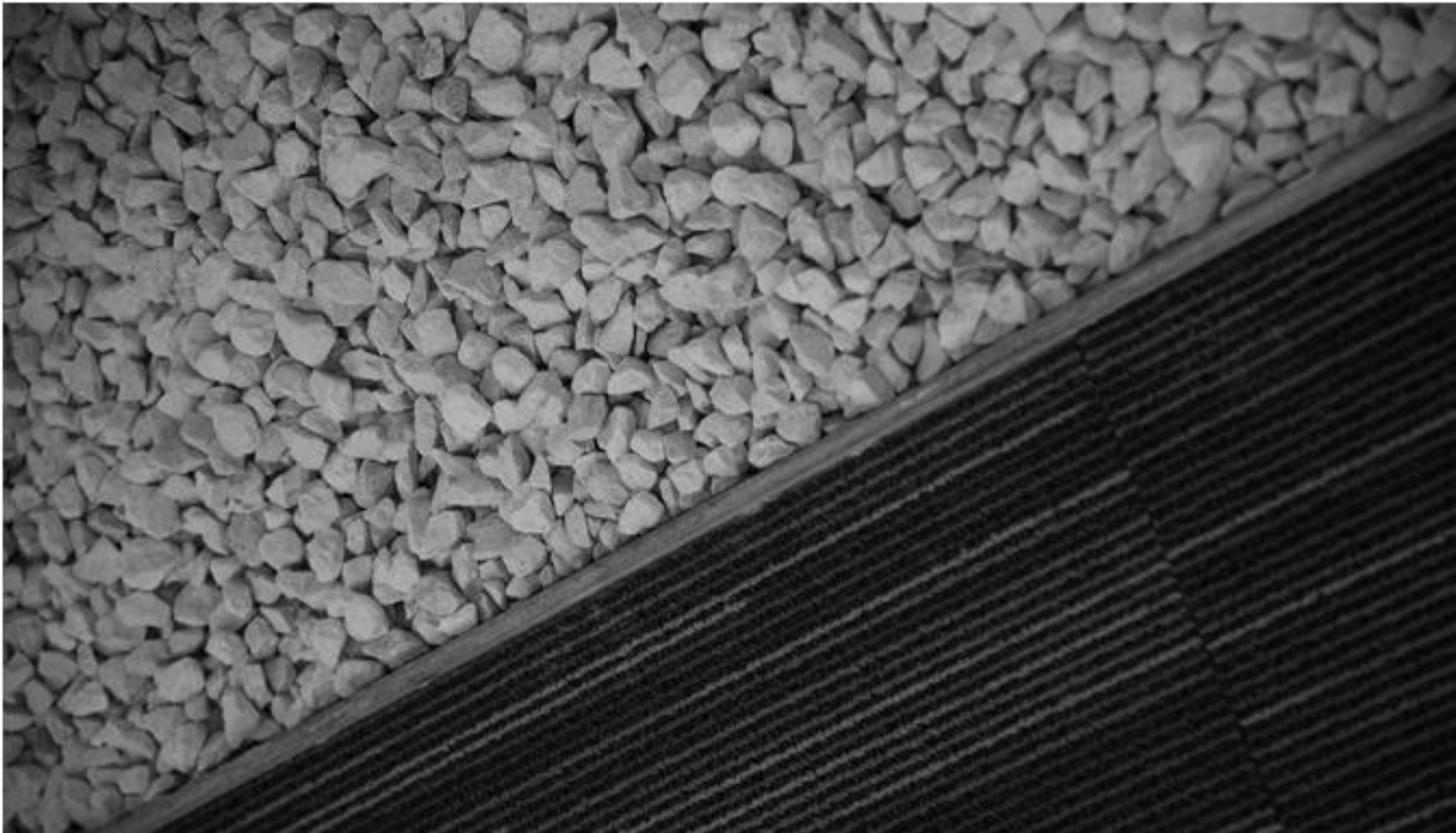
Planning, Financing, Contracting & Monitoring to Central Government level

- Public contracts are awarded in competitive and transparent tender procedures
- The Transport and Infrastructures Ministry (*Ministerio de Fomento*) is responsible for both infrastructure and transport services

Planning, Financing, Contracting & Monitoring to Central Government level

- The Spanish experience on tollroad concessions. Main problems
 - Tolls (demand risk) vs. Availability Payments (availability risk)
Compensation scheme:
 - Compensation accounts
 - Extensions
 - Expropriation risks
Compensation schemes:
 - Participative loans

Transport management & maintenance: roads, railways, ports and airports



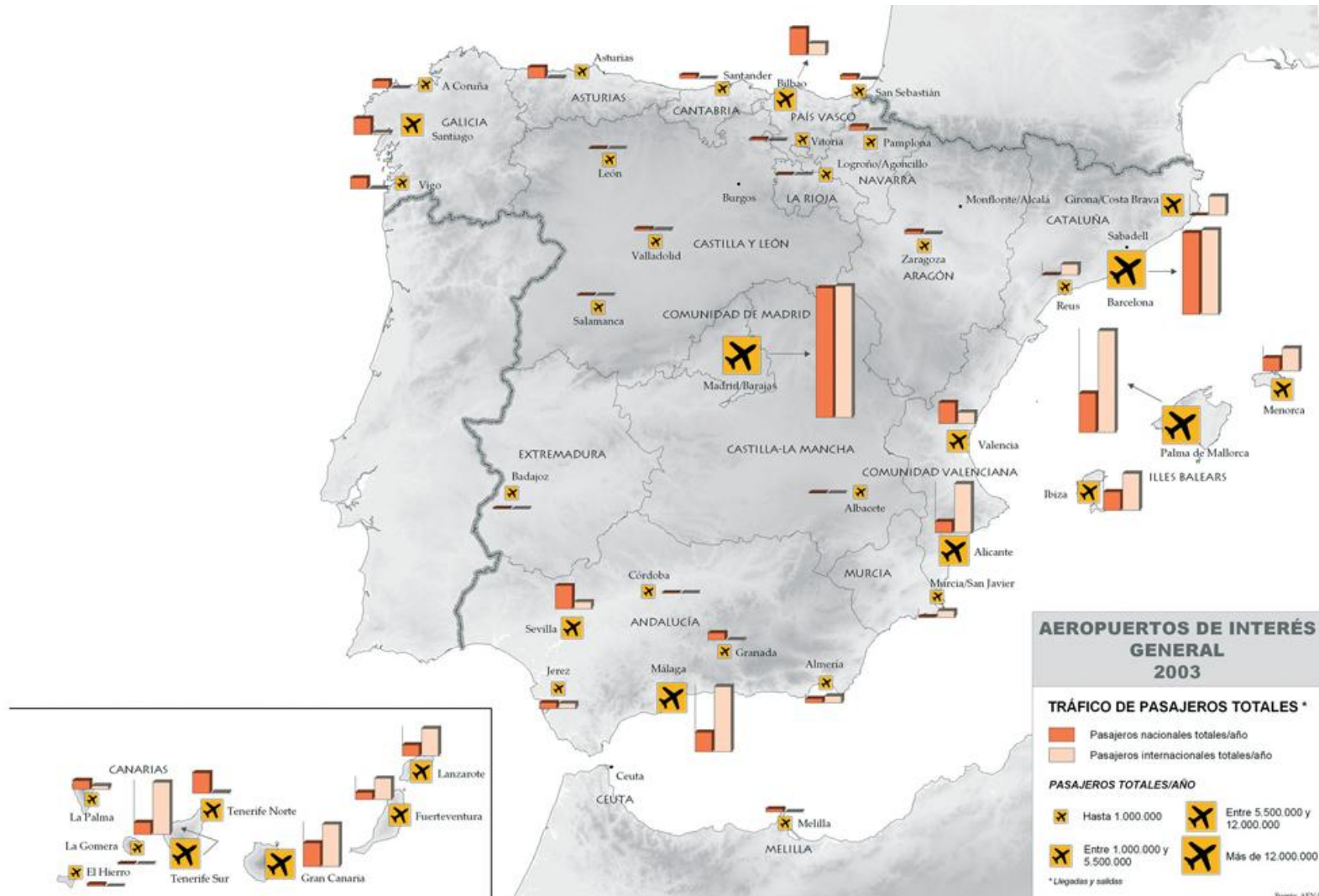
Transport management & maintenance: roads, railways, ports and airports

- Road network: Directorate General for Roads, Directorate General for Land Transport, Directorate General for Traffic (Interior Ministry) + SEITTSA, and Central Government Delegations (for national toll motorway concessionaires)
- Railway network: Directorate General for Railways + ADIF and RENFE Operadora/FEVE

Transport management & maintenance: roads, railways, ports and airports

- Ports: State Ports and Ports Authorities
- Airports: Directorate General for Civil Aviation + AESA and AENA

Spanish airports



Spanish ports



State road network



Railroad network



State vs. Regional Government (*Comunidades Autónomas*)



State vs. Regional Government (*Comunidades Autónomas*)

- Three coordinated networks: problems?
- Each has its own competencies at every level
- Peculiarities of each mode of transport: roads, railways, ports and airports
- Complex budgetary matters (e.g., subsidised air transport to islands)

Planning and execution v. licensing and monitoring



Planning and execution v. licensing and monitoring

- Complex and slow
- A minimum of 10 years passes between the decision to build an infrastructure being taken and its completion
- We are still in a transition period, with different rhythms for each mode of transportation

Basic legal framework



Basic legal framework

- Transports
 - Railway: Law 39/2003, dated November 17, on the railway sector
 - Airports: Law 21/2003, dated July 7, on aviation safety (partially modified in 2011)
 - Ports: Royal Legislative Decree 2/2011, dated September 5, which approves the revised Law of the State Ports and Merchant Marine

Basic legal framework

- Roads: Law 25/1988, dated July 29, on roads. Law 16/1987, dated July 30, on land transportation
- Infrastructures
 - Royal Legislative Decree 3/2011, dated November 14, approving the revised text of the Law on public sector contracts



URÍA MENÉNDEZ

www.uria.com