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PRESENTATION OF CAFER-NIGER

Theme : Road Fund Revenue Collection. Case of CAFER

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I -Introduction

Law No. 2005-22 of 28 June 2005, to replace Ordinance No. 99-55 of 22 November 1999 to set up the Autonomous Road Maintenance Fund (CAFER) outlines under its Section 4 the resources of CAFER. These come from:

- the road-use tax levied on petroleum products meant for automobile consumption;
- road-use dues constituted by tolls on the national road network ;
- all yields from any other taxes collected or to be collected from road users, authorized by the laws and regulations in force;
- revenue linked to the sale of bidding files related to road programmes, whatever their source of financing;
- indemnification for damages caused by users of the national road network, duly ascertained and fixed by expert recommendation or by the courts;
- resources earned from the direct management or concession of structures of the national road network;
- proceeds from the sale of scrapped or unallocated materials acquired by CAFER or assigned as an endowment;
- the proceeds from sundry services;
- the exceptional contributions or subsidies granted by international organizations in the form of bilateral or multilateral aid;
- contributions and legacies.

The focus of this paper will be those financings which at present constitute the bulk of CAFER's resources, namely:

- the road-use taxes levied on petroleum products meant for automobile consumption at the rate of CFAF 30/litre;
- the road-use dues constituted by tolls on the national road network;
- indemnifications for damages and destruction caused by users on the national road network, duly ascertained and fixed, especially the weighing fees.

For each of these resources, the paper will highlight the regulations governing their collection, the relevant collection mechanisms set up by CAFER as well as problems encountered. In the conclusion, the prospects for improving the resources of CAFER will be charted.

II- Revenue collection: legal and regulatory framework, mechanisms and problems encountered

A- Collection of the road-use tax levied on petroleum products

1 – Legal and regulatory framework governing the collection of the road-use tax levied on petroleum products

Until 2000, the CFAF 30/litre road-use tax levied on petroleum products was collected by the national treasury on behalf of CAFER, as stipulated by Ordinance No. 99-55 of 22 November 1999 to set up CAFER. In view of the provisions of this Ordinance, the Niger petroleum products corporation, *Société Nigérienne des Produits Pétroliers* (SONIDEP) turned in the full yields of the petroleum products tax into the national treasury, which then paid to CAFER its due share thereof. It goes without saying that in view of the country's cash-flow and liquidity problems, the payment of the tax was not entirely hitch-free. Thus, over the years, payment arrears kept piling up.

In 2005, Law No. 2005-22 of 28 June 2005, introduced a major change in the modalities governing the collection of this tax. Section 6 thereof stipulates that the resources of CAFER shall be deposited directly in an account opened in its name in the West African Central Bank, BCEAO.

This provision of the law is re-echoed and further specified in Decree No. 2005-153/PRN/ME of 29 July 2005 to lay down the financial regulations of CAFER which stipulates under section 2 that: "the amount of the road-use tax levied on petroleum products will be collected at the customs belt". The tax shall be listed in the finance law, and the initial amount thereof of CFAF30/litre (super grade and gas oil) shall be deducted from the oil tax.

It shall fall due once the petroleum product is put up for consumption. The amount thereof shall be paid at the end of each month into CAFER's bank account opened in the BCEAO".

As can be seen, the change is a major one indeed, because the treasury is henceforth excluded from the collection channel of this due.

2 -Description of the collection mechanism for this tax

The terms and conditions for the collection and payment to CAFER of the tax on petroleum products are specified in Inter-ministerial Order No. 35/ME/ME/F of 12 December 2005, a joint order of the Minister of State for Equipment and the Minister of the Economy and Finance.

The collection arrangement rests mainly on two principal actors, namely, the customs services and the oil importer, SONIDEP. It is worth noting that in Niger, SONIDEP is the sole importer of petroleum products.

The collection process starts with the settlement at the customs belt of the levy on petroleum products put up for consumption. For that purpose, the customs services make out a statement of quantities imported while SONIDEP, beneficiary of removal credits, is bound at each payment to prepare a statement of taxes settled. This statement clearly indicates the amount to be paid to CAFER. It is sent to CAFER for cross-checking of the quantities declared by SONIDEP.

SONIDEP then makes out two separate cheques:

- a cheque made out to the order of the Treasury Paymaster General of Niger which restates the amount to be paid in to the State;
- a cheque made out to the order of CAFER, which restates the amount of the tax. CAFER is then required to deposit the cheque in its account opened in BCEAO.

The Treasury Paymaster General enters into his books the total amount of dues settled, as customs revenue. To regularize the transaction in its records, the Directorate General of the Budget will issue a budget money order of the same amount, made to the order of the Treasury Paymaster General of Niger. The Department of Financial Affairs of the Ministry of Equipment will issue a commitment order for that purpose.

This arrangement has worked well to date. Indeed, at end-July, CAFER recovered monthly the totality of the tax of the first seven months of the fiscal year, according to laid down provisions.

3 – Problems encountered in the collection of the road tax on petroleum products

Although the collection of this tax no longer poses problems like it used to do in the past, it nevertheless remains that the amount thereof still falls short of budgetary provisions. In fact, seven months into the fiscal year, the rate of collection stands at barely 31%. This low performance can be attributed to several factors, including:

- the loss of quantities of fuel put up for consumption, owing to fraud and multiple exonerations granted to development organizations and projects;
- high world market prices of oil which reduces any leeway for increasing the amount of the tax fixed at CFAF 30/litre, which concurrently increases fraud.

B- Road-use rights consisting of tolls on the national road network

1 – Legal and regulatory framework governing the collection of the road-use right

The toll was introduced for the first time in Niger in 1993, by Ordinance No. 93-015. Both Ordinance No. 99-55 of 22 November 1999 and later Law No. 2005-22 of 28 June 2005 to set up CAFER indicated that the road-use right was one of the resources of CAFER and as such ought to revert to it. It must be said that the above-mentioned law is very clear as to the general applicability of the tax. In fact, it stipulates that no exemptions or reductions shall be allowed, not even for Government services.

Decree No. 2005-153 of 29 July 2005 to lay down the financial regulations of CAFER, pursuant to the law, determines five categories of vehicles subjected to the toll depending on the nature of the road (earth road, paved road), and the distance to be covered by the user.

2 -Description of the collection mechanism of the road-use tax

From when the toll was instituted in 1993 to date, the arrangement put in place for its collection has witnessed several changes. Up until February 2000, the toll was managed by the taxation services: this is the date when Order No. 610 MF/DGI, which granted the collection duty to the Chamber of Commerce, came into the picture.

With the creation of CAFER in 1999, toll revenue was now paid to it in accordance with the provisions of Decree No. 91-463 of 22 November 1999, relating to the conditions for the collection of the resources of CAFER in its section 2. However, CAFER transferred the collection of this revenue to the Chamber of Commerce through the signing of a concession agreement under which the Chamber of Commerce was to turn in annually taxes in the amount of CFAF 900 millions FCFA.

As the concession agreement had not satisfied CAFER, (the tax amount paid in never exceeded CFAF 337 millions), a new concessionary company, this time a private operator, was designated to work alongside the Chamber of Commerce and with whom they carved up the national territory for the collection of the toll. Six months later, the results were still disappointing, which prompted the supervisory authorities of CAFER and the Road Board to hand over toll management to CAFER. In 2004, the latter then set up the Road Toll Management Unit (CEPR), pursuant to Decree No. 2005-154 of 29 July 2005 relating to its organization, which authorized it to create services as and when necessary.

CEPR is currently headed by a senior CAFER staff appointed by the Executive Director. It has 3 branches, 12 centres and 52 toll gates throughout the country. Revenue collected in the centres are deposited daily in the CAFER bank accounts opened in localities with a banking service. In localities without any banking service, the branch heads periodically take these funds to the heads of centre.

When CAFER resumed collection of the toll, the revenue generated by this activity increased substantially. Already in 2005, the contribution of the toll to the budget of CAFER was up to CFAF 630 million while in 2006, budgetary estimates increased to CFAF 700 million. Seven months into the fiscal year, the rate of collection was 52%.

3- Problems encountered in the collection of the road-use tax

The problems encountered are of several types. Although revenues increased when CAFER resumed collection of the toll, this was achieved at a high price because CAFER's toll management unit became considerably encumbered. In fact, the monitoring of this activity in terms of personnel management, the tracking of collection operations and internal control absorbs a good part of CAFER's staff whose numbers are besides quite small, despite the recruitment in 2006 of three additional senior staff, to reflect its new status as per Decree No. 2005-152 of 29 July 2005.

The second problem is linked to the method of fixing rates. In fact, rates are fixed depending on the destination of road users, which necessarily means that a toll gate must be erected at the entrance and exit of every large human settlement, thereby increasing management costs. Furthermore, this system is likely to generate huge revenue losses, since the collector must perform complicated calculations to determine the amount payable. Moreover, the possibility of verbal exchanges between the collector and the road user also has a disadvantage in that some citizens would want to talk their way out of paying the toll.

Lastly, it has been observed that toll gates inherited from previous managements are archaic (consisting summarily of a shed, two drums and a cord),

with untrained personnel and unreliable internal audit. The challenge at this level, is to modernize the whole collection system.

C- Resources derived from penalties on axle load checks

1 – Legal and regulatory framework governing the collection of penalties on axle load checks

Penalties on axle load checks commonly called weighing, were instituted by Decree No. 2005-54/PRN/ME/MT relating to the regulation of axle load checks and the preservation of the road heritage. Article 2 of this decree defines the limits of the authorized axle load as well as the total payload. The penalties for exceeding the authorized limits are outlined in article 7 of the same decree.

To date, the provisions of this decree are not fully applied. They have been provisionally replaced by a circular memo of the Minister of State or Equipment, which defines a new scale of fines per tonne of excess load. This circular memo is a moratorium pending the uniformization of the provisions of the decree in all the Member States of WAEMU which issued a directive in that regard.

2 -Description of the mechanism for the collection of penalties on axle load.

The checking of the axle load of vehicles is done at the level of weighing stations which are managed directly by CAFER. To date, there are four weighing stations, namely: Makalondi (Burkina border), Sorey (Niamey), Dosso and Gaya (Benin border). WAEMU has made provisions for building of six new stations which will cover the eastern and northern regions of the country.

Pursuant to the provisions of Decree No. 2005-054, all penalties are settled and paid by defaulters at the level of these weighing stations. The sums collected are directly deposited in the bank account opened by CAFER.

3- Problems encountered in the collection of penalties relating to axle load checks

There are two problems at this level. The first problem has to do with the education of users on the need for compliance with loading standards and the envelopes of vehicles, pursuant to statutory provisions. The second has to do with making the regulation uniform within the WAEMU area, an achievement that is still so distant that the initial six-month moratorium continues to be in force.

III- Conclusion and prospects

The foregoing shows that although the sources of financing of CAFER are numerous, the bulk of them represent occasional revenue, with which it is impossible to cover the funding of all road maintenance needs. CAFER, therefore, used its own resources to carry out a study on the identification of new and more perennial sources of financing as from 2007. An in-depth study will be conducted to further deepen this issue with

the support of the European Union within the purview of the 9th EDF currently underway in Niger.

Concurrently, CAFER embarked on the gradual modernization of arrangements put in place for the collection of the toll. Actions undertaken at this level concern:

- the construction of more modern toll gates in replacement of the former ones;
- the training of workers (branch heads, heads of centres, collectors) ;
- the strengthening of internal control by introducing more secured and protected tickets, computerizing the management of stocks of booklets and introducing more reliable administrative and financial management procedures.

Moreover, on the drawing boards is a three-year communication plan which, when implemented, will help to educate users on their rights and obligations towards the road.