

# Spain: for whom the expropriation tolls

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The euphoria that welcomed the announcement of a €5 billion (\$5.9 billion) greenfield Spanish roads programme has waned in recent months as expropriation risks bring progress to a stumbling shuffle and the dreaded four-letter word – toll – is whispered eagerly in the corridors of power in a bid to hedge their costs.

The initial rush of enthusiasm has been tempered by snail's-pace progress, yet the programme retains its cache as one of the great hopes for a new-build pipeline of any scale in Europe (but then straws look like floating jetties as you go down for the third time in the Atlantic).

The road-building programme – Plan de Inversión Extraordinaria de Carreteras (PIC) – was first explored [in these pages](#) last summer (July 2017), when Prime Minister Mariano Rajoy announced his plan to have them all tendered and awarded by the end of 2019.

The programme has not moved quite as smoothly as the PM had hoped and massive stumbling blocks have landed in the way of these highways particularly in the shape of expropriation.

But it's not just land ownership creeping out of the woodwork... what's this we hear about tolling?

## They're a-tolling for you...

As a quick reminder, the PIC greenfield programme includes:

- [Murcia bypass](#) – 33km road with an estimated value of €400 million
- [new road](#) parallel to the A1 in Madrid
- expansion of the [A5](#)
- completion of [Seville ring road](#)
- addition of a third lane to [Autovia Norte](#), linking Santander and Biscay
- widening lanes between Burgos and Aguilar de Campoo

While expropriation risk is always a challenge on projects of this nature, traffic risk is a more recent issue to have cropped up – and Spanish sources are surprised to see tolling rear its ugly (in this market) head.

“People in government think there is a need to introduce some form of traffic risk, thereby creating a monster with two heads,” says one person close to these deals, adding that availability alongside tolls will deter bidders and needlessly complicate matters.

According to local sources, the Spanish government is mulling a blend of availability payments alongside 20-30% of traffic risk – presumably shadow toll.

Such a large wedge of traffic risk has bidders sucking their teeth and drawing comparison to all other European road deals in the market at the moment and closed in recent years where tolling was deemed toxic.

Realistically, Spain should be the first to shy away from a tolling element on a new motorway, given its experience in recent years.

“I don’t think that any other country is doing that in Europe and I am aware that many other roads around Europe based on availability payments have been approved by Eurostat as non-public assets – and so off-balance sheet,” says another source.

“I think my government has some kind of misunderstanding when it comes to European regulations, and I don’t know if it’s going to materialise. But it is a major point of concern surrounding this process.”

A leading Spanish procurement lawyer adds: “This could imply an element of infringement of the regulation of the Public Procurement Act.”

And then there’s land ownership...

### **Expropriation – where lies the real risk?**

It’s inevitable that the private sector will seek to assume as little expropriation risk as possible, and fair enough. For the bidders to take on a risk of this nature is challenging and leaves one wondering just what the scale is?

One Madrid-based source says the sands are shifting on a daily basis on this front, but that there is a general assumption that a significant proportion of the risk is going to land on the concessionaires’ desks.

There’s been a lot of toing-and-froing between bidders and the Ministry of Finance over risk-sharing and this is how some say it currently stands:

- first 100 cases – dealt with by public side
- second 100 – divided between public and private
- third 100 – private side

Good grief.

And with some saying they fear there will be no absolute cap on it, Spain is teetering atop a legal landmine that throws the timeline into severe doubt.

And it doesn’t end there – as is always the case with such processes.

Once cases are dealt with, the door is open for land owners to appeal the expropriation jury’s resolutions, progressing a challenge in a bid to drive up the price.

All of a sudden 2019 is looking decidedly unlikely, making the brownfield opportunities look a lot more appealing for investors – if not road builders.

### **Brownfield v greenfield**

Another refresher on Spanish projects, the bankrupt roads (with links to their project entries in the *IJGlobal* database) were scheduled for re-nationalisation between February and May. This has happened (in chronological order):

- [R-4](#) – 93km road linking Getafe and Ocana – 21 February
- [R-2](#) – 62km stretch between the M40 and Guadalajara – 28 February
- [AP36 Ocaña-La Roda](#) – 147km road in the community of Castille-La Mancha – 14 March
- [AP7 Cartagena-Vera](#) – 114km road between Cartagena and Vera in southern Spain – 1 April
- [Alicante Ring Road](#) – 33.2km ring around Alicante, running between the towns of Monforte del Cid and El Campello – 1 April
- [M12 access road](#) – 27.7km road from the centre of Madrid to Barajas International Airport – 11 April

- [R-3](#) – 37km road at Madrid’s entry/exit to the east – 10 May
- [R-5](#) – entry/exit road for Madrid to the south west – 10 May

The [AP41 Madrid-Toledo](#) – 71.5km road from the Spanish capital to Toledo – has yet to be brought back under government control, but this should happen shortly... though chances are it will push into June (but that’s not exactly project slip).

The challenge now is to dust them off – get them ship-shape and Bristol-fashion – and serve them up to the infrastructure funds and concession companies before [the end of 2018](#). A challenging timeline to flog off all nine of them, but they will not lack for bidders.

Just to throw a little spanner into the works, word reaches *IJ* ears that the government may call on the winners of some of these concessions to widen some of the roads.

### **You can’t make a Spanish omelette without...**

So there we have it. Expropriation risks and tolling have cropped up as major issues for progress on the greenfield Spanish roads programme.

It’s not going to be a deal breaker, but it will bump up the price and delay progress further, making 2019 a lot more challenging a deadline than it already is.

Traffic numbers have recovered considerably in Spain in the last couple of years, so an element of tolling is not out of the question. It just depends how much.

As for progress, those worrying that lack of development before the summer hiatus will stall the programme until September need not worry. The Spanish government has been known to drop bombshells at the start of the holiday season, leaving bidders to work through August.

Fantastic. Greenfield and brownfield all in the one country.

What could go wrong?

Well...

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