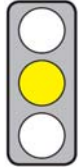


MAIN ISSUES

Objective of the Consultation: The Commission presents for discussion a new “dual layer structure” for the Trans-European Transport Network (TEN-T).

Parties affected: All transport undertakings and their users.



Pros: (1) Linking the main nodes to form a cohesive core network increases overall economic efficiency.

(2) The prioritisation of TEN-T projects and a coordination of the EU funds financing them makes a more focused funding of projects with a European added value possible.

Cons: (1) By maintaining the comprehensive network, the new TEN-T strategy remains too stuck in the old strategy, which was shaped more by national interests than European ones.

(2) The adoption of the TEN-T Guidelines in the form of a regulation is unlawful.

CONTENT

Title

Commission Working Document COM(2010) 212 of 4 May 2010: **Consultation on the Future Trans-European Transport Network Policy**

Brief Summary

► Trans-European Transport Network

- The “Trans-European Transport Network” (TEN-T) currently comprises 95,700 km of road links, 106,000 km of railway links, 13,000 km of inland waterways, 411 airports and 404 sea ports (“comprehensive networks”). Some parts of it are still in the planning stage or under construction.
- The European Parliament and the Council have set up guidelines in order to define TEN-T and to coordinate measures by the Community and Member States [Decision No. 1692/96 last amended by Decision No. 884/2004].
- Currently, the TEN-T policy consists of a “dual layer structure”. Its aim is to achieve
 - the completion of the “comprehensive network (1st level) consisting mainly of national sections and
 - the implementation of currently 30 “priority projects” on the major trans-national axes of railway links, road links and inland waterway links (2nd level) which do not form a coherent network.
- So far, € 400 billion have been invested in TEN-T, with almost a third coming from Community sources (TEN-T budget, Cohesion and Structural Funds and loans from the European Investment Bank).

► Context and target of the Consultation

- The Commission criticises that the current TEN-T policy is often dominated by national interests with respect to the planning, implementation and funding of individual projects, instead of being guided by European interests.
- In 2009, the Commission launched a Green Paper on the revision of TEN-T policy and presented various options for consultation [COM(2009) 44; cp. [CEP Policy Brief](#) and [CEP Monitor](#)].
- As a result of this first consultation the Commission now propagates a new “dual layer structure”: the comprehensive network (1st level) is maintained to serve as a basis for the construction of a coherent “core network” (2nd level). The latter is to be made up of links of “the highest strategic and economic importance” and of a “genuine European planning perspective” (p. 3 and 5).
- The aim of this second public consultation being initiated now is to “refine” the “dual layer structure” (p. 3). The ideas presented for discussion by the Commission concern the future planning of TEN-T, its implementation and its institutional and legal framework.

► Future TEN-T planning

Comprehensive network

- The future comprehensive network targets defined by the Commission include ensuring access to the core network and promoting the “internal cohesion of the Union” and the internal market (p. 4).
- The Commission wishes to “discuss” the planning of the comprehensive network with those Member States whose territory is affected (p. 5). Thereafter, any further planning will be agreed upon among the Member States concerned.
- According to the Commission, the planning of the future comprehensive network should use the current comprehensive network as a “starting point” and adjust it, where necessary, to national planning, and will ensure the interconnection of national transport networks (p. 5).

- The Commission emphasises that the comprehensive network planning should pay particular attention to the possibility for a cross-border use of the infrastructure (so-called interoperability) and to an “efficient” interconnection of different transport modes (so-called co-modality) (p. 5).

Core Network

- The Commission defines the following core network targets:
 - a smooth traffic flow of all transport modes on transport connections of “the highest strategic and economic importance” throughout the EU and neighbouring countries, as well as in other parts in the world (p. 5),
 - a “significant” reduction of greenhouse gas emissions from transport through an improved resource efficiency, e.g. the deployment of “intelligent transport systems” which expedite traffic flow through the use of information and communication technologies (p. 3 and 9), and
 - the provision of an “economic, social and territorial cohesion” of the EU (p. 3).
- The Commission emphasises that the core network should not lead to a new infrastructure programme of “immense scope” (p. 6). Instead, the existing major projects – with slight adjustment where necessary – are meant to form a “key part” of the core network in order to ensure “maximum continuity” (p. 8).
- According to the Commission, the planning of the core network should consist of four “successive major steps” (p. 6):
 - Step 1: Central nodes should be identified. These include, amongst others, the Member States’ capitals, other important cities of supra-regional relevance, intercontinental hub ports and airports and the major inland ports and freight terminals.
 - Step 2: “Ideally”, central nodes should be linked as directly as possible to increase overall efficiency. However, according to the Commission, in practice detours will be necessary, especially in order to include “intermediate nodes” (e.g. smaller and less important cities, airports, freight terminals) and to facilitate a splitting of passenger and freight flows “when justified”. (p. 7)
 - Step 3: Functional and capacity needs of the individual network sections should be determined so as to ensure an appropriate performance level throughout the whole section.
 - Step 4: Finally, it is necessary to examine whether further “hard or soft” infrastructures, e.g. intelligent transport systems, could simplify the operation and use of sections and thus enhance their efficiency and sustainability (p. 7).
- In addition, the Commission intends to accomplish “optimisation” and impact assessments (p. 8). They will take into account also non-monetisable effects, e.g. social cohesion.
- The Commission wishes to promote the infrastructure for “clean” fuels (e.g. electricity, liquid gas) as an “integral part” of TEN-T, in order to make their use “affordable and more efficient” (p. 9).

► **Future implementation of TEN-T**

- The Commission is planning to rank these projects within the TEN-T according to their “priority”, so as to foster in particular projects of “high European added value” (p. 9).
 - In order to identify the proper ranking of projects, the Commission proposes impact assessments of the whole core network based on reliable data and agreed methods.
 - Moreover, the Commission is considering extending the mandate of the “European Coordinators” (experienced European politicians) who coordinate major cross-border projects to smaller coherent infrastructure and operational measures. Thus the Coordinators would be authorized to set guidelines concerning the completion deadline and use of sections.
- The Commission argues in favour of a clear strategy regarding the use of EU funds. It aims at “further concentrating” EU funding in order to increase the “leverage” of EU contributions; moreover, the funding priorities of the EU and Member States are to be harmonised (p. 10).
 - An “integrated European funding framework” is to coordinate EU instruments for transport (TEN-T budget and TEN-T related contributions of the Cohesion and Structural Funds) and provide “guidance” to national investments (p. 10).
 - By cooperating closely with the European Investment Bank (EIB), their expertise should be used and private funds through public-private partnerships be mobilised.

► **Future institutional and legal framework of TEN-T**

- The Commission is considering adopting TEN-T guidelines in the legal form of a regulation.
- A regulation could:
 - pursuant to Art. 290 TFEU (“delegated legal act”) confer on the Commission regulatory powers and
 - in addition, contain the basic rules on granting EU funding for TEN-T projects which currently are regulated separately [TEN-V Financial Regulation (EC) No. 1159/2005].
- The Commission argues in favour of a clarification of the responsibilities of Member States which play a vital role in TEN-T project implementation in terms of planning, financing, implementation and review. It is considering specifying these responsibilities in the corresponding guidelines.

Statement on Subsidiarity by the Commission

The Commission does not address the principle of subsidiarity. However, it does emphasise that the Member States still play a “vital role” in developing the TEN-T (p. 11).

Policy Context

Following the first consultation, the Commission appointed six expert groups in order to discuss issues regarding the planning, implementation and financing of TEN-T, based on the statements which had been submitted as a response to the consultation. The reports of the expert groups served as a basis for the consultation paper. They can be found under:

http://ec.europa.eu/transport/infrastructure/tent_policy_review/expert_groups/expert_groups_en.htm.

The main burden of the € 196 billion to be spent on TEN-T between 2007 and 2013 is borne by the Member States. The EU itself provides € 8 billion through the TEN-T budget and € 43 billion through the European Regional Development and Cohesion Fund. The European Investment Bank also provides support through loans to the amount of € 65 billion. Meanwhile, 60% of EU funding is used for cross-border projects. There are currently ten European Coordinators operating for major cross-border projects.

In 2010, the Commission will propose a revision of the TEN-T guidelines. In the same year, it intends to present a new White Paper on the future transport policy, including the “general aspects” of the future TEN-T policy.

Options for Influencing the Political Process

Leading Directorate General:

DG Mobility and Transport

Consultation procedure:

Any interested party may submit a statement by 15 September 2010 under:

http://ec.europa.eu/transport/infrastructure/consultations/2010_09_15_future_policy_en.htm

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

It is to be welcomed that in a second consultation procedure the Commission presents for discussion substantiated proposals on the future of TEN-T which are based on the results of the first consultation.

However, **the TEN-T policy** propagated in the consultation paper **continues to be stuck in the existing structure, which is shaped more by national interests than European ones**: the comprehensive network is to remain subjected to European planning and the priority projects are to form the major basis of the new core network, in order to ensure “maximum continuity”. **This is all the more surprising considering that it was precisely this, the dominance of national interests, that was the main reason why the Commission decided quite rightly to revise the existing TEN-T structure** [COM(2009) 44; cp. [CEP Policy Brief](#)].

This critical development is mainly a result of the influence of main stakeholders, predominantly the Council and the European Parliament, who, during the first consultation procedure, argued in favour of maintaining the comprehensive network and the existing priority projects [cp. [CEP Monitor](#) in German only].

Nonetheless, **the future TEN-T policy should focus more clearly on cross-border projects with a European added value**, since this is where coordination needs exist at EU level exclusively (e.g. with regard to issues addressing interoperability). The development of a priority ranking for transport projects according to their “European added value” is a step in the right direction.

Irrespective of this general criticism, the Commission’s considerations on the future planning and implementation of TEN-T projects are to be assessed as follows:

Planning the future comprehensive network: the Commission leaves it open as to how far the scope of its responsibilities should reach. The Commission announces rather unclearly its wish to “discuss” this planning with Member States and to leave only the “further” planning to the discretion of Member States. However, **it should be made very clear that the planning of purely national sections of the comprehensive network is exclusively subject to the responsibility of the Member States concerned.**

In respect of cross-border infrastructure development, however, there is a European need for coordination. A Commission-guided project planning is indeed justified here.

Planning of the future core network: through the proposed four successive steps, a smooth traffic flow can be ensured on the major transport axes. **The fact that central transport nodes are linked and integrated into a cohesive core network increases the efficiency of the transport infrastructure** and thus constitutes a European added value.

Moreover, it is appropriate to take into account the potential deployment of intelligent transport systems already during the phase of infrastructure planning, as in this way expensive refittings can be avoided.

Implementing individual TEN-T projects: the planned prioritisation of TEN-T projects principally allows for EU spending to be focussed on projects with a European added value. It is also appropriate – as proposed by the Commission – to accomplish impact assessments for the whole core network by way of harmonised methods. To date, impact assessments have been accomplished only for individual projects without looking at the whole picture. But only if all alternatives are taken into account, as well as their impact on the whole network, can a project priority ranking be set properly.

The intended extension of the mandate of the European Coordinators to include smaller infrastructure and operational measures should not affect the Member States’ action scope when implementing projects, and

should be subjected to an explicit prior approval by the Member States concerned. Principally, the number of Coordinators should, however, be increased, since in the past they have contributed well to the success of individual projects.

The development of a transparent strategy for the use of EU funds is to be welcomed. However, the main burden will still (have to) be borne by the Member States and, increasingly, by transport users. The EU itself should focus more on cross-border projects in future.

The consultation paper lacks a clear and consistent definition of Trans-European transport policy targets. It is somewhat alarming that the Commission wishes impact assessments to cover not only economic aspects but also non-monetisable effects such as social cohesion. **This opens the floodgates to intransparent and arbitrary planning decisions** and is contradictory to the target of basing TEN-T policy on rational and comprehensible criteria – all the more so as the Commission does not explain in detail how the non-monetised criteria are weighed.

Impact on Efficiency and Individual Freedom of Choice

The establishment of an interoperable and co-modal transport network increases the overall efficiency of the economy.

Impact on Growth and Employment

The elimination of transport bottlenecks through cross-border TEN-T projects simplifies the distribution of labour among Member States and thus enhances growth and employment.

Impact on Europe as a Business Location

Measures for an efficient traffic flow increase the attractiveness of Europe as a business location.

Legal Assessment

Legislative Competence

The responsibilities for the planning and construction of networks is subject to the Member States. However, the EU may complement and support the setting-up and development of TEN-T (Art. 170 (1) TFEU). To this end, it may adopt guidelines which cover the targets, priorities and main features of the planning and “identify projects of common interests”. Moreover, the EU is entitled to implement measures necessary to ensure the interoperability of TEN-T. (Art. 171 Abs. 1 AEUV)

Subsidiarity

Unlike national policy action, EU action must generate European added value (Art. 5 (3) TEU). This is given where planning at EU level creates benefits for all states related to the network concerned, and where such benefits would remain unconsidered if planned at national or bi-national level.

Proportionality

Currently not foreseeable.

Compatibility with EU Law

A regulation has a “direct” and “general application” in all Member States (Art. 288 TFEU). This means it produces “legal effects of general and abstract defined groups” (ECJ, Case 101/76, No. 20/22). The adoption of a regulation is therefore not valid if the parties that are in the end to be affected are already known when adopting the legal act (ECJ, Case 242/81, No. 30). The TEN-T guidelines address the EU Member States by name and exclusively, since only they can implement the transport project within the scope of the set targets. Therefore, **the adoption of the TEN-T guidelines as a regulation is unlawful** (cp. [CEP Legal Opinion](#) in German only).

Compatibility with German Law

The priority projects should be adjusted where necessary. In such a case the priority plans of the German Highway Development Act (§ 1 (1) Clause 1 *Fernstraßenbaugesetzes – FStrAbG*) and the Federal German Railway Development Act (§ 1 (1) *Bundesschienenwegeausbaugesetzes – BSWAG*) would have to be modified accordingly. But the binding effect of such priority plans is limited, since lower-level planning increasingly aims at the concrete routing of projects rather than priority planning.

Alternative Policy Options

The EU should not make the comprehensive network an integral part of the TEN-T as it mainly consists of national sections, but should instead focus on building the core network.

Conclusion

The propagated “dual-layer structure” continues to be too stuck in the existing structure, which is shaped more by national interests than European interests. The future TEN-T policy should therefore focus more clearly on original cross-border projects with European added value. This target can be achieved by prioritising TEN-T projects and coordinating EU- funds to finance them. Linking the central nodes into a coherent core network increases overall economic efficiency. The adoption of TEN-T guidelines in the form of a regulation is unlawful.