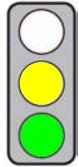


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## MAIN ISSUES

**Objective of the Green Paper:** The Green Paper is to bring about a major EU policy shift with regard to a Trans-European Transport Network (TEN-T).

**Parties Affected:** Traffic participants, building companies, infrastructure operators, developers of complex IT solutions.



**Pros:** (1) Abandoning the hitherto envisaged “comprehensive network” in favour of a “priority network” is reasonable since coordination at EU level is needed only with regard to the latter.  
(2) Intensifying the deployment of public-private partnership schemes is appropriate.

**Cons:** Project financing through Eurobonds is to be rejected. Otherwise the EU might expand its scope of action independently and without any parliamentary control.

## CONTENT

### Title

**Green Paper COM(2009) 44** of 4. February 2009: **TEN-T: A Policy Review** – Towards a better integrated Trans-European Transport Network at the service of the common transport policy

### Brief Summary

#### ► Transeuropean Transport Network

- The “Transeuropean 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 network”).
- So far, € 400 billion have been invested in TEN-T, with almost a third coming from Community sources (TEN Financial Regulation, Cohesion Fund, European Regional Development Fund and loans from the European Investment Bank). The Commission assumes that almost 20,000 km of road links, over 20,000 km of railway links and 600 km of inland waterway links still have to be built or substantially upgraded in order to complete the comprehensive network. The estimated costs for this amount to € 500 billion.
- The European Parliament and the Council have set up guidelines, which were last amended in 2004, in order to define TEN-T and to coordinate measures by the Community and Member States. The objective of the guidelines is “the establishment of a single, multi-modal network” (p.5) comprising both traditional infrastructures and intelligent transport systems (ITS).
- Currently, the TEN-T Policy consists of a “dual layer structure”, the purpose of which is:
  - the completion of the comprehensive network
  - the implementation of currently 30 “priority projects” on the major trans-national axes of railway links, road links and inland waterway links.
- With its Green Paper the Commission is initiating a general revision of TEN-T policy.

#### ► Results of the existing TEN-T Policy

- The Commission estimates that national rail and road networks in the EU have already been “interconnected at many points” and that railways across borders “are beginning to become interoperable” (p. 5). It further claims that the TEN-T policy has “stimulated the development of intelligent transport systems” and meanwhile provides “responses to issues in the field of freight transport” (p. 4).
- The Commission is somewhat sceptical when it comes to the efforts made to establish the comprehensive network. It claims that:
  - EU targets for the comprehensive network have not been defined in a clear enough manner and lack “means of stimulating and monitoring implementation” for the Commission (p. 8),
  - Member States did not complete relevant projects “within the timeframe agreed in the Guidelines” (p. 7),
  - investment decisions of the Member States are “essentially” driven by national (instead of cross-border) interests,
  - the suitability of the approach to connect national networks for different modes of transport at national borders of Member States “became progressively weaker with each enlargement” (p. 6).
- According to the Commission, “priority projects” have a greater potential to contribute to the implementation of TEN-T.
  - As positive examples, it refers to the high-speed railway line linking Paris, Brussels, Cologne, Amsterdam and London and the preparation of the EU satellite navigation system Galileo.
  - The Commission admits that “questions still arise” as to the identification of priority projects in particular and the definition of capacity and quality standards for such projects (p. 5).

► **General focus for future TEN-T policy**

- TEN-T policy is to reflect EU objectives in the political, socio-economic and environmental context. Climate protection targets are to take centre stage in future.
- Projects of common interest are to be chosen through a “harmonised and commonly recognised cost-benefit analysis” (p. 15).
- The Commission finds the current use of “European coordinators” in the planning and implementation of transeuropean transport projects effective. Therefore, it is to be expanded to further projects. Moreover, the Commission wishes to develop concepts to involve all relevant stakeholders

► **Financing future TEN-T policy**

- While the main “financial burden” is to remain with the Member States, the EU and the European Investment Bank will continue to “play a major role” in financing TEN-T projects. For this purpose the Commission considers issuing Eurobonds (p. 15).
- In future, the number of self-financing projects is to increase. Returns from the internalisation of external costs (e.g. costs of noise or polluting emissions) are to contribute to financing.
- Also the role of the private sector is to be intensified. “Community instruments supporting public-private partnerships” are to be further developed “where efficiency gains can be expected”. (p. 13)

► **Options for future TEN-T development**

The Commission puts three options for future TEN-T development up for discussion.

**Option 1: Maintaining the current dual layer structure**

- The TEN-T remains a combination of the comprehensive network and priority projects.
- A revision would be possible on the basis of the two-yearly implementation reports.

**Option 2: Reduction to a single layer; setting up a “priority network”**

- Option 2a: TEN-T consists of priority projects only.
- Option 2b: TEN-T consists of priority projects only. These are connected to a “priority network” to ensure their continuity and to incorporate the nodes.

The priority network is smaller and more transparent than the hitherto envisaged comprehensive network. It is characterised by:

- a transparent and objective planning methodology, which takes into account in particular major traffic flows and connections between regions with different levels of development,
- a multi-modal approach enabling an optimal interconnection of transport modes and
- full interoperability and capacity standards for all infrastructure components.

**Option 3: Setting up a new dual layer structure; creation of a “core network”**

- TEN-T consists of a comprehensive network and a “core network”. The core network is to become the “centrepiece” of TEN-T policy, whereas the comprehensive network is to take a backseat (p. 12).
- The core network consists of two “pillars”:
  - a priority network comprising all priority projects (“geographic pillar”) (identical to option 2b);
  - a “highly business-oriented” (p. 18) concept based on transport policy for the identification of projects, corridors and network parts over time (“conceptual pillar”).

## Statement on Subsidiarity

The Commission does not address the question of subsidiarity expressly. It merely states that the EU must take the “leading role” due to the steadily growing complexity of the projects, while duly respecting the Member States’ sovereign rights.

## Political Context

In 1996, the European Parliament and the Council adopted guidelines for the development of the transeuropean transport network (Decision No. 1692/96/EC). Following extensive negotiations between the Commission and the Council, as well as the appointment of a high-ranking group consisting of representatives of EU-27 countries and the European Investment Bank, the guidelines were last amended in 2004 (Decision No. 884/2004/EC). It is through these amendments that the 30 priority projects were established. The Commission wanted to provide € 20 billion for the period of 2007 – 2013, but the Council cut funding to € 8 billion.

## Options for Influencing the Political Process

Leading Directorate General: DG Energy and Transport

Consultation Procedure: Each interested party may give its opinion on the Proposal. The deadline is 30. April 2009.

[http://ec.europa.eu/transport/infrastructure/consultations/2009\\_04\\_30\\_ten\\_t\\_green\\_paper\\_en.htm](http://ec.europa.eu/transport/infrastructure/consultations/2009_04_30_ten_t_green_paper_en.htm)

## ASSESSMENT

### Economic Impact Assessment

#### Ordoliberal Assessment

The highly abstract wording of the Green Paper makes it difficult to comprehend clearly the policy options resulting from the assessment of the current TEN-T policy. Apparently, the Commission now deems the completion of the hitherto envisaged comprehensive network unrealistic. It seems the Commission favours option 2b (developing a priority network) or option 3 (developing a core network). However, it is not comprehensible why the Commission would drop the comprehensive network in option 2 only, and not in option 3. Also unclear is the question of what added value the conceptual pillar mentioned as part of option 3 could provide. The given explanations do not suffice for an evaluation.

**Establishing a priority network whilst dropping the comprehensive network (option 2b) would be an appropriate solution**, for the following reasons:

**Firstly, the comprehensive network consists, to a very large extent, of purely national sections.** Therefore, it should be left to the Member States to provide a sufficiently developed infrastructure. A European coordination of transport networks is reasonable only if investment decisions of single Member States affect bordering or other countries in a substantial manner. For in these cases, there is a risk that projects that are important from a European perspective might not be realised. Joint planning could ensure such advantages are taken into account.

**Secondly, the Commission's proposal to connect priority projects to a priority network would generate a European added value.** For all existing priority projects serve primarily to satisfy transport policy targets of Member States and altogether do not form a coherent network. It is, for instance, rather questionable whether the railway line linking Cork, Dublin and Belfast is of any trans-European relevance at all.

The financing of projects within the Transeuropean Network will remain a burden to be borne first and foremost by participating Member States, also in future. Nevertheless, a Community participation in such projects may be justified too, provided a European added value is given.

In order to ensure financing of TEN-T projects, **the Commission considers issuing Eurobonds. This is to be rejected in any circumstance**, no matter which party issues them. If issued directly by the EU, there is a risk that the EU might expand independently and without parliamentary control the scope of action allocated to it by the Member States. An issuance through groups of states of the Eurozone would entail a significant weakening of the stability and growth pact. Such borrowing would be beneficial to states with a low budgetary discipline, since they would not necessarily be held accountable through higher interest rates.

**Preferable therefore would be a higher participation of users in the costs for the construction and operation of the Transeuropean Transport Network.** As mentioned by the Commission, public-private partnership schemes would be a possible option, which are based on financing through private concessionaires and usage charges. The success of such schemes, however, depends on their concrete design, which the Commission does not address: Private concessionaires will bear investment risks of new network sections only if they stand to gain from taking such risks and from an efficient operation. Nonetheless, usage charges must be regulated, given the existing incentives for concessionaires to set monopoly prices.

#### Impact on Efficiency and Individual Freedom of Choice

Expanding the use of European coordinators, as promoted by the Commission, is to be welcomed, since the harmonisation between several Member States necessary to develop such projects involves high negotiation costs. In the past, coordinators appointed by the EU contributed significantly to reducing the costs of common action.

**The Commission's aspiration to select projects of transnational relevance according to rational and comprehensible criteria is to be welcomed.** But this requires a clear definition of the targets of trans-European transport policy. The existing TEN-T policy mingled the target of enhancing growth of the internal market with regional policy targets. As before, the Green Paper does not separate these targets. Therefore, the separation of targets would be a more favourable approach – also with regard to financing: TEN-T budget funds should be dispensed for the development of trans-European networks to the largest extent possible, whereas regional and cohesion funds should be dispensed for targets based on regional policy motivations only.

#### Impact on Growth and Employment

The removal of transport bottlenecks through cross-border TEN-T projects simplifies the division of labour between Member States and thus increases growth and employment. However, this becomes naturally less true the more TEN-T policy must also pursue regional policy targets.

#### Impact on Europe as a Business Location

Measures for an efficient flow of goods and transportation of passengers increase the attractiveness of Europe as a business location.

## Legal Assessment

### Legislative Competence

Art. 154 – 156 TEC empower the EU “to contribute” to the construction and development of TEN-T. To this end, the EU is entitled to adopt guidelines where targets, priorities and basic principles of planning are defined and projects of common interest are described. However, the competence for planning and construction of infrastructures belongs to the Member States. The options presented in the Green Paper observe this boundary.

### Subsidiarity

EU action must yield an added value compared to national action. This is the case if in planning at EU level, advantages for all states connected to the network can be taken into account that would be ignored if planning took place at national or multilateral level.

### Proportionality

Not foreseeable.

### Compatibility with EU Law

To date, the TEN-T guidelines have been adopted in the legal form of a decision addressed to the states. As long as Art. 249 TEC does not acknowledge guidelines as a stand-alone legal instrument, this procedure should not be changed (cp. [CEP Legal Opinion](#) on the legal form of TEN-T guidelines).

### Compatibility with German Law

According to the case law of the German Federal Constitutional Court (BVerfG), the TEN-T policy of the EU is restricted to complementing Member State policy which, in principle, has priority (BVerfGE 89, 155, Maastricht, at 158). Should the guidelines be modified as a result of a shift in TEN-T policy, the projects listed therein would have to be included, as projects serving “urgent needs”, into the priority plans of the Fernstraßenausbaugesetz and the Bundesschienenwegeausbaugesetz. But the binding effect of such priority plans is limited, since lower-level planning increasingly aims at the concrete routing of projects rather than degrees of urgency. As a consequence, the classification of a project as serving “urgent needs” only means it has a chance – albeit a rather good one – to reach the stage of final planning. The requirements of the BVerfG are therewith met.

## Alternative Policy Options

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### Possible Future EU Action

After consultation, the revision of the TEN-T strategy will be further assessed in working groups. At the end of assessment, revised guidelines will be adopted by the European Parliament and the Council.

## Conclusion

It is to be welcomed that the Commission ushers in a general revision of TEN-T policy. EU coordination is necessary only in projects of cross-border relevance. It is therefore reasonable to drop the hitherto envisaged comprehensive network in favour of a priority network. In financing it, public-private partnership models should be increasingly applied. The use of Eurobonds, however, is to be rejected. Regional development targets and growth policy targets should be separated as far as possible.