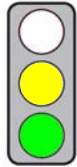


MAIN ISSUES

Objective of the Regulation: The EU wishes to create a “complete and integrated” trans-European Network (TEN-T) which takes into account all transport modes, in order to remove transport bottlenecks within the EU and with third countries.

Parties affected: All transport participants.



Pros: (1) Linking central transport nodes to create a consistent core network increases the efficiency of the transport infrastructure.

(2) “European coordinators” can help reduce the costs of a common approach.

Cons: Adopting the TEN-T guidelines in the form of a regulation is unlawful.

CONTENT

Title

Proposal COM(2011) 650 of 19 October 2011 for a **Regulation** of the European Parliament and of the Council on **Union guidelines for the development of the Trans-European Transport Network**

Brief Summary

Note: Unless otherwise stated, the articles and pages quoted refer to the Regulation Proposal COM(2011) 650.

► Background and targets

- The EU wishes to establish a “complete and integrated trans-European transport network” (TEN-T) which includes railways, roads, maritime and air transport as well as inland waterways (Art. 2 (2)).
- Although transport infrastructure within the EU “as such is well-developed” (p. 2), it is, however, fragmented in geographic terms and also among and between the various transport modes. As yet, there is no complete trans-European transport network. Enhanced coordination in planning and the design of a sound governance structure is intended to solve this problem.
- The TEN-T is to enable transport services and operations which: (Art. 4 Abs. 1)
 - meet the mobility and transport needs within the EU and third countries;
 - are economically efficient; and
 - guarantee the “accessibility” of all regions of the EU.
- In particular, the development of the TEN-T infrastructure should (Art. 4 (2)):
 - establish interoperability of the transport networks both between Member States and neighbouring countries;
 - ensure “optimal integration” and interconnection of all transport modes; and
 - remove bottlenecks and bridge missing links.
- The TEN-T is to help reduce greenhouse gas emissions created through transport by 60% by 2050 (p. 3).

► Structure and development of TEN-T

- The proposed “guidelines” in the form of a Regulation (Art. 171 (1) TFEU) define criteria for the selection of projects to be carried out in connection with TEN-T (Art. 1 (1)).
- The development of TEN-T shall be achieved by implementing a “dual-layer structure” comprising a “comprehensive network” and a “core network” (Art. 6 (1)).
 - The comprehensive network is made up of “all existing and planned transport infrastructures” of the TEN-T (Art. 6 (2)), derives “in large parts” from the corresponding national networks [Consultation COM(2010) 212, p. 2], and is to ensure the accessibility of all regions (Recital 19), including those far from the core network, e.g. through railway lines (Art. 12 (2)) or motorways (Art. 20 (3)).
 - The core network overlays the comprehensive network and consists of those parts which are “of the highest strategic importance” (Art. 6 (3), Art. 44 (1)) and deliver the “highest European added value” (Recital 11). It serves to bridge missing cross-border links (p. 3).
- For both networks, the projects must be either of “common interest” or of “mutual interest” (Art. 1 (1)).
 - Projects of “common interest” (Art. 3 lit. a) demonstrate a “clear European added value” (Art. 7 (2)).
 - Projects of “mutual interest” (Art. 3 lit. b) connect the TEN-T to transport networks of third countries (Art. 8) (s. [CEP Policy Brief](#) on transport cooperation with neighbouring countries).

► **Comprehensive Network**

- The comprehensive network is to be completed by the end of 2050 (Art. 9 (3)).
- The Regulation provides the requirements for the infrastructure development of different transport modes, e.g. the introduction of a signalling system (“European Rail Traffic Management System” – ERTMS) or connecting inland port infrastructure to railway transport infrastructure. Member States are to “give particular consideration” to this. (Art. 14, 18, 22, 27, 31 and 35)
- In “urban nodes” (Art. 3 lit. o), “seamless” connections between the comprehensive network and the regional and local traffic are to be established (Art. 36).
- “Intelligent transport systems” (ITS) are to be introduced within and between transport modes (Art. 37). ITS support transport through information and communications technologies (e.g. satellites), in order to improve safety and the traffic flow (Art. 3 lit. g).

► **Core network**

- The core network is to be completed by the end of 2030 (Art. 46 (3)).
- Beyond the requirements relating to the comprehensive network, the core network must in particular provide (Art. 45 (2))
 - full electrification of the railway lines and
 - alternative clean fuels for roads, maritime and air transport, as well as inland waterways.
- The core network is “interconnected in nodes” (Art. 44 (2)). Such “nodes”
 - comprise “urban nodes” (including their ports and airports), maritime ports and border crossing points to neighbouring countries (Art. 47 (1)), and
 - are to connect all transport modes (“multi-modal”) (Art. 47 (2) and (3)).

► **Core network corridors**

- Ten core network corridors are to be developed [s. Regulation Proposal Facility “Connecting Europe”, COM(2011) 665, p. 43 et sqq.].
- “Core network corridors” are to facilitate the development of a core network (Art. 48 (1)) and consist of (Art. 49 (1)):
 - The most important cross-border long-distance flows;
 - at least three transport modes; and
 - at least three Member States.
- For each of these corridors, Member States will establish a “corridor platform” which:
 - defines the general “objectives” of the core network corridor and prepares and supervises measures (e.g. to remove technical and administrative obstacles within or between the transport modes (Art. 52 (1), Art. 53 (1)));
 - consists of representatives of the Member States, infrastructure operators and, if necessary, of other public and private entities (Art. 52 (1)); and
 - is headed by a “European coordinator” appointed by the Commission (Art. 51 (1)).
- The “corridor platforms” draw up “corridor development plans” in order to coordinate efficiently the different work in the corridor in Member States. Such plans must contain a description of the characteristics of the core network corridor, the objectives of a corridor, multimodal transport market study, an implementation plan and an investment plan. (Art. 53 (1))
- Should work on the core network be delayed, the Commission may:
 - request a justification for the delay from participating Member States (Art. 59 Abs. 1); and
 - take “appropriate measures” (Art. 59 (2)).

► **Financing**

- The completion of the TEN-T requires roughly 500 billion Euros by 2020, of which 250 billion Euros are projected for the core network [COM(2011) 665, p. 2].
- Projects of common interest can be supported by the newly established facility “Connecting Europe” [COM(2011) 665] (Art. 7 (5)).
 - It is to provide 31.7 billion Euros for the development of transport infrastructure for the period of 2014-2020 [also see [CEP Policy Brief](#) on the multi-annual financial framework].
 - Funds from the “Connecting Europe” facility should in particular be available for the core network, as this provides a high “European added value” [COM(2011) 665, Recital 14 and Art. 7 (2)].
- Projects of mutual interest can be promoted either by newly established or existing instruments, such as the Neighbourhood Investment Facility (NIF) (Art. 8 (5))
- EU funds are to help generate also private investments in infrastructure development and thus close the financing gap [COM(2011) 665; see also the consultation paper on EU support for project bonds; s. [CEP Policy Brief](#)].

Changes to the Status Quo

- ▶ To date, the guidelines for the TEN-T have been laid down in the form of a decision by the European Parliament and the Council (No. 661/2010/EU). Now they are to be defined in the form of a Regulation.
- ▶ To date, the “dual-layer structure” has comprised the comprehensive network and 30 priority projects for the most important cross-border railways, road transport and inland waterways. Now it is to comprise the comprehensive network and the core network.
- ▶ For the period of 2007-2013, the EU has provided 8 billion Euros for the implementation of TEN-T. For the period 2014-2020, the new facility “Connecting Europe” will provide 31.7 billion Euros.

Statement on Subsidiarity by the Commission

According to the Commission, the coordinated development of TEN-T, in particular of cross-border sections, require measures at EU level.

Policy Context

In 1996, the European Parliament and the Council adopted guidelines for the development of a TEN-T (Decision No. 1692/96/EC). In 2010, the Commission carried out a “consultation on the future policy for TEN-T” [COM(2010) 212; s. [CEP Policy Brief](#)] which introduced the “dual-layer” structure. Shortly after, the TEN-T Guidelines were revised “in the interest of clarity” (Resolution Nr. 661/2010/EU).

Legislative Procedure

19 October 2011	Adoption by the Commission
Open	Adoption by the European Parliament and by the Council, publication in the Official Journal of the European Parliament, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Mobility and Transport
Committees of the European Parliament:	Transport and Tourism (in charge)
Committees of the German Bundestag:	open
Decision mode in the Council:	Qualified majority (approval by a majority of Member States and at least 255 out of 345 votes; Germany: 29 votes)

Formalities

Legal competency:	Art. 172 AEUV
Form of legislative competency:	Shared competence, Art. 4 (2) lit. g and h TFEU
Legislative procedure:	ordinary legislative procedure, Art. 294 TFEU

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The promotion of cross-border infrastructure projects, in particular of the core network, is appropriate in principle, for single Member States often do not have enough investment incentives to carry out infrastructure projects which generate benefits for not only the Member State concerned but also for further Member States and which therefore have a “European added value”.

Similarly, cooperation with third countries for projects of “mutual interest” is also appropriate, for mobility and transport do not stop at the outer borders of the EU; obstacles there and also in the third countries themselves affect passenger and freight traffic throughout the entire EU.

The planned participation of private investors in the development of infrastructure opens up the prospect that this development will increasingly take into account economic considerations, for investors will participate only if the projects are based on sustainable financing models.

Impact on Efficiency and Individual Freedom of Choice

Prescribing a 60% greenhouse gas reduction target for the transport sector by 2050 unnecessarily increases the costs of climate protection, as greenhouse gas reductions in other sectors might be significantly cheaper. Therefore, the EU should prescribe an overall economic greenhouse gas reduction target and leave it to the market forces to find out in which sectors the reduction can be achieved at the lowest possible cost. With the European trading system for emissions rights (EU ETS), the EU is already using an instrument to achieve a politically prescribed reduction of emissions efficiently. To date, of transport modes only electric rail and as from 2012 also aviation are included in EU ETS. The Commission should expand the EU ETS to include all transport modes.

The planned core network can help create the preconditions for a smooth traffic flow on the key transport axes. **The interconnection of transport nodes and multimodal links into a consistent core network increases the efficiency of transport infrastructure** and thus constitutes a European added value.

The establishment of “corridor platforms” makes it possible to take into account the interests of all parties involved in an ordinary procedure. This increases the likelihood of a compromise solution and in turn of infrastructure projects actually being carried out. However, the realisation of such projects is subject to coordination, which requires high negotiation costs. **Therefore, the use of “European coordinators” is appropriate, for it can contribute to reducing the costs of a common approach.**

By introducing ITS already at the beginning of infrastructure planning, expensive later upgrades can be avoided.

Impact on Growth and Employment

Removing transport bottlenecks through cross-border TEN-T projects facilitates the division of labour between Member States and thus increases growth and employment. Furthermore, a multimodal use of ITS can have a positive impact on growth and employment, for ITS services and applications are suitable for facilitating optimised transport planning and an increased transport flow, which reduces congestion and follow-up costs.

Impact on Europe as a Business Location

Measures improving the efficiency of transport flow increase the attractiveness of Europe as a business location.

Legal Assessment

Competency

Unproblematic. Competency for the planning and construction of transport infrastructures lies mainly with the member States. However, the EU can contribute to the set-up and development of TEN-T (Art. 170 (1) TFEU) in order to implement the internal market (Art. 26 TFEU) and the economic, social and territorial cohesion in the EU (Art. 174 TFEU). In so doing, it may promote the cooperation and interoperability of the national transport networks (Art. 170 (2) TFEU). To this end, the EU may set objectives, priorities and principles of actions in “guidelines” and define “projects of common interest (Art. 171 (1) TFEU).

Subsidiarity

“Projects of common interest” must demonstrate a “clear European added value” (Art. 7 Abs. 2 lit. d, Art. 3 lit. e) compared to national action (Art. 7 (2) lit. d). This condition is in principle suitable for safeguarding the principle of subsidiarity (Art. 5 (3) TEC).

Proportionality

Unproblematic.

Compatibility with EU Law

The Commission chooses as a binding form of action for the TEN-T guidelines (Art. 171 (1) TFEU) no longer only a “decision” addressed to the Member States but a “regulation” which is “directly” applicable and binding “in its entirety” (Art. 288 TFEU). It justifies this with the fact that in addition to the Member States also local and regional authorities, infrastructure operators, transport companies and public and private entities are to be obliged (p. 9). One argument against the regulation’s form of action is, however, the fact that the TEN-T guidelines are only to define the “**objectives, priorities and broad lines” in TEN-T policy** measures and to set projects of common interest (Art. 171 (1) TFEU). They **are not, by definition, enforceable within a wide target group but are addressed to those Member States** which alone can work towards their implementation within the given “objectives, priorities and broad lines.” Consequently, only the Member States must account to the Commission for any delays in completing the core network (Art. 59 (1)). **The adoption of TEN-T guidelines in the form of a regulation is therefore unlawful** (see [CEP Legal Opinion](#), in German only).

Compatibility with German Law

Where priority projects must be adjusted, the demand plans of the German law on the development of highways (*Fernstraßenausbaugesetzes* § 1 (1) sentence 2, Annex FStrAbG) and of federal railways (*Bundesschienenwegeausbaugesetzes* § 1 (1), Annex BSWAG) must be modified accordingly.

Conclusion

Due to a lack of investment incentives for individual Member States, the promotion of cross-border infrastructure projects, in particular of the core network, is appropriate in principle. Linking central transport nodes to form a consistent core network increases the efficiency of transport infrastructures and thus constitutes a European added value. The use of “European coordinators” can help reduce the costs of a common approach. However, the adoption of the TEN-T guidelines in the form of a regulation is unlawful.