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**Trans-European networks: Towards an integrated approach**

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## 1. INTRODUCTION

Developing, connecting, better integrating and better coordinating the development of European energy, transport and telecommunications infrastructures are ambitious objectives and are referred to in the Treaty<sup>1</sup> and the Guidelines for growth and jobs<sup>2</sup>.

The trans-European energy, transport and telecommunications networks are the lifeblood of our economies. If they suffer, competitiveness suffers. Their development is vital to this Commission's agenda on growth and jobs.

The trans-European networks (TENs) also help to boost the EU's competitiveness through the medium of major industrial programmes which are strategically important for the EU's independence such as GALILEO, ERTMS and SESAR. The TENs also make it easier to disseminate and make more effective use of information and communications technologies through the telecommunications networks and to increase security of supply through the energy networks. Furthermore, the sustainable use of resources is an essential aspect of policy on the TENs since the priority projects give privileged status to those modes which are most environmentally friendly.

At the President's request, on 20 July 2005 the Commission set up a Steering Group made up of the members of the College most closely involved in the issues surrounding the trans-European networks.

The group, which is chaired by the Commissioner responsible for transport, includes the Commissioners responsible for the information society, the environment, economic and monetary affairs, regional policy, the financial programming of the budget, the internal market and energy.

It was mandated to define a joint approach in order better to coordinate the various Community initiatives supporting work on the trans-European transport, energy and telecommunications networks.

This communication describes the state of play for each of the three trans-European networks: transport, energy and telecommunications. It then looks at specific aspects covered by the Steering Group during its meetings.

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<sup>1</sup> Articles 154, 155 and 156 of the Treaty.

<sup>2</sup> Guidelines for growth and jobs (2005-2008) No 9, 10, 11 and 16.

## **2. THE TRANS-EUROPEAN NETWORKS: STATE OF PLAY AT THE END OF 2006**

Development of the trans-European networks is vital for the creation of the internal market and to strengthen economic and social cohesion. To this end, Community action should aim at promoting the interconnection and interoperability of national networks as well as access to these networks<sup>3</sup>.

### **2.1. The trans-European transport networks**

Modern transport infrastructures which enable goods and people to move between the Member States faster and more easily will help to make the EU more competitive.

14 priority projects were identified by the Essen European Council and included in the 1st Decision of the European Parliament and of the Council on Community guidelines for the development of the trans-European transport network (TEN-T) in 1996<sup>4</sup>. This list was extended in 2004 to take account of the accession of 10 and then 12 new Member States to the EU. The TEN-T now comprises 30 priority projects which should be completed by 2020. Furthermore, the Commission has recently underlined the necessity to extend the trans-European transport network to the neighbouring countries<sup>5</sup>.

The completion dates for these major projects have fall behind the original timetables. However, large-scale projects have been or will be completed by 2007: the Øresund fixed link (connecting Sweden and Denmark, completed in 2000), Malpensa airport (Italy, completed in 2001), the Betuwe railway line (linking Rotterdam to the German border, completed in 2007) and the PBKAL project (HST Paris-Brussels/Brussels-Cologne-Amsterdam-London, completed in 2007).

Of these 30 priority projects, 18 are railway projects, 2 are inland waterways and shipping projects. High priority has therefore been given to the most environmentally friendly transport modes.

Implementation of the trans-European transport networks requires substantial amounts of funding. Construction of the priority projects alone is mobilising € 280 billion in investment out of the € 600 billion which the entire trans-European network will cost. In order to meet the 2020 deadline, € 160 billion of investment will be needed to finance the priority projects alone during the 2007-2013 financial programming period. Two maps, contained in Annex I to this communication, show the progress made on the 30 priority projects to date and the progress which should be made by the end of the multi-annual financial framework period in 2013. These maps clearly show how incomplete the network still is and what effort needs to be accomplished by 2013 to honour the commitments entered into.

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<sup>3</sup> Article 154 of the Treaty.

<sup>4</sup> Decision No 1692/96/EC (OJ L 228, 9.9.1996).

<sup>5</sup> COM(2007) 32, 31.1.2007

During the 2000-2006 financial programming period, the European Union contributed financially to the implementation of the TEN-T through the following three financial instruments:

- the € 4.2 billion budget allocated to the development of the trans-European transport network for the 2000-2006 financial programming period. Grants awarded on the basis of the current TEN-T Financial Regulation<sup>6</sup> have permitted co-funding of these projects up to a maximum of 10% on national sections and a maximum of 20% on cross-border sections.
- the trans-European transport networks have also benefited from € 16 billion under the Cohesion Fund. Under the European Regional Development Fund (ERDF), € 34 billion has been invested in transport, some of which (investment in railway, road, motorway, port, etc. infrastructure) has benefited the TEN-T.
- European Investment Bank (EIB) loans totalling € 37.9 billion<sup>7</sup>.

Under the multi-annual financial framework 2007-2013, the sum of € 8.013 billion was allocated for the development of the trans-European transport network. On 12 December 2006, political agreement was obtained in the Council on the proposal for a Regulation<sup>8</sup> on financial support arrangements for the trans-European transport and energy networks during the period 2007-2013. This proposal for a regulation provides for Community co-funding rates of 50% for studies and maximum rates of 10 to 30% depending on the type of project.

The ERDF and the Cohesion Fund will continue to be the main sources of Community assistance for co-funding of the trans-European transport network projects during the 2007-2013 programming period.

Cohesion policy resources should be more fully exploited as a large number of the priority projects are located in territories which will receive low levels of funding under this policy. As for the 2000-2006 period, several tens of billions of euros will be available for co-financing projects in the transport sector through the various financial instruments of European regional policy, including about € 35 billion under the Cohesion Fund which should chiefly be invested in the priority projects. The incentive rates (up to 85%) of these funds will make it easier to put together the funding package for these projects and hence to complete these works in accordance with the timetable laid down in the TEN-T Guidelines. Member States eligible for the Cohesion Fund and regions eligible under the Convergence Objective of the European Regional Development Fund are invited to make use of these instruments in order to complete the priority projects situated within their territory<sup>9</sup>.

In general terms, the Community contribution to the implementation of the trans-European transport network should be concentrated on the cross-border sections and on bottlenecks.

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<sup>6</sup> Regulation (EC) No 807/2004 of 21 April 2004 (OJ L 143, 30.4.2004).

<sup>7</sup> EU-15 (2000-2004): € 24 301 million + EU-25 (2005-2006): € 6 821 and 6 850 million.

<sup>8</sup> COM(2006) 245.

<sup>9</sup> Article 19(2)(a) and (c) of Decision No 884/2004/EC (OJ L 201, 7.6.2004).

The EIB will continue to provide funding for transport infrastructure in the form of loans and through a specific guarantee instrument which has a budget of € 500 million under the EIB's own funds and € 500 million under the trans-European transport network's budget (i.e. 6.25% of the total amount available).

## **2.2. The trans-European energy networks**

The Community recently adopted guidelines updating the trans-European energy networks<sup>10</sup>. 32 electricity and 10 gas network projects have been declared to be of European interest. These projects are to be carried out as a priority as they are essential for the creation of a Europe-wide energy network.

The capacity of the gas networks should be adapted to secure and diversify imports from Norway, Russia, the Black Sea basin, the Mediterranean and the Middle East.

The EU will need to invest, before 2013, at least € 30 billion in infrastructure (€ 6 billion for electricity transmission, €19 billion for gas pipelines and € 5 billion for Liquefied Natural Gas (LNG) terminals), if it wants to address fully the priorities outlined in the TEN-E Guidelines. Connecting more electricity generated from renewable sources to the grid and internalising balancing costs for intermittent generators will for instance require an estimated € 700-800 million yearly. Between 2000 and 2006, about € 140 million was invested in the trans-European energy networks under the TEN budget. For the financial framework 2007-2013, the sum of € 155 million is provided for in the TEN Regulation now being approved. This sum is very small in view of what is at stake and the actual needs. This budget will mainly help to co-finance studies. Additional funding will be necessary under the Cohesion Policy and from the European Investment Bank.

The priority interconnection programme adopted on 10 January 2007 describes the progress made on the priority projects and, looking beyond the problems of funding, analyses the obstacles to the completion of these projects. The programme outlined a strategy based on 4 specific actions: the drawing up of an inventory of the main infrastructures encountering serious difficulties, the appointment of European coordinators, coordinated planning at regional level and the harmonisation of authorisation procedures.

The European Council of 9 March 2007 confirmed this approach and underlined notably the importance of improving the interconnection of networks. The Council supported the Commission's proposal to appoint European coordinators and requested it to come forward with proposals to streamline the administrative decision making procedures.

## **2.3. The trans-European telecommunications networks**

Telecommunications services have been progressively opened to competition since 1988 and the impact has been dramatic. More competition has stimulated investment, innovation, the emergence of new services and a significant decline in consumer prices.

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<sup>10</sup> Decision No 1364/2006/EC (OJ L 262, 22.9.2006).

Since liberalisation, the deployment of telecommunications networks in Europe has been mainly driven by commercial investment. Despite a slowdown in 1999-2001, investment has been significant. For example, in 2005 capital expenditure rose to more than € 45 billion, including 25 billion for fixed infrastructure, representing an annual increase of over 5%, the third annual increase running.

Nowadays, investment is concentrating on the upgrade of existing networks to next generation, in the deployment of 3<sup>rd</sup> Generation mobile and other wireless infrastructure, and in bringing broadband to the rural areas of the EU. Investment may involve the layout of fibre-optic networks, where civil works and indoor cabling represent 70% of deployment costs. Construction of railway lines, roads or energy lines may facilitate the rollout of these networks in under-served areas.

The Communication "Bridging the Broadband Gap"<sup>11</sup> highlights disparities between urban and rural areas and calls upon Member States to undertake concrete actions and set targets to close the gap by 2010. Public support is encouraged in the presence of market failure, in full respect of telecom and state aid rules. The start of the next programming period for cohesion and rural development policies can be a great opportunity for regional and rural areas to invest in broadband.

A mapping of existing infrastructures is needed in order to help competent authorities better assess their infrastructure needs and exploit ongoing civil works. Relevant authorities responsible for large transport/energy projects underway should take into account the needs of telecommunications infrastructure and make the appropriate planning and budgetary provisions on the basis of existing infrastructure. Moreover, a greater coordination of alternative sources of funding (Structural Funds, Rural Development Fund, TEN and national funds) is needed to develop coherent planning and complete the coverage of broadband.

### **3. THE ASPECTS COVERED BY THE STEERING GROUP**

The Steering Committee of Commissioners for the trans-European networks has met 6 times since it was set up on 7 December 2005. The group has considered questions of synergy between the trans-European networks, the methods of funding and their spread across the various Community financial instruments. More general issues have also been dealt with (TEN and the environment, the development of new Community financial instruments).

#### **3.1. Synergies between trans-European networks**

Does the EU have any interest in promoting the construction of combined infrastructures, in particular in the new Member States where infrastructure needs are significant?

Combining rail and road has proven its merits<sup>12</sup>: less use of space, joint engineering structures, lower visual impact on and less fragmentation of the landscape, measures

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<sup>11</sup> Commission Communication COM(2006) 129, 20.3.2006.

<sup>12</sup> Some Member States have introduced a legal obligation to seek synergy, in particular Germany (Bundesnaturschutzgesetz, paragraph 2, Bündelungsgebot)

to soften the impact of joint infrastructures (anti-noise protection, viaducts for large and small wildlife). Combined infrastructures offer genuine scope for reducing costs and environmental impact.

A study of the scope for developing other combinations (passing a high-voltage line through a railway tunnel, adding a telecommunications cable to a railway line) has been carried out<sup>13</sup>. Technical feasibility, the impact on project costs and the complexity of the procedures have been analysed, with the following conclusions.

Apart from the possibility of combining gas pipelines with other infrastructures, where technical feasibility seems difficult in view of the extent of the secure areas required, there are genuine advantages to be gained from combining other kinds of TENs. Synergies between the telecommunications and transport networks seem to be the most promising. Every transport network can be optimised by having its own communication network which is used to manage the network. In most cases, rail and motorway networks already have such communication networks. In some cases, the surplus capacity of these networks is used for other purposes, e.g. for data communication. On the other hand, it is still rare for systematic synergies to be sought between an infrastructure management network and a telecommunications network from the start of construction of the infrastructure.

Valuable ideas could be explored to interconnect electricity networks: laying high-voltage cables along the banks of canals and rivers, low-voltage interconnections (2 x 25 kV) along high-speed railway lines, more systematic interconnections of underground high-voltage lines (300 to 700 kV) along transport network paths. These suggestions do not replace the immediate need to interconnect the national high-voltage networks, but are a proposal for finer meshing of the national electricity systems over a longer time span matching the time it takes to complete the major infrastructure projects.

Synergies could also be achieved in terms of procedures: impact studies, planning and budgetary arrangements could be combined. However, the parallel planning of two types of infrastructure governed by different legislation and budgetary procedure, or with different life cycles and construction times, might prove to be complex.

### **Conclusion:**

The group recommends continuing with work on potential synergies between the different trans-European networks. A manual combining best practices will be drawn up to inform project promoters about potential synergies between infrastructures.

The synergies between the geothermal energy projects and the tunnels to be built in the context of the trans-European transport networks should be explored as a matter of priority.

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<sup>13</sup> Synergies between Trans-European Networks, Evaluations of potential areas for synergetic impacts, ECORYS, August 2006.



The group considers that a mapping of telecommunications infrastructure is required and that telecommunications needs should be taken into account when building transport and energy networks.

### **3.2. Respect for the environment and the trans-European networks**

The Lisbon Strategy for Growth and Jobs calls for the TENs to be implemented in a manner which is compatible with sustainable development.

The 30 priority projects for the trans-European transport network are mostly projects which promote the most environmentally friendly transport modes and which consume less energy, such as the railways and waterways. The completion of the trans-European transport network will have a positive impact on the environment. If transport-generated CO<sub>2</sub> emissions continue to increase at the present rate, by 2020 they will be 38% above present levels. Completing the 30 priority projects will slow down this rise by about 4%, equivalent to reducing CO<sub>2</sub> emissions by 6.3 million tonnes a year.

By interconnecting the national power systems and connecting the renewable energy sources to them it will be possible to optimise capacity utilisation in each Member State and thereby soften the environmental impact.

Community environmental protection legislation provides a clear framework in which these major projects have to be implemented. The Community guidelines for the development of the trans-European transport network refer to it explicitly<sup>14</sup>. Each new infrastructure programme has to undergo a strategic environmental assessment<sup>15</sup> and each project has to be assessed on an individual basis<sup>16</sup>. This double obligation makes it possible to optimise the implementation of the major infrastructure projects from the environmental angle. There is also the possibility of using the assessments as a framework for study to find possible synergies.

Apart from these environmental assessments, each individual project has to comply with Community legislation on noise, water and the protection of flora and fauna<sup>17</sup>. If an impact is found on any of these aspects, alternatives will have to be looked for in order to guarantee that environmental legislation is complied with as far as possible. If none of the alternatives to a project declared to be in the public interest is considered to be an optimum solution and in line with Community legislation, compensatory measures may be adopted which will allow the project to be carried out while at the same time compensating for any negative impact. Annex 2 sets out the conditions in which such steps might be considered.

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<sup>14</sup> Article 8 of the abovementioned Decision No 884/2004/EC.

<sup>15</sup> Strategic Environmental Assessment (SEA) Directive (2001/42/EC) for plan and programme assessment.

<sup>16</sup> Environmental Impact Assessment (EIA) Directive (85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC) for project assessment.

<sup>17</sup> Birds Directive (79/409/EEC), Habitats Directive (92/43/EEC) and Water Framework Directive (2000/60/EC).

## **Conclusion:**

Reconciling the development of the trans-European transport networks with compliance with the European Union's environmental law obligations demands greater coordination between the various Commission departments concerned. A reference document has been prepared on this and is annexed to this communication.

### **3.3. Exploiting new technologies in the trans-European transport network**

The recently approved Mid-term Review of the Commission's 2001 White Paper on Transport Policy<sup>18</sup> recognises the role that new technologies can play in provision of safe and sustainable movement of people and goods. Within the European 7<sup>th</sup> Framework Programme for Research and Development (2007-2013), technological innovation in transport will contribute directly to the European competitiveness, environmental and social agendas.

Among the most promising priority areas are Intelligent Transport Systems (ITS) integrating information, communication, navigation and positioning technologies with transport infrastructure, vehicles and users.

Investment in ITS should be considered as a strategically important element in all new trans-European transport networks projects, and in projects for refurbishing existing networks and links. Moreover, ITS offers a set of tools for co-modality and environmental sustainability.

Examples of successful ITS applications in the transport networks include Road Control and Management Systems (Euroregional projects as part of the TEMPO Multi-annual Indicative Programme 2001-2006), Waterway Navigation and Control Systems (RIS and SafeSeaNet); and the European Rail Traffic Management System (ERTMS). Work has started in the so-called Co-operative Systems based on vehicle-to-vehicle and vehicle-to-infrastructure communications and accurate positioning (i2010 Intelligent Car Initiative). These systems will offer longer-term substantial benefits towards both safe and sustainable transport. Finally, GALILEO, the European project on Satellite Navigation, will offer substantially improved navigation, positioning and timing services for all modes of transport when it becomes operational in 2010. ITS also encompasses services for the end users, including Real-Time Traffic and Travel Information (RTTI), contributing to decreased journey times, improved safety and supporting co-modality.

In spite of proven benefits, ITS systems and services in Europe are patchy and lacking in many areas. In the time-frame 2007-2013, Europe should focus on large-scale deployment. Public authorities should exploit the use of new technologies to address policy objectives thereby creating a sufficiently large market for innovative ITS products.

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<sup>18</sup> Keep Europe moving - Sustainable mobility for the Europe -an continent: Mid-term review of the European Commission's 2001 Transport White Paper, COM(2006) 314.

## **Conclusion:**

The group considers that for the trans-European transport networks, the use of new technologies offers effective tools for increasing safety and in reducing congestion and the environmental impact of transport.

The group recommends that investment in Intelligent Transport Systems (ITS), representing typically a few percent of the infrastructure cost, should be included from the beginning in the planning of all new TEN-transport projects, as well as considered as an essential element for all infrastructure improvement and refurbishment projects.

### **3.4. Financing of the trans-European networks**

The different budgetary sources have to be coordinated and new mechanisms have to be developed for improving financing in general and Community co-financing of these infrastructures in particular.

#### *3.4.1. Combining funds*

The question of cumulation of Community funding of various financing sources on the same project has been a constant preoccupation of the Commission. The Court of Auditors has highlighted this issue in its reports on the Commission's implementation of the trans-European networks.

The Steering Group has concluded that there must be no possibility of cumulation of subsidies from several Community funds. In order to ensure budgetary transparency and proper financial management, the Financial Regulation and/or basic sectoral acts adopted or in the course of adoption rule out the cumulation of different Community financial instruments for one and the same action.

In the context of operational programmes receiving financial assistance from the Structural Funds and/or the Cohesion Fund, other Community funds cannot provide a substitute for the required national co-funding.

Expenditure within a project that is part of an operational programme receiving financial assistance from the Structural Funds and/or the Cohesion Fund cannot benefit from other Community funding. It follows that when expenditure, for example for ERTMS equipment or electrification of a railway line, is not receiving financial assistance from the Structural Funds and/or the Cohesion Fund, it could benefit from TEN-funding. The actual construction of the railway line could be funded by the ERDF or the Cohesion Fund. Projects could also be divided into geographical sections, which could be co-financed either by ERFD/Cohesion Fund or TEN-funding.

When granting TEN-subsidies, the Commission will therefore check whether the projects have not received funding from the Structural Funds or the Cohesion Fund.

After consultation of the Court of Auditors, the Commission will also issue guidelines to Member States on how the different funding instruments can be combined.

Such prohibition of duplicate financing will need to be designed to make Member States choose which financial instrument they will call upon for Community financial support in accordance with the rate of assistance offered by the instrument and the prioritisation of the projects in question. Member States eligible for the Cohesion Fund and regions eligible for the Convergence Objective are therefore asked to give preference to using these instruments for the co-financing of large infrastructure projects.

**Conclusion:**

The Steering Group has confirmed the need to maintain a consistent approach through the medium of the various legal instruments. The non-cumulation principle is now clearly enshrined in Community legislation, thereby responding directly to the comments made by the Court of Auditors.

*3.4.2. Financing of major priority projects*

Delays in implementing priority transport projects are due in particular to the difficulty of reconciling the rules for the award of Community grants under the TEN budget with the real financial needs of large-scale priority projects.

The new TENs Regulation will facilitate the co-financing of large cross-border projects which are technically and financially complex. Even if the implementation of these projects embraces a variety of financial frameworks, Community co-financing is entirely feasible: a grant decision may be taken within a particular financial framework and the payments may be made outside the bounds of that framework as the work on the project progresses.

If the solution set out in the new TENs Regulation, permitting multiannual funding in annual tranches, should prove inadequate to what is needed, other options would be considered.

*3.4.3. Public-private partnerships*

Public-private partnerships (PPPs) allow public authorities to delegate public service missions to private firms. There is much to be gained from using the PPP formula: better cost control (construction and operating costs) and a greater likelihood that the work will be completed to deadline. But above all, part of the risk is transferred to the private partner: besides the construction risk, the private partner can assume either the operating risk or the availability risk. This transfer of risk is very important for calculating government debt or deficit. At the start of 2004 a Eurostat decision was published on the calculation of "private investments" in a PPP in relation to the government debt<sup>19</sup>. When the private partner assumes the construction risk and either the availability risk or the operating risk, the private investments do not have to be included in the calculation of the government debt.

A consultation has been held on the evolution of Community legislation on public contracts in order to take account of the rapid development of PPPs. In 2004 the

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<sup>19</sup> ESTAT Decision of 11 February 2004.

Commission adopted a Green Paper on PPPs. In November 2005 the Commission announced a possible legislative initiative to develop the legal framework of concessions in such a way as to offer an enhanced level of legal certainty while maintaining sufficient flexibility to cope with the many different forms of PPP which exist.

The EIB is establishing a European PP Expertise Centre (EPEC) jointly with the Commission and other interested parties. The idea is to establish EPEC as a pan-European public sector source of information, as a means of exchange of PPP best practice and of developing public sector capacity to implement PPP projects.

#### 3.4.3.1. PPPs based on demand risk: guarantee instrument

In response to a request from the European Council of December 2003, the Commission and the EIB have looked into the possible benefits of developing a European guarantee instrument. At the beginning of 2005, in two communications to the Council<sup>20</sup>, the Commission confirmed that such an instrument would be useful for facilitating and encouraging the funding of trans-European transport networks through PPPs. The principle of such an instrument has in the meantime been inserted in a new TENs Regulation for the period 2007-2013. The loan guarantee instrument would support those types of PPP which are based on demand risk (such as concession type PPPs) by reducing the risks associated with revenue shortfalls in the first years of operation of a project. It would be applied in particular in the case of contracts for concessions.

The EIB grants a guarantee to a financial institution which in turn provides a stand-by credit line to the financial beneficiary for the ramp-up period of a project in order to assure the debt service of senior credit facilities. The Commission and the EIB share the financial contribution to the expected loss provisioning and capital allocation for those guarantees. The guarantee would be activated only if revenue flow should be insufficient to service senior loans<sup>21</sup>. The guarantee would not eliminate the risk to senior creditors but would offer better cover for servicing of the senior debt, thereby increasing the likelihood of private partners borrowing for the project.

In the event that the guarantee were called into play, the EIB would obtain a financial claim subordinated to<sup>22</sup> senior claims but taking priority over that of ordinary shareholders. This additional debt, so-called "mezzanine debt"<sup>23</sup>, should be repaid with interest as soon as the revenue generated by the project allows it and the claim of the senior creditors has been honoured. The level of the guarantee would be set to reflect the risk taken and the costs of managing it.

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<sup>20</sup> COM(2005) 75: "Feasibility report on EU loan guarantee instrument for TEN-Transport projects"; COM(2005) 76: "Concept for the design of an EU loan guarantee instrument for TEN-Transport projects"; SEC(2005) 323: "Loan guarantee instrument for TEN-Transport projects".

<sup>21</sup> A senior loan or "senior debt" is a debt which enjoys specific guarantees and takes priority over other debts ("junior debts") as regards repayment.

<sup>22</sup> A debt is "junior" or "subordinated" when its repayment is subject to prior repayment of the other creditors. Of course, in return for the additional risk they assume, junior creditors ask a higher interest rate than the other creditors.

<sup>23</sup> "Mezzanine debt" is the debt between senior debt and capital. An investor in mezzanine will not therefore be repaid until after all tranches of senior debt have been fully repaid.

The leverage factor of the instrument is in the range of 4-6 times the Commission contribution of € 500 million directly guaranteeing stand-by credit lines of € 2-3 billion. Combined with the equal EIB contribution of € 500 million, this would allow underpinning senior debt of more than € 20 billion. This contribution would be made as and when necessary according to the number and financial size of the projects to be covered by the instrument.

The actual details of implementation of the instrument are set out in an annex to the TEN-T Financial Regulation which is currently under discussion in the European Parliament and the Council. The management agreement between the Commission and the EIB is now being prepared, and this will allow the instrument to begin operating in 2007.

#### 3.4.3.2. PPPs based on availability risk: introduction of a form of specific support

If in addition to the construction risks the private investor assumes the availability risk, he provides the initial funding, builds the infrastructure and repays himself by charging long-term payments (e.g. over 30 years). The payments are, however, dependent on the level of availability of the infrastructure: they can be reduced if the service provided does not come up to the level set.

Availability-based PPPs can work in two different ways:

- (1) in a mixed form where availability payments cover only a part of the investment, the other part being financed in the traditional form of subsidies during the construction phase. This first type of arrangement poses no problems in respect of the TENs Regulation since the EU's contribution might exclusively concern the direct subsidy part ;
- (2) in the exclusive form of regular payment flows over the period adopted for repayment of the infrastructure costs to the private investor.

Numerous countries<sup>24</sup> have expressed an interest in this second type of arrangement. But the time between the co-financing decision (prior to the work) and the start of availability payments (in the operation phase) is several years. What is more, these payments are considered to have been effected throughout the agreed duration of the arrangement (e.g. 20 or 30 years). The Commission, which is reluctant to enter into financing decisions that are left open over a large number of years, has hitherto been obliged to refuse its support for this type of arrangement.

In order to resolve this problem while complying with the General Financial Regulation, the TENs Financial Regulation has been amended in order to concentrate Community support on the initial phase of availability payments and thereby ensure that the Member State prioritises using Community support in its availability payments.

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<sup>24</sup> Notably the United Kingdom, Finland, the Netherlands, Hungary, the Czech Republic and France.

**Conclusion:**

The new guarantee instrument should soon be one of the new instruments available for promoting the completion of the trans-European networks.

PPPs based on availability will be one of the indispensable types of subsidy eligible for Community financial support under the new Regulation for trans-European transport and energy networks. If the Commission follows up the implementation of this new instrument, it may be possible to extend it to other Community financial instruments such as those of cohesion policy.

**4. CONCLUSION**

The very fruitful cooperation within the Steering Group has quickly produced tangible results: legal instruments, interdepartmental cooperation, transparency of Community measures.

The discussions within the Steering Group have made it possible to achieve greater consistency between the provisions of the various legislative instruments in preparation for the new financial programming period 2007-2013, consisting of rules applicable to combinations of different financial instruments and development of new and innovative financial instruments. The legal clarification regarding not allowing the cumulation of Community funds will lead to more transparency, meeting a request made by the Court of Auditors. The Steering Group has also given new impetus to the interdepartmental cooperation already in place so as to make certain that this principle is applied.

The coordination effort for implementing the new financial instruments (guarantee instrument and availability-based public-private partnerships) must continue.

The Steering Group has made some concrete proposals for reconciling the construction of infrastructures with respect for the environment.

At the same time, the work of the Steering Group has helped to identify specific areas where action is necessary. The Steering Group recommends :

- continuing to look for synergies between the trans-European networks with the aim of distributing a manual of best practice;
- developing synergies between the objectives of cohesion policy and the priorities adopted for the trans-European networks;
- assessing the need for any alternative solutions that may be required for covering availability payments over several periods of the financial framework and, if necessary, making an appropriate legislative proposal;
- closely following the development of public-private partnerships and taking all steps necessary to promote these types of financing;

- carrying out the priority TEN projects within the deadlines while ensuring that environmental law is applied through the mechanisms set up by Community law; the annexed guide will provide a useful contribution to this end.