

TRANS-EUROPEAN TRANSPORT NETWORK
PROGRAMME 2007-2013

Granting of Community financial aid in the field of
the trans-European transport network
CALL FOR PROPOSALS 2008

GUIDE FOR APPLICANTS

Version 1



Further copies of this Guide, together with all information related to this call for proposals, can be downloaded from the following web-site:
http://ec.europa.eu/dgs/energy_transport/grants/proposal_en.htm

About this Guide

This is the version n. 1 of the TEN-T Guide for Applicants, established in conformity with the Article 110 of the Financial Regulation and the Article 169a of its Implementing Rules, for calls using single-stage submission procedures (Multi-annual work programme calls and Annual work programme calls). The main part of this Guide (sections 1 to 5) is common to all such calls. If it is revised during the course of Programme 2007-2013, the new Guide will be given a different version number and the changes will be indicated in this box.

Information specific to this call is found in the Annexes.

Please note: *This Guide is based on the rules and conditions contained in the legal documents relating to TEN-T (in particular the "Community guidelines for the development of the trans-European transport network", the "Regulation laying down general rules for the granting of Community financial aid in the field of trans-European transport and energy networks", and the Work programmes), all of which can be consulted via the DG TREN website.*

The Guide does not in itself have legal value, and thus does not supersede those documents.

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1 Introduction

The purpose of this document is to provide guidance to those wishing to apply for financial support from the Trans-European Network Transport (TEN-T) programme. The guide aims to help applicants to fill the application forms and to clarify the evaluation criteria applied by the evaluators in the proposals assessment. In practical terms, the guide aims at bridging the gap between people applying for TEN-T financial aid and people doing the evaluation.

In order to achieve these objectives, this guide gives an overview of the selection procedure, and details and clarifies the two parts of the application form, linking them to the call for proposal and the evaluation.

The main legal documents quoted in this guide are the following (see for details Annex 6):

- TEN- T Guidelines: Community Guidelines for the development of the trans-European transport network (Decision N° 1692/96/EC of the European Parliament and the Council of 23 July 1996, as amended).
- TEN- Regulation: Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks (hereafter "TEN Regulation")
- Multi- annual Work Programme for grants in the field of trans-European Transport network (TEN-T) for the period 2007-2013
- Annual work programme for grants in the field of trans-European Transport network (TEN-T)
- Call for proposals for projects of common interest in the field of the trans-European transport network under the multi-annual work programme 2007–2013
- Call for proposals for projects of common interest in the field of the trans-European transport network under the annual work programme 2008.

This guide does not supersede the rules and conditions laid out, in particular, in Council and Parliament Decisions relevant to the Call for proposals, the TEN Regulation, the Community Guidelines for the development of the trans-European transport network, the Financial Regulation applicable to the general budget of the European Communities and the Implementing Rules for the Financial regulation.

The calls, in particular, describe in detail the contents required in the proposals, such as general and specific objectives, eligibility criteria, selection criteria, and award criteria.

The multi-annual and the annual calls may be found on the following specific call page:

- http://ec.europa.eu/dgs/energy_transport/grants/proposal_en.htm

The call for proposals under the multi-annual work programme 2007-2013 is structured in threefields:

- **Field n. 5: Motorways of the Sea, TEN-T Priority Projects n°21** included in Annex III of the Community Guidelines for the development of a trans-European transport network (Decision of the European Parliament and the Council n°1692/96/EC of 23 July 1996, as last modified by decision n°884/2004/EC of 29 April 2004). The

maximum amount available for the selected proposals, for 2008, shall be 20 million euros.

- **Field n. 6:** Projects in the field of River Information Services (RIS) The maximum total amount available for the selected proposals, for 2008, is 15 million euros.
- **Field n. 7:** Projects in the field of Air traffic Management (ATM) / Functional Airspace Blocks (FABs). The maximum total amount available for the selected proposals, for 2008, is 10 million euros.

The application forms and in some cases the evaluation criteria may differ according to the specific TEN-T call. For each proposal, ONLY THE CRITERIA, FORMS AND PROCEDURES APPROPRIATE TO THE SPECIFIC TEN-T CALL MUST BE USED.

2 Getting started

In the 2007-2013 TEN-T programme funding decisions are made on the basis of proposals submitted following calls published by the Commission. Proposals describe planned activities, information on who will carry them out, how much they will cost, and why they should be supported financially by EU.

The Commission evaluates all eligible proposals in order to identify those whose quality is sufficiently high for possible funding. The basis for this **evaluation** is a peer-review carried out by independent experts.

An internal evaluation Panel of the Commission then compares all of those whose proposals have successfully passed the evaluation stage and prepares the final funding proposal to be submitted to the Evaluation Committee.

The Evaluation Committee assesses the Internal Panel's proposal and makes a final funding proposal to the Commission.

This Guide for Applicants contains the essential information to guide you through the mechanics of preparing and submitting a proposal. It is important that you have the correct application form referring to the call you want to submit an application for.

You must also refer to the work programmes covering the themes of the TEN-T Multi-annual or annual programmes. The work programmes provide detailed descriptions of the objectives and topics which are open for proposals, and will describe the wider context of the activities in the trans-European transport network area. The annual work programme is adopted for each year separately, so make sure you refer to the latest version before preparing your proposal.

3 How to apply

The application form is the only element of information about the proposal and it is under the complete responsibility of the applicant (-s). Missing information or formal requirements can be grounds for exclusion of the proposal.

The application form must be filled in the electronic form using TENtec eSub tool, then printed, signed and sent together with an electronic disc containing the complete proposal in electronic format by registered mail, by private courier or delivered by hand to the Commission. In the unlikely case that the signed original of the application is different from its electronic copy on the disk, the version of the paper copy signed in original prevails.

Any technical questions can be delivered to the following addresses reserved for information and assistance by the TEN-T help desk and will be directed to the most appropriate department for reply:

Multi-Annual programme help-desk:

Telephone: +32-(0)2-29-73956 Fax: +32-(0)2-29-56504

Fax: +32-(0)2-29-56504

E-mail MAP: ten-t-helpdesk-call-map2008@ec.europa.eu

Annual programme help-desk:

Telephone: +32-(0)2-29-73956 Fax: +32-(0)2-29-56504

E-mail: ten-t-helpdesk-call-annual2008@ec.europa.eu

3.1 Who can get funding?

Eligible are project proposals which are submitted, in the form of a written grant application, by one of the following types of applicants:

- one or (jointly) several Member States
- one or (jointly) several public or private undertakings or bodies with the agreement of the Member State(s) directly concerned by the project in question or
- one or (jointly) by several international organisations with the agreement of all Member States directly concerned by the project in question
- A Joint Undertaking within the meaning of Article 171 of EC Treaty with the agreement of all Member States directly concerned by the project in question.

3.2 Who can't apply for TEN-T support?

Project proposals submitted by natural persons are not eligible. Applicants (other than a Member State) must show that it exists as a legal person, by providing the form relative to legal entities as set out in the application form.

In no case, projects proposals submitted by third Countries or legal or natural persons established outside EU countries can be beneficiaries of the funds.

3.3 Presenting your proposal

A proposal has two parts:

- Part A will contain the administrative information about the participants (See TENtec eSubmission Annex 3) and its Annex
- Part B1 will contain the administrative information and the information on the compliance with the Community policy and law
- Part B2 will contain the technical and financial information about the proposal (See Annex 4)

This information will also support the external experts and Commission staff during the evaluation process. Only black and white copies are used for evaluation and you are strongly recommended, therefore, not to use colour in your document.

In order to be helped to fill it in please read carefully the Annex 3 of this guide.

In **Part B** applicants have to give the necessary information in a way that your proposal can be evaluated in an equal manner against the award criteria. It is strongly recommended not deleting questions and trying to answer, if possible, to all points, in particular those relating to activities and milestones. The form is designed to highlight those aspects that will be assessed against the evaluation criteria. It covers, among other things, the nature and the objectives of the proposed activities, the financial and technical maturity of the proposal, its European added value and the impacts that might be expected to arise from it. For more details, please see Annex 4.

The proposal must address the priorities identified in the respective calls, as described at point 3 of each call.

3.4 Proposal language

Proposals may be prepared in any official language of the European Union. Nevertheless, if your proposal is not in English, a translation of the full proposal would be of assistance to the experts and the services of the Commission. An English translation of the administrative information and technical information should be included in the proposal. For more details, please see Annex 9.

3.5 Proposal submission

The complete proposals shall be:

a) either sent by registered mail or by private courier (1 paper copy signed in original, 1 further paper copy and 1 copy on electronic disk)

The proposal must be sent by registered mail or by private courier, dispatched not later than **the date indicated in the publication notice** (the postmark or the receipt issued by the courier service serving as proof of the dispatch) to the following address:

By registered mail:
European Commission
Directorate-General for Energy and Transport (0/100 –Archives)
Rue de Mot, 28
B-1049 Brussels
Belgium

By private courier:
European Commission
Directorate-General for Energy and Transport (DM 28 – 0/100)
Avenue du Bourget, 1
B-1140 Brussels (Evere)
Belgium

b) or delivered by hand (1 paper copy signed in original, 1 further paper copy and 1 copy on electronic disk)

Proposals must be delivered by hand to the Central Mail of the European Commission by **the date indicated in the publication notice** (Brussels time), at the following address:

European Commission
Directorate-General Energy and Transport (DM 28 - 0/100)
Avenue du Bourget, 1
B-1140 Brussels (Evere)
Belgium

In this case, a receipt must be obtained as proof of submission, signed and dated (with the hour, if necessary) by the official in the Commission's central mail department who took delivery. The department is open from 8.00 to 17.00 Monday to Thursday, and from 8.00 to 16.00 on Fridays. It is closed on Saturdays, Sundays and Commission holidays.

c) in addition to a) or b) in electronic form via the internet (application form part A only) using the TENtec eSub tool. The email address is embedded in the tool (see **TENtec eSub guidance note**)

As soon as the electronic submission tool TENtec eSub is available, proposals (only application form part A) must be sent electronically using this tool before the deadline indicated for the submission of the paper mail. Applicants are invited to consult regularly DG TREN website in order to complete the electronic form through TENtec eSub tool that will be available around the 16th of May 2008.

Date and time of the electronic submission are generated automatically by the tool and imbedded in the submission. In order to prove authenticity a reference code is automatically generated and also imbedded in the electronic submission.

Date and time (if any specified) for the electronic submission are identical to the ones given for the hand delivery. All electronic submissions baring a later submission date (and time) will not be accepted.

At the time of submission the tool prints out the final version of the application form part A, stamping each page of the printout with the reference code. This printout is then to be signed on the place(s) foreseen and consequently used as an integral part of the paper copy signed in original, which must be sent in parallel.

Important Note: It is the sole responsibility of the applicant to ensure that the signed original of the application form part A, its copies on paper and on the disk and sent via TENtec eSub are identical.

Applications not respecting the closing date will not be evaluated.

It is the responsibility of the applicant to ensure that proposals are sent to the address set out in the call for proposals, and that they are sent within a time enabling them to arrive before the deadline. The Commission cannot be held responsible for consignments which are not addressed correctly or for proposals sent in several parts which are not clearly marked so as to enable them to be put together. If necessary, applicants must be able to present proof of postage.

Each proposal must be placed inside two sealed envelopes, one inside the other. The inner envelope must bear the words:

(For the Multi-annual programme 2007-2013)

**Call for proposals
TREN/B2 – Call trans-European transport network –
Multi-annual work programme 2008
- Not to be opened by the Postal Service or the Internal Mail Department -
DM 28, 0/100 courrier /archives**

(For the Annual programme 2008)

**Call for proposals
TREN/B2 – Call trans-European transport network –
Annual work programme 2008
- Not to be opened by the Postal Service or the Internal Mail Department –
DM 28, 0/100 courrier /archives**

If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

Applications which fail to comply, in particular, with the formal requirements may not be evaluated further.

With regard to the format of the proposals, two paper copies of the complete proposal, i.e. one signed original and one additional copy, should be sent. A complete proposal consists of the printout of application form part A, as it is generated by the TENtec eSub tool at the time of the electronic submission, form part B and all its annexes and other related documents. In addition, the paper submission should contain a CD-ROM or DVD-R disk (non-rewritable!) containing the complete proposal in electronic format (PDF or formats readable by MS Office programs).

In parallel, applicants are requested to send the electronic application form part A using the TENtec eSub tool. (See point TENtec eSub guidance note).

The evaluation committee or, where appropriate, the authorising officer responsible may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, in particular in the case of obvious clerical errors. The authorising officer shall keep appropriate records of contacts with applicants during the procedure.

Applicants are invited to consult the website of Directorate Energy and Transport regularly until the deadline for submission.

3.6 About the deadline

It is the responsibility of the applicant to ensure that proposals are sent to the address set out in the call for proposals. The Commission cannot be held responsible for consignments which are not addressed correctly or for proposals sent in several parts which are not clearly marked so as to enable them to be put together. If necessary, applicants must be able to present proof of postage.

3.7 Correcting or revising your proposal

Once the deadline has passed, the Commission can accept no further additions, corrections or re-submissions. The proposal received before the deadline is the one which will be evaluated, and no later material can be submitted.

3.8 Ancillary material

The applicant shall deliver only supporting documents mentioned in the application forms (technical and financial capacity, documents proving the environmental compliance of the proposal, work programme of activities, etc...). Any hyperlinks to other documents, embedded material, and company brochures, reports, audio, video, multimedia etc. will be disregarded.

4 Check list

4.1 Preparing your proposal

Does your proposal fit in the scope of the call for proposals? Check that your proposed activities do indeed address the topics identified in the respective calls. (Please check if you have correctly chosen the call and verify its priorities).

Does your proposal satisfy all the formal requirements for submission? Please refer carefully to the formal arrangements for submission provided in the call (point 11 for the MAP calls and point 12 for the Annual call). Proposals not meeting these requirements will not be evaluated.

Is your proposal eligible? The eligibility criteria are given in the call (point 5 for the MAP calls and point 6 for the Annual call). See also Annex 2 of this Guide. Proposals not meeting the eligibility requirements will be considered ineligible and will not be evaluated.

Is your proposal complete? Proposals must comprise the electronic submission form Part A, containing the administrative information, a Part B 1 as well as a Part B2 containing the technical and financial description of your proposal as described in this Guide. A proposal that does not contain those three parts will be considered ineligible and will not be evaluated.

Does your proposal follow the required structure? Proposals should be precise and concise, and must answer to the proposed questions as described in this document (Annex 4 of this Guide), which are designed to correspond to the evaluation criteria which will be applied. This structure varies a little for different calls. Omitting requested information will almost certainly lead to lower scores and possible exclusion.

Have you maximised your chances? There will be strong competition. Therefore, edit your proposal tightly, strengthen or eliminate weak points. Put yourself in the place of an expert evaluator; refer to the evaluation criteria given in Annex 2 of this Guide. Arrange for your draft to be evaluated by experienced colleagues; use their advice to improve it before submission.

4.2 Final checks before submission

Do you have the approvals of all the Member States directly concerned by your proposal?

Have all the requested documents (e.g. Declarations of compliance with Community policy and law, financial identification form, legal entity form, Annex I) been filled and signed by competent authority and/or organisation?

Have all the requested additional documents (such as the Natura 2000 map, EIA and SEA documentation.) been attached to the proposal?

4.3 The deadline: very important!

Make sure that the proposal is timely delivered.

5 What happens next?

Shortly after the call deadline, the Commission will check that your proposal meets the formal requirements; eligibility and selection criteria that apply to this call (see the specific call and Annex 2 of this Guide).

All proposals compliant with eligibility and selection criteria will be evaluated by independent experts on the basis of the award criteria. The evaluation criteria and procedure are described in Annex 2 of this Guide. The Commission draws up the final list and a reserve list of proposals for possible funding on the basis of the results of the evaluation by experts. It will also take account of the available budget, the strategic objectives of the programme and the policy relevance of the proposals, as well as their overall balance.

Once the results (the final ranking and the reserve list) are available, DG TREN will launch an (internal) interservice consultation (ISC), to have the comments of other services of the Commission and in order to verify if there is any risk of double financing of the same activity or project. Then, a final proposal for funding will be submitted to the vote of the TEN-T Financial Assistance Committee, consisting of delegates representing the governments of the Member States, which votes it. Then, the right of scrutiny (*droit de regard*) of the EP will be launched¹. The procedure for granting aid for the selected projects through a Commission decision will start afterwards.

The financing procedure for proposals in the reserve list will only begin if funds become available. In other cases, the Commission will be open to explaining why your proposal has not been funded on this occasion.

¹ See Art. 8(1) and 15(2) TEN- Regulation

Glossary

The following explanations are provided for clarity and easy-reference. They have no legal authority, and do not replace any official definitions.

A

Availability payment schemes: financing schemes for infrastructure projects built and operated by a private investor who receives periodic payments after the construction phase for the infrastructure service provided. The payment level depends on the degree of achievement of the contractually agreed performance levels. The availability payments are made during the duration of the contract between the contract awarding authority and the project promoter and serves to cover the construction costs, the financing costs, the maintenance costs and the operational costs (definition of Art. 2 (13) TEN Regulation).

B

Beneficiary: One or more Member States, international organisations, joint undertakings within the meaning of Article 171 of the Treaty, and public or private undertakings or bodies having complete responsibility for a project and proposing to invest their own resources or funds provided by third parties with a view to carrying out the project. (definition of Art. 2 (7) TEN Regulation).

Bottleneck: Obstacles, in terms of speed and/or capacity, which make it impossible to guarantee the continuity of transport flows. (definition of Art. 2 (6) TEN Regulation).

C

Cost: see direct indirect cost, eligible cost, project cost.

CPM: critical path method, project management method.

Cross-border section: In the context of certain priority projects, cross-border sections between two Member States, including motorways of the sea, shall be identified by the Member States on the basis of criteria defined by the Committee set up under Article 18(2) and notified to the Commission. These will be, notably, sections which are technically and financially indivisible or to which the Member States concerned commit themselves jointly and for which they put in place a common structure. (Art. 19b TEN-T Guidelines) and cross border sections which ensure, via a third country, the continuity of a priority project between two member States (see Art. 2(5) TEN- Regulation).

The definition of cross-border sections of priority projects has been endorsed on 25 April 2007 by the Committee for Monitoring Guidelines and the Exchange of Information, set up in accordance with Article 18 (2) of the TEN-T Guidelines (see the Annex to the Multi-annual call field 1 and to the annual call). Please refer to this document for further details.

D

Direct costs: Costs which are identifiable as costs specific to the action and directly linked to its implementation and which are directly assigned.

E

Eligible costs: The part of the project's costs taken into consideration by the Commission for the calculation of Community financial aid (definition of Art. 2(11) of TEN Regulation). Expenditure shall be eligible from the date on which an application for aid is lodged. Expenditure resulting from projects included in the multi-annual programme may be eligible as from 1 January of the current year, starting from 1 January 2007; VAT shall not be an eligible cost, except for non-refundable VAT (Art. 10 (2) of TEN Regulation).

1. Eligible costs are costs actually incurred by the beneficiary of a grant which meet all the following criteria (definition of Art. 172a Implementing Rules for the Financial Regulation):

- (a) they are incurred during the duration of the action or of the work programme, with the exception of costs relating to final reports and audit certificates;
- (b) they are indicated in the estimated overall budget of the action or work programme;
- (c) they are necessary for the implementation of the action or of the work programme which is the subject of the grant;
- (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost accounting practices of the beneficiary;
- (e) they comply with the requirements of applicable tax and social legislation;
- (f) they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

2. Without prejudice to point 1 and to the TEN Regulation, the following costs may be considered as eligible by the authorising officer responsible (i.e. if they are mentioned as eligible in the financing decision- which is planned to be the case):

- (a) costs relating to a bank guarantee or comparable surety to be lodged by the beneficiary of the grant pursuant to Article 118 of the Financial Regulation;
- (b) costs relating to external audits required by the responsible authorising officer either upon the request for financing or upon the request for payment;
- (c) depreciation costs, provided they are actually incurred by the beneficiary;
- (d) administrative expenditure, staff and equipment costs, including the salary costs of personnel of national administrations to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken.

ERTMS: European Rail Traffic Management System

F

Final payment: see payment of the balance

Financial Regulation: Council Regulation (EC, EURATOM) n° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1) as last amended by Council Regulation (EC, EURATOM) n° 1995/2006 of 13 December 2006 (OJ L 390, 30. 12. 2006, p. 1), see Annex 6

G

GANTT: project management tool. The GANTT diagram (or chart) is a project planning tool used to represent the timing of tasks required to complete a project. GANTT diagrams are used by most project managers for all but the most complex projects.

GIS: Geographic Information System. It is a collection of computer hardware, software, and geographic data for capturing, managing, analyzing, and displaying all forms of geographically referenced information.

Global project: it means a physical or technological infrastructure which pursues the completion of a higher, indivisible objective. It could be technically and financially separated in a number of different actions (studies/works) but aiming at the achievement of the same specific objective (e.g. a railway line connecting two or more metropolitan areas, or different regions or states, can be composed of several sections, technically and financially identifiable, but the line will not start operations before the completion of all sections). For decisions addressed to a single Member State regarding projects located on its territory (or mostly on its territory), the 'global project' is the national section. For cross-border sections or international European projects, the 'global project' is the part of the project that is implemented jointly.

I

Indirect costs: Costs which are not identifiable as costs specific to the action and directly linked to its implementation and which are directly assigned, but which can be identified and justified by the beneficiary using its accounting system as having been incurred in connection with the eligible direct costs of the action. They may not include any eligible direct cost.

The grant decision may authorise, in the form of flat-rates, funding of the beneficiary's indirect costs up to a maximum of 7 % of total eligible direct costs for the action, save where the beneficiary is in receipt of an operating grant financed from the Community budget. The 7 % ceiling may be exceeded by reasoned decision of the Commission (see Art. 181 (3) Implementing Rules for the Financial Regulation).

Implementing Rules for the Financial Regulation: Commission Regulation (EC, EURATOM) n° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, EURATOM) n° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities² as last amended by Commission Regulation (EC, EURATOM) n° 478/2007 of 23 April 2007³, see Annex 6.

Intermediate payment instalment: An interim payment, which may be repeated, is a payment based on supporting documents which make it possible to check that the action financed has been carried out in accordance with the terms of the financing decision and the TEN Regulation (see Art. 104 (1) Implementing Rules for the Financial Regulation) when the action is in progress.

Interim payment: see intermediate payment.

ITS: Intelligent transport systems for roads.

J

Joint Undertaking: Within the meaning of Article 171 EC Treaty. The Community may set up (by a Council Regulation) joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.

L

Loan guarantee instrument: a guarantee issued by the European Investment Bank (EIB) in favour of a stand-by liquidity facility provided to projects of common interest in the field of transport. It will cover the debt service risks due to demand shortfalls and the resulting unforeseen loss of revenue during the initial operating period of the project. The project's financial viability needs to be based, in whole or in part, on revenues, tolls or other income paid by or on behalf of the users/beneficiaries (definition of Art. 2 (12) of TEN Regulation).

P

Part of a project: Any activity that is independent financially, technically or over time and which contributes to the completion of the project. (definition of Art. 2 (4) TEN Regulation).

Payment: Payment shall be made on production of proof that the relevant action is in accordance with the provisions of the basic act or the contract and shall cover one or more of the following operations:

- a) Payment of the entire amount due;
- b) Payment of the amount due in any of the following ways:
 1. Pre-financing, which may be divided into a number of payments;
 2. One or more interim payments;
 3. Payment of the balance of the amounts due.

Payment of the balance: The closure of the expenditure shall take the form of the payment of the balance, which may not be repeated and clears all preceding payments, or a recovery order.

PERT: Program Evaluation and Review Technique, a model for project management, which depict task, duration, and dependency information.

Pre-financing: Pre-financing is intended to provide the beneficiary with a float. It may be split into a number of payments.

² OJ L 357, 31.12.2002, p. 1.

³ OJ L 111, 28.04.2007, p. 13

Priority Project: A project of common interest located on an axis or a project listed in Annex III of the TEN-T Guidelines (definition of Art. 2 (2) TEN Regulation).

Project cost: The total cost of studies or works directly related to and necessary for carrying out the project and actually borne by the beneficiary (definition of Art. 2 (10) TEN Regulation).

Project of Common Interest: A project or part of a project identified as being of common interest for the Community in the field of transport in the framework of the TEN-T Guidelines (definition of Art. 2 (1) TEN Regulation).

Project Promoter: Project Promoters may be Member States or Regional Authorities directly, government agencies, public and private undertakings or bodies, international organisations, joint undertakings or private contractors.

Project Status Report: Annual summary on the progress of the studies or works, which must be completed by the Project Promoter and sent via the Member State to the Commission every year.

PSR: See Project Status Report

S

Study: Activities needed to prepare project implementation, including preparatory, feasibility, evaluation and validation studies, and any other technical support measure, including prior action to define the project fully and decide on its financing, such as reconnaissance of the sites concerned and preparation of the financial package.

TEN Guidelines: Decision n° 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of trans-European Transport network⁴ as last amended by Council Regulation N° 1791/2006/EC of 20 November 2006⁵, see Annex 6

TEN Regulation: Regulation (EC) n° 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of trans-European networks⁶, see Annex 6

W

Work: The purchase, supply and deployment of components, systems and services, and the carrying out of construction and installation works relating to the project, the acceptance of installations and the launching of the project.

⁴ OJ L 228, 09.09.1996, p. 1

⁵ OJ L 363, 20.12.2006, p.1

⁶ OJ L 162, 22.06.2007, p.1

Annexes

Annex 1 Timetable and specific information for this call

Annex 2 Evaluation criteria and procedure

Annex 3 Instructions for completing "part A" of the application form

Annex 4 Instructions for completing "part B1" of the application form

Annex 5 Instructions for completing "part B2" of the application form

Annex 6 Guide to key environmental legislation

Annex 7 Applicable legal rules cited

Annex 1 Timetable and specific information for the 2007 calls

1 Multi-annual programme calls

- The **Call for proposals under the multi-annual programme 2007 – 2013** provides the essential information for submitting a proposal to this call. It describes the content of the topics to be addressed, and details on how it will be implemented. The work programme is available on the call page.
- **Timetable for this call:** Publication of call *25 Avril 2008*
- **Deadline for submission of proposals** *20 June 2008*
- **Evaluation of proposals** *July 2008 to February 2009*
- **Notification of the decisions granting aid:** *February / March 2009*

2 Annual programme call

- The **Call for proposals under the annual work programme 2008** provides the essential information for submitting a proposal to this call. It describes the content of the topics to be addressed, and details on how it will be implemented. The call is available on the call page.
 - **Indicative timetable for this call:** Publication of call *25 Avril 2008*
 - **Deadline for submission of proposals** *20 June 2008*
 - **Evaluation of proposals** *July 2008 to February 2009*
- Notification of decisions granting aid:** *February / March 2009*

Annex 2 Evaluation criteria and procedure

1 General

The evaluation and selection of proposals is carried out by the Commission⁷ with the assistance of independent experts, who will carry out assessments of the proposals or that may also be invited by the Commission to perform the roles of *rapporteur* for consensus discussions.

External experts perform assessments on a personal basis, not as representatives of their employer, their country or any other entity. They are expected to be independent, impartial and objective, and to behave throughout the evaluation process in a professional manner. They sign an appointment letter, including a confidentiality and conflict of interest declaration before beginning their work. Confidentiality rules must be adhered to at all times, before, during and after the evaluation.

2 Before the evaluation

- It should be noted that for calls of this type no further information will be required from the applicant at the end of the first step as all of the relevant information has to be submitted at the time of the deadline.
- Eligibility and selection criteria for each proposal are checked by Commission staff before the external experts evaluation begins and proposals which do not fulfil these criteria are excluded.
- In organising the evaluation, Commission staff assigns the proposals to a panel of external experts based on the mode of transport considered in the proposal.
- The assignment of external experts to a panel and the allocation of proposals to them will be carried out taking account of the fields of expertise of the experts and any relevant conflicts of interest.
- If the subject matter of a particular proposal covers more than one panel, appropriate means to assess it fairly will be established.
- This may involve, for example, inviting experts from other panels to participate in the assessment of the proposal or forming an ad-hoc cross-cutting group of experts.
- In assessing proposals for any of the TEN-T actions, proposals will be supplied to experts at the moment of the start of the evaluation in Brussels.
- The external experts have to sign a form in which they have to certify that they are not in a situation of conflict of interest.

3 Overview of the evaluation process

The evaluation of proposals is carried out using a single-stage submission (that is the full proposal is submitted) with a **three-step evaluation**, where the full proposal will be:

- Assessed by external experts against all evaluation criteria;
- Pre-evaluated by an Evaluation Panel composed of internal experts of the concerned Directorates of DG TREN or of other Directorates-General, which meets under the chairmanship of a Head of Unit;

⁷ In the future, the Commission will be assisted by the TEN-T Executive Agency.

- Evaluated by an Evaluation Committee, composed of DG TREN Directors of the concerned Directorates and chaired by the Director responsible for the programme. This Committee draws up a list of projects for which a support is proposed, on the grounds of all evaluation criteria.

The process altogether can be schematised in 9 steps (Step 1 and 2 belong to the process before the evaluation, see above point 2):

Step 1: Opening Committee

The Opening Committee, composed of a president (a technical officer or another officer from the Directorate responsible of the programme), an officer from the DG TREN mail service, an officer for the financial unit of the Directorate responsible of the programme, another DG TREN officer not belonging to the same president's unit, shall verify that proposals are dispatched not later than the closing date of the call.

Step 2: Assessment of eligibility, compliance with Community laws/policies, and with selection criteria

Technical and financial officers from the Directorate responsible of the programme will assess for each proposal the eligibility and the compliance to the Community legislation and to the selection criteria.

Step 3: Internal Evaluation Panel (First Part)

In the context of the Panel, proposals are allocated to two internal officers, namely the desk/policy officer and a technical expert, which are responsible for the analysis of the proposal, for collecting all information regarding eligibility, compliance and technical and financial merit, and for taking care of the "appraisal form" of the project.

Step 4: Briefing of the Internal Panel

All officers responsible for analysing proposals will be briefed orally before the evaluation in the Internal Panel, in order to agree the general evaluation objectives, tools, timetable and guidelines.

Step 5: Briefing of the external experts

All external experts will be briefed orally before their assessment by representatives of the Commission's service, in order to inform them of the general assessment guidelines and the objectives of the TEN-T priorities for the different modes of transport.

In particular, the external experts will be briefed in the following way:

1. A general briefing covering the following issues:
 - a. TEN-T guidelines (consolidated version)
 - b. Text of the Call
 - c. Vested interest
 - d. Evaluation Procedures
 - e. Logistics
2. Dedicated briefing (responsibility of the technical units):
 - a. Supporting documents
 - b. Specific remarks

All the key written documents such as the TEN-T guidelines and the text of the Call will be made available. In addition, other documents dedicated to specific transport modes, and relevant for the evaluation, may be supplied. Moreover, the evaluation of projects already being financed may be supported by the existing documentation, such as old application forms and Commission decisions.

Step 6: Individual assessment of submissions by the external experts

Each submission is assessed independently against the applicable criteria by several evaluators who fill in Individual Assessment Forms giving marks and providing comments. This part of the evaluation is carried out by the external experts at the Commission's premises.

Step 7: Consensus between the external experts

For each proposal a consensus meeting chaired by a Commission's official will take place. In the meeting a consensus should be reached and the respective *consensus reports* will be prepared by one of the experts appointed to act as *rapporteur*. These reports will faithfully reflect the common views of the external experts and their achieved consensus. The external experts will eventually meet and agree on a joint assessment, a scoring of the proposal, and a *consensus overall comment* of the proposal.

Step 8: Internal Evaluation Panel (Second Part)

An Internal Evaluation Panel will take place to prepare the draft funding proposal to be submitted to the Evaluation Committee. This panel may re-discuss/re-examine the consensus reports of the external experts for all proposals and may revise, in duly justified circumstances, only the *consensus overall comments* of proposals. On this basis, the Internal Evaluation Panel should make recommendations on a priority order for the proposals and/or on a possible change of support.

Step 9: Evaluation Committee

The Committee will assess the Internal Panel's proposal and will make a final funding proposal to be submitted to the Director-General. The Committee is composed of Directors of DG TREN concerned by the TEN-T plus the Head of Unit of DG TREN R1 as observer.

4 Basic principles of the evaluation

The process for evaluating proposals submitted for funding to TEN-T programme of the European Communities is based on two principles:

- Transparency: Adequate feedback will be provided to applicants on the outcome of the evaluation of their proposals.
- Equal treatment: All proposals are evaluated in the same manner against the same criteria.

5 Evaluation criteria

The proposals will be evaluated in terms of three different types of evaluation criteria, as described in the call:

- Eligibility criteria
- Selection criteria
- Award criteria

5.1 Eligibility criteria

In the application form, all relevant information for the eligibility criteria is in Part A "ADMINISTRATIVE INFORMATION".

The eligibility criteria are the following:

- √ **Conditions for applicants**

Only written applications submitted by legal persons of private or public law legally constituted and registered in a Member State are eligible for Community financial support.

Applications can be presented by:

- one or (jointly) several Member States
- one or (jointly) several public or private undertakings or bodies with the agreement of the Member State(s) directly concerned by the project in question
- one or (jointly) by several international organisations with the agreement of all Member States directly concerned by the project in question
- a Joint Undertaking within the meaning of Article 171 EC Treaty with the agreement of all Member States directly concerned by the project in question.

Projects are not eligible if submitted by:

- natural persons (applicants other than a Member State must show that it exists as a legal person, by providing the form relative to legal entities as set out in the application form)
- by third Countries or legal persons established outside EU countries

In the call at point 5.1,3 the Commission draws applicants' attention to Art.114 of the Financial Regulation and to Art.134 and Art.174 of its Implementing Rules.

All public or private undertakings or bodies applying for the financial aid must certify in Annex I of the application form Part A that none of the situations listed in these articles applies to them.

√ **General conditions for the eligibility of projects**

- Under this programme, proposals must relate to one or more of the “**projects of common interest**” identified in the TEN-T Guidelines and must obtain the agreement of the Member State concerned. In the application form part B2, this condition is addressed (point 4.1) “Please relate the Action proposed to the projects of common interest identified in the Community Guidelines for the development of the trans-European transport network⁸”.

- Projects involving cross-border sections or a part of such sections may receive Community financial aid at a maximum financial aid of 30% if there is a written agreement between the Member States concerned or the Member States and the third countries concerned relating to the completion of the cross-border sections. Exceptionally, when a project is necessary to link to the network of a neighbouring Member State or a third country but does not actually cross the border, the written agreement referred to may not be required Art. 3(3) TEN Regulation). The **written agreement** has to relate to the completion of the cross-border section. This agreement has to fulfil the requirements of Art. 6 (2)(b)(i) of the TEN Regulation, i.e. the Member States must have given the Commission all necessary guarantees regarding the financial viability of the project and the timetable of carrying it out. In addition, the Member States concerned have show that they have committed themselves jointly to the project and to put in place a common structure for it in conformity with the conditions established by the Definition of cross-border sections of priority projects endorsed on 25 April 2007 by the Committee for Monitoring Guidelines and the Exchange of Information, set up in accordance with Article 18 (2) of the TEN-T Guidelines (see Annex to the call for the MAP Field 1 and to the annual call). The agreement has to be on a sufficiently high level of each

⁸ Article 7 of the Community Guidelines for the development of the trans-European transport network (Decision N° 1692/96/EC of the European Parliament and the Council of 23 July 1996⁸, as last amended by Council Regulation N° 1791/2006//EC of 20 November 2006⁸), OJ L 363 of 20 December 2006

Member State such as to assure the Commission that the agreement will be implemented from both sides, i.e. in general on the level of the ministers concerned.

- In accordance with the TEN-T Regulation Art. 7, TEN-T financial aid shall not, in principle, be assigned to projects or stages of projects which benefit from other sources of Community funding. Therefore, in Annex I, all the public or private undertakings or bodies must declare that their “application for funding (i.e. the expenditure covered by this application) is not the subject of any other application for funding under the Community budget”. Moreover, in the application form part B at the point 7.8 the question is recalled in a more explicit way.

For more details see the Commission information note concerning **combination of Community funding**: guidelines for Member States (Annex to the calls).

- The granting of Community financial aid to projects of common interest is conditional to compliance with relevant Community law, inter alia concerning interoperability, environmental protection, competition and public procurement.

- ***Environmental legislation***

All construction activities and studies implying physical interventions are required to demonstrate their compatibility with Community policy on environment. In particular, applicants must state that all relevant environmental, nature conservation and water bodies have been consulted, and that the project complies with the European Directives listed below, if applicable:

- Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, the so-called EIA-Directive, as amended by 97/11/EC and 2003/35/EC.

- Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment known as the Strategic Environmental Assessment Directive (SEA Directive).

- Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, known as the Habitats Directive.

- Directive 79/409/EEC on the conservation of wild birds known as the Birds Directive.

- Directive 2000/60/EC establishing a framework for Community action in the field of water policy known as the Water Framework Directive

In cases where Directive 85/337/EEC as amended is applicable, the following supporting documents must be provided:

- The information referred to in Article 9 (1) of the Directive
- The non-technical summary of the Environmental Impact Study carried out for the project
- Information on consultations with environmental authorities, the public concerned and, if applicable, with other Member States.

In cases where Directive 2001/42/EC is applicable, the applicant must provide an electronic copy of the documentation required by art. 9 (b) of the SEA Directive, the non-technical summary of the Environmental Report carried out for the plan or programme and information on the consultations (with the competent authorities and the public).

The effects on Natura 2000 sites must be analysed. If the project implies activities likely to have a significant negative effect on sites included or which should be included in the relevant national Natura 2000 networks, the Annex II-A must be completed, signed, stamped and dated and the summary of the assessment carried out according to Directive 92/43/EEC and Directive 79/409/EEC must be provided. A Natura 2000 map at scale of 1:100.00 indicating the location of the action as well as the Natura 2000 sites concerned must be

provided. If the project has no impact on Natura 2000 sites, the Annex II-B (declaration by authority responsible for Natura 2000 sites) must be completed (signed, stamped and dated by the competent authority). The applicant should provide a Natura 2000 map at scale of 1:100.000 or the nearest possible scale, indicating the area of intervention.

In cases where Directive 2000/60/EC is applicable and if the project implies a modification (deterioration or failure to achieve good water status) in the water status, the applicant will complete the questions under point 1.7.1. If the project is not likely to deteriorate the water status, the Annex II-C must be completed (signed, stamped and dated by the competent authority).

- **State aid & competition**

All projects shall comply with the art. 87 of the EC Treaty, that is, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

In order to be compliant to the Treaty, the applicant shall put into evidence that such aid is granted without discrimination, and the following aids, amongst the others, may be considered to be compatible with the common market:

- Aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- Aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- Aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

In substance, the applicant shall reply to the *point A2.3 of the application form part A*

- **Award of public contracts**

The project shall comply with the relevant EU legislation where required: e.g. Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operation in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts etc..

Details of the contracts must be provided in the *application form part B at the point 8*. The total amount in the contracts should cover wherever possible a major part of the total eligible cost of the project.

It must be noted that the Directive shall apply to contracts estimated to be worth (VAT excluded) no less than the following thresholds:

- a) EUR 499 000 in the case of supply and service contracts;
- b) EUR 6 242 000 in the case of works contracts.

- **Relevant rail interoperability rules**

All rail projects shall comply with the relevant EU legislation in place (among others Interoperability Directives 96/48/EC, 2001/16/EC, 2004/50/EC + the different Technical Specifications for Interoperability –TSIs (high-speed and / or conventional rail, depending on

the nature of the project). In particular, studies shall anticipate carrying out the works in line with the above mentioned legislation.

The compliance with the technical specifications mentioned above is in general compulsory. In case some elements of it, in particular some prescriptions contained in the TSIs, are not respected, reasons must be given by the applicant and then be assessed by the Commission. In particular, the applicant has to explain the existence of any notification of an intention to derogate previously addressed to the Commission including the relevant reactions of the competent Commission services. These derogations must then be verified by the Commission.

The applicant shall fill the *point A2.2 of the application form part A* about interoperability, with signature and stamp of the competent authority.

5.2 Selection criteria

√ **Financial capacity**

In accordance with the call (point 6.1), the applicants must have provided information about the financial capacity to complete the action for which the grant is sought, by providing their annual accounts for the last financial year.

Please note that the demonstration of financial capacity does not apply to Member States, joint undertakings within the meaning of Article 171 of the EC Treaty, other public bodies, or international public-sector organisations.

√ **Technical capacity**

In accordance with the call (point 6.2), the applicants must have provided information about the technical and operational capacity to complete the project for which the grant is sought and must have provided appropriate documents attesting to that capacity (proof of the experience in carrying out actions of the type in question).

Please note that the demonstration of technical capacity of applicants does not apply to Member States, Joint undertakings established under Article 171 of the EC Treaty, other public bodies or international public-sector organisations.

Information submitted by applicants who benefited from TEN-T aid as from 2004, may be taken into account in the evaluation of these applicants' technical capacity.

5.3 Award criteria

The award criteria shall be assessed by external experts. Each project proposal will be evaluated in an equal manner against the following award criteria, set out in the TEN Regulation (Article 5):

- Maturity
- The need to overcome financial obstacles
- The stimulative effect of the Community intervention on public and private finance
- The soundness of the financial package
- Socio-economic effects
- Environmental consequences and
- The degree of contribution to the continuity and interoperability of the network, as well as to the optimisation of its capacity
- The degree of contribution to the improvement of service quality, safety and security

- The degree of contribution to the internal market and other priorities of the trans-European transport networks
- The degree of contribution to the re-balancing of transport modes in favour of the most environmentally friendly ones •(reduction of environmental footprint)
- The complexity of the projects, for example due to the need to cross natural barriers
- Quality of the application

These award criteria shall be re-grouped in the following four blocks of evaluation criteria, which are intended to be a common basis for the assessment of the proposals for TEN-T projects:

- Relevance
- Maturity
- Potential impacts
- Quality of the action

Each block lists a number of detailed issues (prompting questions) which the external expert should consider during the assessment of that block.

When examining proposals, external experts may *only* apply the evaluation criteria which are set out and shown on the evaluation forms. No other factors shall be taken into consideration.

The **Relevance** block of evaluation criteria re-groups the following general award criteria:

- The degree of contribution to the continuity and interoperability of the network, as well as to the optimisation of its capacity
- The degree of contribution to the improvement of service quality, safety and security
- The degree of contribution to the internal market and other priorities of the trans-European transport networks
- The degree of contribution to the re-balancing of transport modes in favour of the most environmentally friendly ones
- The complexity of the projects, for example due to the need to cross natural barriers
- The stimulative effect of the Community intervention on public and private finance

This block of evaluation criteria assesses the extent to which:

- The proposal interests Community policy and particularly the priorities defined in the TEN-T Guidelines.
- The proposed action can have a European added value.
- The proposal addresses the general and specific objectives as defined in the call for proposals (please separate the general and specific objectives assessments).

This block of evaluation criteria shall assess the proposal in terms of:

- Its interest to Community policy, particularly transport policy;
- the added value of Community funding

The assessment shall be based on information provided at the point 5 of the application form part B (Contribution of the project to the TEN-T policy objectives). Other useful information shall be provided in the technical description and objectives. Finally, for cross-border sections some additional information is required at point 5.5.

The **Maturity** block of evaluation criteria re-groups the following general award criteria:

- Maturity
- The soundness of the financial package
- The need to overcome financial obstacles

This block of evaluation criteria assesses the extent to which the proposal has:

- Technical and financial readiness
- Political commitment
- Procurement procedure well advanced
- Administrative procedures completed and complying with the relevant national and European legislations
- Risks/factors of uncertainty
- Problems of a legal/administrative nature

The assessment of this block of evaluation criteria shall be based on the information provided in the following parts of the application form:

- Point 6 (Maturity of the project)
- Point 8 (External and internal costs)
- Other useful information: technical description, objectives, and some financial information (Point 7)

The **Potential impacts** block of evaluation criteria re-groups the following general award criteria:

- Socio-economic effects
- Environmental consequences and benefits

This block of evaluation criteria assesses the extent to which the proposal:

- would have direct and indirect socio-economic effects, bases in particular on the results of ex-ante evaluations and/or Social Cost Benefit Analyses, including the results of the potential economic viability analysis, etc
- would have positive and/or negative effects on the environment
- in case of possible environmental negative effects, whether the project has taken into account clear measures of prevention, monitoring and/or compensation
- would have a substantial impact on the internal market

The assessment of this block of evaluation criteria shall be based on the information provided Basis at the Point 9 (Potential impacts of the project)

The **Quality of the action** block of evaluation criteria re-groups the following general award criteria:

- Quality of the application
- The soundness of the financial package

This block of evaluation criteria assesses the extent to which the proposal:

- is coherent with the objectives and the proposed activities and planning are sufficient to achieve the objectives
- is consistent from the technical point of view

- provides for the financial resources necessary for the action (importance for launching the project or gathering the funds from public and private parts)

Basis for the assessment of this block of evaluation criteria are Point 1 (technical description of the project), Point 3 (Duration of the activities), Point 4 (Main objectives of the project) and Point 7 (Financial information)

5.4 Proposal marking

External experts examine the individual issues comprising each block of evaluation criteria and mark the blocks on a six-point scale from 0 to 5. Half marks may be given. In this scheme, the scores indicate the following with respect to the block under examination:

0 - The proposal fails to address the issue under examination or cannot be judged against the criterion due to missing or incomplete information

1 - Poor

2 - Fair

3 - Good

4 - Very good

5 - Excellent

The prompting questions comprising the blocks of criteria are not scored; the expert will only record his observations on them on the form. Those are reminders to help him in supporting his judgement on what score to assign to the criterion concerned when he has finished his reading, and also to remind him of issues he may wish to raise later during the discussions of the proposal.

A feature of the procedure as described is to allow the experts to reflect on the individual issues comprising the blocks of criteria. By only taking the marks for the blocks of criteria into consideration in the final assessment of the proposals, experts are encouraged to “look at the wider picture” and score the proposal against these important blocks of criteria as a whole, rather than applying a “mechanical” process of adding any marks given on individual issues.

Annex 3 Instructions for completing the electronic submission "part A" of the application form (TENtec eSubmission)

See TENtec eSubmission – User manual.

Annex 4 Instructions for completing "part B" of the application form

The following instructions cover part B.1 and B.2 of the application form for several different calls (Annual work programme 2008, Multi-annual work programme 2007-2013 for priority projects - Motorways of the Sea (field 5), River Information Services (field 6) and Air Traffic Management- Functional Airspace Blocks (field 7)). Therefore, in the explanatory comments we contemplate a large number of requirements by providing suggestions and examples, but of course we can not cover every situation.

Part B.1 covers the administrative information in particular relating to the compliance with Community law; B.2 covers the technical and financial information of the proposal. These are the only parts of the application that will be evaluated by external experts.

Part B.1 is composed as follows:

Section 1: Administrative information on applicants

1. Legal entity
2. Additional formal requirements for public and private undertakings and bodies

Section 2: Compliance with Community policy and law

1. Compliance with Community policy on environmental protection
2. Compatibility with Community policy on interoperability (Railway actions only)
3. Compatibility with community law on state aids
4. Compatibility with Community law on road charging
5. Annex I : Declaration form of the public or private undertakings or bodies applying for the Community financial aid
6. Annex II-A : Information on actions likely to have significant negative effects on Natura 2000 sites
7. Annex II-B : Declaration by the authority responsible for Natura 2000
8. Annex II-C : Declaration by the authority responsible for water management

Part B.2 is composed of seven sections:

1. Technical description of the project
 2. Location of the project
 3. Main objectives of the project
 4. Contribution of the project to the TEN-T policy objectives
 5. Maturity of the project
 6. Financial information
 7. Potential impacts of the project
- Each section has questions which address your proposal to satisfy the needs for the evaluation, stated in the TEN Regulation, and then in the work-programmes and in the calls.
 - To move from one field to the other in the protected parts of the form, please use the Tab key.

The following notes are for information only. They should assist you in completing part B 1 of your proposal.

SECTION 1: ADMINISTRATIVE INFORMATION ON APPLICANTS

1. Legal Entity

- √ Only public and private undertakings or bodies and international organisations need to provide the Legal Entities form.
- √ An editable form in your language and for your country may be downloaded and attached to the application at the following Internet address:
 - http://ec.europa.eu/budget/execution/legal_entities_en.htm
- √ Please note that some additional documents referred to in the legal entity form need to be attached.

2. Additional formal requirements for public and private undertakings and bodies

- √ If an applicant is a public/private undertaking/body it must demonstrate its technical and financial capacity to complete the action for which the grant is sought.
- √ Please provide your annual accounts for the last financial year for which the accounts have been closed.

- √ Please provide appropriate documents attesting that you have the technical and operational capacity to complete the project for which the grant is sought (proof of experience in carrying out projects of the type in question).
- √ Please complete and sign the declaration form in Annex I of the application form B1. The declaration is about compliance with Article 114(2) of the Financial regulation and its Implementing Rules (Article 134b)

SECTION 2: COMPLIANCE WITH COMMUNITY POLICY AND LAW

1. Compliance with Community policy on environmental protection for works

- √ This part must be filled in for all projects including physical activities. Therefore, you must also fill in this section in the case of studies with destructive tests, excavations, etc.
- √ The questions must be answered in the most complete way. If the question is not pertinent, please write N/A.
- √ The section on EIA (1.3) includes information on:
 - Development consent (or other similar national requirements)
 - The application of the Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive) as amended by Directive 97/11/EC and Directive 2003/35/EC:
 - If the project is a development covered by the Annex I of the Directive, provide the following documents:
 1. the information referred to in Article 9 (1) of the Directive (content of the decision and any conditions attached thereto, main reasons and considerations on which the decision is based, description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects)
 2. the non-technical summary of the Environmental Impact Study carried out for the project
 3. information on consultations with environmental authorities, the public concerned and, if applicable, with other Member States
 - If the project is a development covered by the Annex II of the Directive, either provide the documents mentioned in 1.3.2.2 or explain the reasons and give the thresholds, criteria or case by case examination carried out to reach the conclusion that the project has no significant environmental impact ("screening").
 - The application of the strategic environmental assessment directive 2001/42/EC (SEA-Directive)
 - If the project results from a plan or programme falling within the scope of the SEA Directive, provide the documentation required by art. 9 (b) of the SEA Directive, the non-technical summary of the Environmental Report carried out for the plan or programme and information on the public consultations.
 - If it does not result from such a plan or programme, explain.

- √ Section (1.4) on Natura 2000 (Directive 92/43/EEC and Directive 79/409/EEC) :
 - Project likely to have significant negative effects on Natura 2000 sites:
 - Provide: a) a summary of the conclusions of the appropriate assessment carried out according to Directive 79/409/EEC and/or Article 6 (3) of Directive 92/43/EEC approved by the environmental authority; b) Annex II-A form filled, signed, stamped and dated and enclose a map over the area including project and Natura 2000 sites.
 - For projects that does not have significant negative effects on Natura 2000 sites.
 - Attach a completed Natura 2000 declaration (Annex II-B) filled , signed, stamped and dated by the relevant authority and enclose a map over the area including project and (if any) Natura 2000 sites.
- √ Section (1.5) on additional environmental integration measures
(e.g. environmental audit, environmental management, specific environmental monitoring)
- √ Section (1.6) on Cost of measures taken for correcting negative environmental impacts
- √ Section (1.7) on the Water Framework Directive
 - Project likely to involve a deterioration of failure to achieve good water status:
 - Answer 2 questions on mitigation measures and on other means to achieve the objective
 - Project not involving a deterioration of failure to achieve good water status:
 - Provide completed Annex II-C declaration, signed, stamped and dated by the competent authority

2. Compatibility with Community policy on Interoperability (Railway projects only)

- √ This section must be filled by all project of rail infrastructure construction, both conventional and High speed.
- √ In the case some elements of the interoperability specifications are not respected, please add information about derogations agreed with the Commission services or any exemption requests.
- √ Please make sure that form has the stamp and signature of the appropriate authority

3. Compatibility with Community law on State Aids

- √ The question refers to Art. 87-89 of the EU Treaty, and takes into account past, present and future state aids.

4. Compatibility with Community law on Road charging

- √ The question refers to Art. 7(11) of the Directive 1999/62/EC, on the charging of the heavy goods vehicles for the use of certain infrastructures.

The following notes are for information only. They should assist you in completing part B 2 of your proposal.

1. Technical description of the project

- √ Please specify if the proposal refers to studies or works (see "study" and "work" definitions in the glossary).
 - √ Nevertheless, if the studies are strictly related to the construction or deployment phase, you may prepare 1 application form for both, works and studies. In this case, you can tick both "studies" and "works". Please, provide then at the point 1.2 a clear distribution amongst activities which should be considered as studies or works. In the multi-annual programme, in particular, the Commission could decide to separate activities in two or more financing decision and to grant to the study part of the project a Community financial aid with a higher rate.
 - √ Please bear in mind that, if studies are not strictly related to upcoming works or the works can be decided only after the results of the studies, you are kindly requested to prepare two separate application forms, one for works, and one for studies.
- 1.1. Please give a general outline of the Project (please be aware that this part is a core element of your application)
- √ Please give technical details of the proposed project (type of product, size, relevant features and quality of the future service).
 - √ Make clear the distinction between the Project, for which Community financial aid is requested by this application, and the Global Project, which the submitted Project belongs to.
 - √ For projects belonging to priority projects or intelligent transport systems, please specify their role and relevance in the framework of the Global project and give an idea about the current state of the Global project's current advancement and planning.
- 1.2 Please give a detailed description of each activity of the Action given in Part A3.1, including intermediate and final results, and milestones, by also using graphic tools such as GANTT, PERT, and CPM (please be aware that this part is a core element of your application)
- √ Each activity must be clearly detailed from both the technical and organisational point of view. In particular for proposals in the multi-annual work programmes, by organising the Project in activities - results, timing and costs - this description will help the Commission to concentrate the financial resources on activities for which the Community funding could have higher added value.

- √ in case all or part of the activities concerned have started prior to the submission of the application to the Commission, the description should only cover activities carried out during the eligibility period, e.g. for annual proposals, from the submission of the application to the Commission onwards, for Multi-annual proposals from 1 January 2007.
 - √ Intermediate results and milestones (as well as key indicators – see point 1.3) are very important in order to proceed with intermediate payment instalments. In the TEN Regulation, specifically, it is foreseen to allow a commitment from the Community on a multi-annual basis.
- 1.3 Please specify the key indicators to be used for monitoring and assessing the progress of the Project.
- √ Try to specify if possible physical (e.g. kilometres built) and quantitative (e.g. milestones achieved, permission obtained) indicators. Qualitative indicators (e.g. work-packages finalised) must be considered as the last option.
- 1.4 Please describe any major elements of complexity of the Project
- √ Please specify the main stakeholders involved. In particular, point out the organisational structure – beneficiary (in multi-beneficiary applications: including the coordinator and its tasks), promoters, sponsors, implementing body, supervising body, etc... - and expected main users.
 - √ According to the type of proposal, you may detail planned technology and materials for project with high technological value (such as infrastructure crossing natural barriers, intelligent traffic management systems, and aerospace initiatives), or indirect effects and externalities on the economy for projects with possible relevant regional impacts (large construction works).
- 1.5 Please describe briefly the results of each feasibility and technical study undertaken for the Project. If the studies are related to the Global Project only, the results should be given.
- √ The type of intervention and/or the choice of a certain technology or layout must be referred to the preparatory studies. Please make reference to the studies carried out and outline the main results supporting the Project and/or Global project design.
- 1.6 Please provide the results of demand forecast studies (scenario with and without the project if possible), including an outline of the overall context and scope of the study (-ies) concerned, the methodology chosen and the assumptions made
- √ This question can be answered only by proposals on interventions (e.g. rail sections, motorways, inland waterways, airports, ports, and installation of traffic management systems)
 - √ The demand forecast studies can be very useful to support the proposal only if completed with methodology and assumptions. Thus, please pay attention to provide them.

2. Location of the project

Geographic co-ordinates

- √ This part must only be completed for proposals concerning physical infrastructure (sub-structure and/or super-structure) in Part A3.1. Please attach a map with the

geographic location of the project at scale of 1:100.000 (or the nearest possible scale) and the reference number of the geographic co-ordinates pointed out on the table (at least three co-ordinates).

- √ This information will be helpful to locate the project in the TEN-T GIS. Please attach (if possible) a GIS file with the map of the action using one of the following formats:
 - Shapefile
 - ArcInfo coverages
 - DGN (5.x to 8)
 - DWG (Release 12 to AutoCAD 2006)
 - DXF (Release 12 to AutoCAD 2006)
 - PC ArcInfo coverages.

3. Main objectives of the project

3.1 Please describe the longer-term or wider results expected from the Project (or the Global Project) with particular regard to the TEN-T development.

- √ In addition to the description of main objectives of the Project (or Global project) please introduce the importance of the project for the physical development of the network (e.g. add a key missing link, support modal shift).
- √ If you use future predictions and forecasts to design the future scenarios, please make reference to the source.
- √ Your answer will be taken into account for evaluating the relevance of the proposal

3.2 Please describe the main scope, goals and short-term objectives of the Project as implemented

- √ In order to answer to this point, please illustrate the direct results and the short-term effects expected from the project defined at point 1.1. (e.g. implementation of a new link, develop and implement innovative safety technology)
- √ Your answer should be structured in order to give idea of the effectiveness of the proposed action
- √ If the Project as such cannot yield measurable direct outcomes (for instance when the project consists of a stage or a component of a larger project), please make reference to the Global project.

3.3 Please describe the main needs addressed by the Project

- √ This question refers to the operational objectives of the Project, that is, the construction of infrastructure or the realisation of a study, finalised to satisfy certain requirements.
- √ Your answer may be relevant for evaluating the efficiency of the action proposed.

4. Contribution of the Action to the TEN-T policy objectives

4.1 Please relate the Action to the projects of common interest identified in the Community Guidelines for the development of the trans-European transport network.

- √ In answering, please refer to the art. 7 of the Guidelines on projects of common interest. In particular, please show its relation to an element of the network described in Articles 9 to 17 and in particular relate to the routes identified on the maps in Annex I, and/or correspond to the specifications or criteria in Annex II.

- √ With regards to physical infrastructure, it is suggested to attach the related network map with the indication of the Project.
- 4.2 Please specify the Action's added value in the light of the TEN-T priorities, as defined in the Art. 5 of the Community Guidelines for the development of the trans-European transport network
- √ Your answer should match the objectives of the Action previously defined in the objectives and priorities (respectively) of the TEN-T as set out in the TEN-T Guidelines (e.g. eliminating bottlenecks, achieving a shift to more sustainable modes, improving quality in the road sector, revitalising the railways)
 - √ The question covers also the contribution to the EU sustainable development policy', such as ecological economic and social sustainability impacts and can be from the section 9.
 - √ Please make also reference to the objectives defined in the calls.
 - √ The emphasis is required at the EU level, but should also include contributions at regional and national level if results and lessons are considered to be transferable within the European context
- 4.3 Please specify the "network effect" produced by the Action (or the Global project) in relation to other TEN-T initiatives, sections, and transport modes;
- √ Please give information about the importance of the proposed action for the completion of the TEN-T priorities (e.g. priority projects, modal shift, interoperability, intelligent traffic management)
 - √ If the project represents a necessary step for the realisation of a larger Action, please explain.

4.4 SECTION FOR CROSS-BORDER PROJECTS

This section aims at verifying the correspondence of the proposal to the definition of cross-border sections of priority projects, as endorsed on 25 April 2007 by the Committee for Monitoring Guidelines and the Exchange of Information, set up in accordance with Article 18 (2) of the TEN-T Guidelines,.

Cross-border projects are entitled to receive higher rate of support up to 30%.

- √ The activities defined at point 4.4.A must be consistent with those defined at point 1.2, 3.3 and 6.9
- √ For proposals regarding cross-border sections, it is strongly encouraged to prepare joint application forms. This can also give an indication as to how well the coordination between the parties has developed.
- √ For all relevant information, please consider the definition of cross-border sections of priority projects, as endorsed on 25 April 2007 by the Committee for Monitoring Guidelines and the Exchange of Information, set up in accordance with Article 18 (2) of the TEN-T Guidelines as a guide. See also this Guide, page 20, Annex 2 Point 5.1.

5. Maturity of the project

- 5.1 Please give information of the political commitments taken regarding the implementation of the Project and, if relevant, the Global Project

- √ Please indicate all formal and informal documents, that is, decisions of Government, Parliament, or Regions, as well as Memorandums of understanding, written agreements, inclusion of the project in National Master Plans or in sectoral strategies
 - √ Please make reference to documents and give a brief summary.
 - √ If the project has already started, indicate the current state of works
- 5.2 Please provide a full list of sections/parts of the Action, as described under point 1.2, for which a separate building permit procedure has to be obtained to comply with the relevant national legislation
- √ This point is for construction works only. The subject of each individual procedure, to be set out in the first column of the following table, should be followed by a concise indication of the geographical extension and/or the kind of works concerned. Code numbers only understandable to insiders should be avoided.
 - √ For ERTMS proposals the question has been changed as follows:
Specify the Member State(s) involved in the certification procedure and, for each of them, detail the process to be applied, clearly referencing the appropriate legislation, rules. Identify the responsible body. List the deliverables: authorisation to enter in service, acceptance, etc... Please indicate the procedures put in place in order to avoid redundancy in ERTMS related tests (acceptance of similar tests already carried out in another Member State). The prototype has to be certified at least in two **Member** States (see Art. 6 (2) (c) (ii) first indent TEN Regulation); the third could be a third country if this ensures the continuity of a priority project between two member States (as these countries are now also included for cross- border sections, see Art. 2 (5) TEN Regulation)
- 5.3 Please specify which procurement method has been selected for which part of the project and the advancement of the procurement preparation.
- √ The state of the contract preparation is a good measure of the project's maturity. Please, explain the typology of contracts and the current situation of the most important ones
 - √ Please be consistent with Section 8.
- 5.4 Please specify possible problems of a legal/administrative (technological /normative /industrial nature for the ERTMS proposals) which remain to be settled before activities can start (legal proceedings against the building permit, etc)
- 5.5 Other risks/factors of uncertainty which may affect the implementation of the Project (political, institutional, financial, social, technical, etc.)
- √ Describe the probability distribution estimate of the project's financial and economic performance indexes. Provide relevant statistical information (expected values, standard deviation).
 - √ Please do not omit to inform us about problems! Such information can help us to optimise the European funding and can be very important in order to establish monitoring tools.

6. Financial information

- 6.1 Please specify the expected sources of financing for the "Global Project" in accordance with the information provided in the first table of Part A3.1.

- 6.2 Please specify the expected sources of financing for the Project in accordance with the information provided in the second table of Part A3.1.
- 6.3 Please specify the amount committed of public funds for the Project throughout the eligible implementation period and the relevant legal basis, and the modalities of budget allocation and its timing. In particular for on-board ERTMS equipment, describe the national financing scheme and in which way is compatible with State aid rules.
- 6.4 Please specify each private financing source, in particular their commitment (current/future), forms of financing, and timing
- 6.5 Please describe decisions taken regarding a public-private partnership approach (e.g. concession award, availability payment scheme) or the measures to be taken to examine the feasibility of such an approach
- 6.6 If purely public financing has been decided upon, please describe reasons underlying this decision
- 6.7 Please provide information about any request for loans to the European Investment Bank and their current status

- √ These five questions ask for more in-depth information about the proposal's sources of financing, in order to appreciate their concreteness, maturity, and stability.
- √ In particular, the applicant should explain if a Public-Private Partnership model has been taken into account, and decisions taken for using/refusing it

6.8 Does the Global Project or a part of it benefit from any other source of Community funding (European Regional Development Fund, Cohesion Fund, Research budget, etc.). In this respect please refer to the Commission information note concerning combination of Community funding: guidelines for Member States (Annex to the calls)

- √ Please inform us if the Global project or a part of it has also applied/is going to apply for any Community financial aid other than TEN-T.
- √ If yes, please point out which activities have been/are expected to be supported.

6.9 Please indicate the level of uncertainty of the current estimation per activity and year, giving reasons of the problems behind (budgetary, technical, political, social, or environmental)

- √ Please provide an estimation of possible constraints and give an indication of the maximum expected delay per problem, or draw attention to key events, which could influence negatively the planned timetable.

6.10 Financial performance of the Project: Please give the results of the Cost Benefit Analysis with regard to the following indicators:

INTERNAL RATE OF RETURN	IRR	
NET PRESENT VALUE	NPV	

- √ In case the analysis carried out goes beyond the scope of the Project because it concerns the Global Project or a part of it, please explain and try, as far as possible, to draw concrete conclusions for the Project (as described at points 1.1 and 1.2).
- √ Please assess the performance of the project also with and without Community financial aid
- √ Please outline the main elements and parameters used for financial analysis, such as (The costs and revenues should be based on figures excluding VAT):

- √ The reference period (years)
 - √ Financial discount rate (%)
 - √ Total investment cost (in euro, not discounted)
 - √ Total investment cost (in euro, discounted)
 - √ Residual value (in euro, not discounted)
 - √ Residual value (in euro, discounted)
 - √ Revenues (in euro, discounted)
 - √ Operating costs (in euro, discounted)
 - √ Net revenue = revenues – operating costs + residual value (in euro, discounted)
 - √ Eligible expenditure = investment cost – net revenue (in euro, discounted)
 - √ Funding gap rate (%)
- √ The Commission supported a study for "Harmonised European Approaches for Transport Costing and Project Assessment" – HEATCO. Harmonised procedures are strongly encouraged. Please consult the following site:
- <http://heatco.ier.uni-stuttgart.de/>
- 6.11 In case the **Project generates revenues** (tolls, user charges, revenues from commercial or other use, contributions from third parties etc.) please provide details, in particular the future management organisation (public, private, mixed), their forecasts over time, and the risk associated with them
- √ Please calculate the net revenues of the project (Net revenue = revenues – operating costs + residual value) if applicable.
 - √ If the project is expected to generate revenues through tariffs or charges borne by users, please give details of charges (types and level of charges, principle on the basis of which the charges have been established).
 - √ If no tariffs or charges are proposed, please explain how operating and maintenance costs will be covered.
- 6.12 Please indicate which form of Community financial aid could be preferable for the Action:
- √ Please outline the most suitable form of financial aid, such as:
 - √ grants for studies/works;
 - √ grants for works in the framework of availability payment schemes;
 - √ interest rate rebates on loans;
 - √ contribution to the project-related activities of joint undertakings
 - √ For multi-annual programme proposals, please suggest the way the payments to the project are preferable, such as:
 - √ Advance payment and final payment
 - √ Advance payment, one intermediate payment, and final payment
 - √ Advance payment, several intermediate payments, and final payment

- √ The payment methods will be defined in such a way as to take into account in particular the multi-annual implementation of infrastructure projects
- 6.13 Please describe in what way the granting of Community financial assistance under the TEN-T budget would have a stimulating effect on the implementation and/or the financing of the Project
- √ Examples could be: lower interest rates from the banks; stability at national level, accelerating the planning of the construction; impact on quality standards of the project.
- 6.14 Please describe in detail the arrangements for monitoring, internal and external audit and evaluation applied to the Project
- √ Article 11 of the TEN regulation says that:
 - √ (paragraph 2) The Member States shall undertake the technical monitoring and financial control of projects in close cooperation with the Commission and shall certify the reality and the conformity of the expenditure incurred in respect of the project or the part of the project. The Member States may request the participation of the Commission during on-the-spot checks
 - √ (paragraph 3) The Member States shall inform the Commission of the measures taken under paragraph 2 and supply, in particular, a description of the control, management and monitoring systems set up to ensure that the projects are successfully completed
 - √ Member States approving the proposal (that is, MS directly concerned by the project) have the responsibility to certify the reality and conformity of the expenditure incurred of the project and, therefore, to undertake measures of control, management and monitoring.
 - √ Please specify which type of monitoring. Costs for the external auditing of the project can be included in the eligible costs
- 6.15 Please describe the measures to give publicity to the (possible) TEN co-financing (e.g. site notices etc.)
- √ Article 17 par 3 of the TEN Regulation says:
 - √ The Member States concerned and, where appropriate, beneficiaries shall ensure that suitable publicity is given to aid granted under this Regulation in order to inform the public of the role of the Community in the implementation of the projects
 - √ Please give a short description of the planned measures, such as on-site posters, banners, brochures, press releases, etc...

7. Potential impacts of the Action

- 7.1 Please give information on ex ante evaluations of the Action and present the summary of main results.

- √ With the exception of feasibility studies including amongst their activities an evaluation, all proposals must have previously been subjected to some evaluation. Please refer to them.
 - √ In general, please describe objectives, activities and policy options taken into account.
 - √ Provide a summary of the demand analysis, including the predicted utilisation rate on completion and the demand growth rate
 - √ Outline the alternative options considered
 - √ Give precise references if TEN-T or other Community programme is/was involved in the financing of the studies
 - √ If the evaluation carried out goes beyond the scope of the Action(i.e. the Action is part of a Global Project) please give an overview of the ex ante evaluation of the Global project and explain the importance of the Action in that framework.
 - √ In some case, ex ante evaluation has been conducted at European level (e.g. ERTMS, ITS). Please describe it.
- 7.2 Please describe the main indicators used in the ex ante evaluation and make reference to the appropriate statistical base
- √ Ex ante evaluations take into account different elements, such as social, political, economical and environmental; please provide the indicators' list and their sources (Institution, web site, database, id)
- 7.3 Please describe findings and results of the socio-economic analysis for the Action.
- √ Please explain for the analysis referred to on what main hypothesis and parameters it is based.
 - √ Provide a short description of methodology and the main findings.
 - √ In the case it is a part of a Global Project, please give also the available results of the Global Project.
- 7.4 Please give results and conclusions of any environmental assessment or study for the Action.
- √ Please give reference of the assessment, and explain of who, why and when of the assessment.
 - √ In the case it is a part of a Global Project, please give also the available results of the Global Project
 - √ Please list positive and negative potential impacts and quote the mitigating measures that have been proposed and/or taken.
- 7.5 Please describe the impact of the Action on regional development and land use.
- √ Please give an overview of the analysis done and explain if the Action is linked to urban development plans, or if the project will contribute to increase the land value.
 - √ Please assess positive and negative impacts on neighbouring regions.
- 7.6 Please describe the expected impact of the Action on traffic growth, multimodal split and safety
- √ It is strongly recommended to make use of existing studies. If such studies could have a relevant added value, please explain why they're missing.

7.7 If the case, please describe potential impacts of the Action on internal and international competition

- √ Please give an overview of the positive and negative effects of the project on the internal market.
- √ Please outline the relevance of the project in terms of international competition, both in term of transport and industrial innovation

7.8 As far as quantitative results are concerned and a Social Cost Benefit Analysis (SCBA) has been completed, please provide at least two of the following indicators, specifying values used for the calculation of the quantitative data (contingent valuation, travel costs, hedonic pricing, dose-response functions, shadow projects, replacement costs, value of time saved, of environmental gains etc.):

INTERNAL RATE OF RETURN	IRR	
NET PRESENT VALUE	NPV	
BENEFIT/COST RATIO	B/C	

- √ Provide a short description of methodology (key assumptions made in valuing costs and benefits) and the main findings
- √ Please specify the values used for the calculation of the quantitative data, such as:
 - √ contingent valuation,
 - √ travel costs,
 - √ hedonic pricing,
 - √ dose-response functions,
 - √ shadow projects,
 - √ replacement costs,
 - √ value of time saved,
 - √ value of environmental gains
- √ Give details of main economic costs and benefits identified in the analysis together with values assigned to them (e.g. Unit value - where applicable, Total value -in euro discounted, % of total benefits, % of total costs)

Annex 5 Guide to key environmental legislation⁹

1. Summary

This Guide is a short outline of five EC environmental directives particularly relevant for the Trans European Networks (TENs) for Transport and Energy and is targeted at Member States transport and energy authorities. It describes briefly the Directives on environmental impact assessment (EIA) of projects, environmental assessment of plans and programmes

⁹ This Guide has been published as Annex 2 of the Commission document SEC(2007)374, the accompanying document to the Communication of the Commission "Trans-European Networks : Toward and integrated approach" COM(2007)135.

Both documents are accessible here: <http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=en>

(strategic environmental assessment - SEA), the protection of flora and fauna, (the Habitats and Birds Directives) as well as the Water Framework Directive. The Guide also highlights the references to environmental protection in the relevant TENs legislation.

The environmental legislation forms an important part of the 'acquis communautaire' as does the legislation on the TENs. Many TEN projects encourage environmentally friendlier modes of transport or aim at interconnecting the energy networks of the Member States which can directly contribute to reduced national investments and thus to a lower environmental impact. Especially the 30 priority projects for transport and the 42 priority projects for energy are crucial for realising the TENs. It is therefore essential to find common agreement on how to bring forward the TENs and respect of the environment at the same time. The correct and proactive application of EIA and SEA, for example through choice of route, and continuous consultation with the population concerned by such projects, is directly related to the successful implementation of the TENs.

The Habitats and Water Framework Directives also envisage mitigation and in a final stage, compensatory measures (in the case of the Habitats Directive), in the case of overriding public interests.

It is hoped that this Guide can offer an important contribution to a mutual understanding how the development of the TENs can be achieved whilst ensuring respect for the environment.

2. Respect of the environmental and TEN *acquis*

Member States, regions and project proposers must respect the environmental *acquis* for infrastructure related to any Community co-financing. For the TENs, the main concerns are related to potential negative impacts arising from TEN-T and TEN-E projects. On the other hand, the legislation on TENs requires Member States to implement especially the Projects of European Interest within a given timeframe.

What are the most important environmental Directives for the TENs?

All the environmental *acquis* applies to the TEN co-financed projects (air, noise, water, waste, etc.). However, experience has shown that five Directives are particularly relevant:

- **Environmental assessment** – Environmental Impact Assessment (EIA) Directive¹⁰ for project assessment, and Strategic Environmental Assessment (SEA) Directive¹¹ for plan and programme assessment; these are both procedural directives requiring the evaluation of a wide range of environmental impacts and consultation with environmental authorities and the public (including cross border consultations). The Directives take account of the provisions of the Aarhus Convention on public participation and (for EIA only) access to justice in environmental matters.
- **Nature** – Birds Directive¹² and Habitats Directive¹³ in particular in relation to impacts on the network of Natura 2000 sites and species benefiting from a strict protection regime (listed in Annex IV).
- **Water** – Water Framework Directive¹⁴ for infrastructures with potential risks of water resources deterioration.

¹⁰ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 97/11/EC and Directive 2003/35/EC (OJ L 175, 5.7.1985, p. 40; OJ L 73, 14.3.1997, p. 5; OJ L 156, 25.6.2003, p. 17).

¹¹ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

¹² Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L 103, 25.4.1979, p. 1).

¹³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

The EIA and SEA Directives are largely intended to improve decision-making. They do not predetermine outcomes. The two Directives differ from each other in detail but broadly speaking, both require the description and assessment of the likely significant environmental effects of specified projects and certain plans/programmes respectively.

These assessments must cover alternatives. There must be consultation on the environmental information and project application or draft plan/programme. The environmental information and results of consultation must be taken into account, and mitigating measures identified, in the decision (or final version of the plan/programme). The EIA Directive requires the environmental report to include an outline of the main alternatives studied and an indication of the main reasons for the choice made (taking into account the environmental effects).

The SEA Directive requires an assessment of reasonable alternatives that bear in mind the objectives and the geographical scope of the plan/programme (including the "zero" option). Being at a more strategic level, these alternatives could include radically different ways of achieving the objectives of the plan or programme. These Directives do not contain provisions like those in the Habitats Directive (Article 6.4) and the Water Framework Directive (WFD) (Article 4.7c) on mitigation and compensatory (in the case of the Habitat's Directive) measures. The EIA Directive contains a provision dealing with exceptional cases. Recent guidance emphasises the exceptional nature of the circumstances in which this provision might be used (in line with the European Court of Justice's normal approach to interpreting derogations).

How are the environmental parts of TEN forms assessed when they are sent to the European Commission (DG TREN)?

DG ENV and DG TREN have concluded a **Modus Operandi** for the efficient assessment of many TEN-T and TEN-E projects at the same time. The application forms that the Member States have to fill in are those foreseen in Commission Regulation (EC) No 1828/2006 of 8 December 2006¹⁵ setting out rules for the implementation of Council Regulation (EC) No 1083/2006¹⁶.

What are the rules applying to non-EU Member States?

In addition to the above, there is a link between proposed infrastructure and **respect for environmental *acquis* rules in countries in the geographical proximity of the EU**: compliance in the case of Candidate Countries; approximation for potential Candidate Countries; and convergence for the remaining neighbouring countries. The respect for environmental *acquis* in Candidate Countries has its legal basis in the External Relations Council Conclusions on the accession strategy for the environment from 24 September 1998. In the potential Candidate Countries of south-east Europe, the Stabilisation and Association Process and/or Agreements are the legal basis. In Mediterranean countries, Russia and Newly Independent States (NIS), Association Agreements provide the legal basis.

How are environmental rules taken up in the TEN-E and TEN-T guidelines?

Article 8 of the TEN-T Guidelines stipulates that environmental protection must be taken into account by the Member States through the carrying out of an EIA (for projects) and an SEA (for plans and programmes) and through the application of the two nature directives. *The Declaration of European Interest* included in the Guidelines further emphasises Community

¹⁴ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 21.12.2000, p. 1).

¹⁵ Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund (OJ L 371, 27.12.2006, p. 1).

¹⁶ Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25).

legislation on environmental protection. The European Co-ordinators have a major opportunity to help with the implementation of environmental legislation and procedures in a co-ordinated fashion.

Article 8 of the TEN-T Guidelines¹⁷ and Article 9 of the TEN-E Guidelines¹⁸ both underline the importance of the results of environmental assessments (for projects, plans and programmes) that have to be taken into account before a funding decision is taken in accordance with the relevant Community legislation.

3. Mechanisms for implementing the environmental *acquis*

It must be underlined that the different environmental *acquis* are free-standing. Therefore, even if synergies are possible and encouraged by the Commission, it is necessary to check that the individual requirements of the EIA, SEA, WFD and the nature Directives are fully respected. In this section the mechanisms for implementing each key directive are considered one by one.

How does the EIA Directive for project assessment apply to the TENs?

The projects listed in Annex I of the EIA Directive require a mandatory environmental impact assessment. The following steps are required:

- Preparation of a report on the environmental effects of the project
- Preparation of a non-technical summary
- Consulting the public on the application for Development Consent and the environmental report as soon as the information can be provided [superfluous as all the steps are required and the EIA is mandatory]
- Consulting other Member States if cross border project
- Consulting environmental authorities

Then the subsequent steps are taken:

- Development Consent (duly signed)
- Transmission of information to the public on the Development Consent, on the main reasons on which the Consent is based, and on a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

The projects included in Annex II of the Directive require that a screening is carried out by the competent authorities to determine if an EIA is required or not. Such screening may be done on a case-by-case basis or by establishing thresholds or criteria but in either case must take account of criteria specified in Annex III to the EIA Directive (concerning project location, project characteristics, and potential impact). The determination must be made available to the public. Upon the developer's request and before the Development Consent is submitted, the competent authority are to give an opinion on the information to be supplied and to consult the developer before its gives its opinion.

Transport and energy projects fall under both Annex I or Annex II of the EIA Directive.

How does the SEA Directive apply to plan and programme assessment of the TENs?

Article 1 of the SEA Directive sets out the objectives of it while Article 2 provides the definition with respect of certain characteristics which plans and programmes must possess

¹⁷ Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network (OJ L 228, 9.9.1996, p. 1).

¹⁸ Decision No 1364/2006/EC of the European Parliament and of the Council of 6 September 2006 laying down guidelines for trans-European energy networks and repealing Decision 96/391/EC and Decision No 1229/2003/EC (OJ L 262, 22.9.2006, p. 1).

for the Directive to apply to them, and in Article 3 that sets out rules for determining which of those plans and programmes are likely to have significant effects on the environment and must therefore be subject to environmental assessment.

Article 3(2) of the SEA Directive states that SEAs are compulsory for transport and energy plans and programmes. These will include the plans/programmes drawn up by Member States for the parts of TENs in their territory but the Directive does not itself apply at European level. The following steps are required:

- Preparation of the Environmental Report (details of content provided in Annex I of the SEA Directive), including "reasonable" alternatives, and a non technical summary
- Public consultation on the Environmental Report and the draft plan/programme
- Consultation of the environmental authorities at the screening (= similar process to EIA) and scoping (= similar process to EIA) stages and on the Environmental Report
- Consultation of other Member States on draft plans/programmes and the Environmental Report if likely to have significant environmental effects on other Member States

The subsequent steps are:

- The Environmental Report and results of consultations (including any cross border consultations) must be taken into account in the preparation of the plan/programme
- Consultees must be informed of the adoption of the plan/programme and certain information made available (adopted plan/programme; summary of how environmental considerations have been integrated; how environmental information and results of consultation have been taken into account; reasons for the choice of alternatives; monitoring measures)
- Member States are to monitor significant environmental effects of the implementation of plans and programmes in order to identify at an early stage unforeseen adverse effects, and be able to undertake appropriate remedial action

The Commission services have already produced interpretative and methodological guidance on the EIA and SEA Directives related to scoping, cumulative impacts, exceptional cases in Article 2(3) of the EIA Directive; Implementation SEA Directive

How do the Nature Directives (Birds and Habitats) apply to the TENs?

Article 4 of the "Birds" Directive (79/409/EEC) requires Member States to designate "all their most suitable territories as Special Protection Areas (SPAs)". Article 3 of the "Habitats" Directive (92/43/EEC) likewise aims at the establishment and conservation of a coherent network of Special Areas of Conservation (SACs). All SPAs and SACs form part of a European network that is called 'Natura 2000'.

The protection and conservation regimes for Natura 2000 sites are set out in Article 6 of the Habitats Directive. This provides for proactive measures (positive conservation actions that may include management plans), preventative measures (requiring steps to avoid loss of value of sites) and procedural safeguards (to deal with plans and projects that may affect the overall integrity of the sites).

There is not any *a priori* prohibition of new activities or developments within Natura 2000 sites. This needs to be judged on a case by case basis. Articles 6(3) and 6(4) of the Habitats Directive, which apply to all Natura 2000 sites, provide for the appropriate assessment of

development proposals which are likely to have an impact on designated sites. These provisions are based on existing good practice with respect to environmental impact assessment. However, it should be stressed that the EIA Directive contains procedural provisions designed to ensure that the consideration given to environmental issues is improved, while the Habitats Directive lays down substantive requirements regarding approval of a plan or project, which is intended to be served by the procedure envisaged in Article 6(3) and (4) of the Habitats Directive. The following sequential steps are involved in an Article 6 evaluation.

First step:

Is the Natura 2000 network fully established? If this is the case, the provisions of Article 6 of the Habitats Directive apply (see below). If this is **not** the case (i.e. SPAs for birds and SACs for habitats, have not been sufficiently designated by the Member State), Birds Directive, Article 4(4) provisions should be applied to the most suitable areas for birds (based on Important Birds Areas - IBAs), and the project must then avoid any possible negative effect on habitats of Community importance for which an insufficiency has been identified (precautionary principle).

Second step:

Article 6(3)

As a basic step an appropriate assessment must be undertaken to determine if there will be a significant negative effect on the site. This assessment needs to have full regard to the conservation objectives of the site, and cumulative effects of all plans and projects that may have negative effect. If this assessment shows that the negative impact on the site will not be significant, the national authorities can approve the plan or project. Otherwise, there is a need for reconsidering mitigation measures and analyzing other possible alternatives. Only if this path is exhausted, the procedure of Article 6(4) should be used.

Article 6(4)

- If the conclusion of the assessment is that the integrity of the site will be adversely affected, then the proposed development may only proceed in the absence of alternative solutions such as other possible development locations or other project designs.
- Furthermore, there must be a demonstration that the project needs to be carried out for imperative reasons, of overriding public interest.
- Finally if each of the above-mentioned tests are met and the development is allowed to proceed, compensatory measures must be provided to offset the loss or damage to the site.

The compensatory measures must address as precisely as possible the negative effects arising from a plan or project on the affected species or habitats. The result of the compensation has normally to be operational at the time when the damage is effective on the site concerned with the project. Compensation is a measure of 'last resort' and can consist of:

- recreating a habitat on a new or enlarged site, to be incorporated into the Natura 2000 network;
- improving a habitat on part of the site or on another Natura 2000 site, proportional to the loss due to the project;
- in exceptional cases, proposing a new site under the Habitats Directive.

If the site hosts a habitat type or species listed as being of priority interest under the Habitats Directive (particularly rare and vulnerable habitats and species for which the EU has particular importance in the world) a smaller number of considerations to justify the overriding

public interest apply and an opinion of the European Commission is required on the matter. Indeed, species listed in Annex IV of the Habitats Directive benefit in all territory of the EU, also outside Natura 2000 network from a strict protection regime regulated by Articles 12 and 13 of the Directive that might influence the infrastructure planning process.

The opinion of the general public may be sought in relation to the conclusions of the appropriate assessment under Article 6 of the Habitats Directive where this is considered necessary.

The Commission services have already produced interpretative and methodological guidance on the provisions of Article 6 of the Habitats Directive. Other guidance documents relevant to Natura 2000 and different sectoral interests are in preparation or planned. For example the Commission has undertaken to produce guidance on the management of estuaries which could be of interest to port authorities. Such guidance is prepared in consultation with different relevant stakeholder groups.

How does the Water Framework Directive apply to the TENs?

Article 4.7 of the Directive describes the conditions under which "new activities" like the development of new infrastructures or works (e.g. new roads, new canals, deepening of navigation channels) downgrading the status of water bodies can be accepted. An interpretation paper of the provisions of this article was recently finalised.

A clear distinction is to be made between:

- Mitigation measures, which aim to minimise or even cancel the adverse impact on the status of the body of water, and
- Compensatory measures, which aim is to compensate in another body of water the "net negative effects" of a project and its associated mitigation measures.

Article 4.7 requires only mitigation, not compensatory measures. However, the Water Authorities have also the possibility to impose additional compensatory measures or requirements in the forthcoming river basin management plans (to be adopted by 2009). Thus, a cross-reading of the provisions of Article 4.7 and of the affected river basin management plans will be needed for a particular project.

4. Environmental cross-border considerations

A key issue for the TENs and the environment is how to ensure that environmental procedures are carried out in an effective and legally compliant fashion for cross-border sections.

How can cross-border EIAs be carried out?

The EIA Directive in Article 7 outlines the steps to be taken for cross-border projects which are likely to have significant impacts on the environment in another Member State. In particular, the Member State in whose territory the project is intended to be carried out will need to send the affected Member State a description of the project and information on the nature of the decision and ask it whether it wants to participate in the EIA process. If this is the case, the Member State of origin must provide to the affected Member State certain information to enable it, its environmental authorities, and the public concerned to send their opinions to the Member State of origin.

The Espoo Convention on EIA in a Transboundary Context (signed in Espoo – Finland in 1991) sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across borders. The Espoo Convention entered

into force in 1997. The European Community is a Party to the Convention and implements it through the EIA Directive. The Convention is important in the case of projects in or affecting Parties which are not EU Member States.

The steps of the Espoo Convention are similar to those of the EIA Directive, namely:

- Notification (information on proposed activity, nature of possible decision and deadline to answer) to affected party according to list of activities in Appendix I of the Espoo Convention
- Public consultation

Some Parties have entered into bilateral agreements with neighbouring states to provide a settled basis for matters not explicitly detailed in the Convention (and EIA Directive) such as time limits, language of communications, contact points etc.

How can cross-border SEAs be carried out?

The Commission signed the UNECE Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, and UNECE guidance is currently being prepared. Guidance on the practical application of the Espoo Convention describes briefly how to carry out a joint EIA. More generally, the BEACON research project (**B**uilding, **E**nvironmental **A**ssessment **C**ONSensus) was initiated by the Commission in 2003 and aimed at developing suitable methods for implementing the SEA Directive with the objectives, *inter alia*, of ensuring appropriate coordination, avoiding duplication of effort, and achieving simplification and acceleration of planning processes for cross-border projects and corridors while complying with the Directive. BEACON produced a source book which gives useful advice on carrying out SEAs of transport plans and programmes and this will help Member States to produce better plans and comply with the SEA Directive

In addition to the EIA and the SEA Directive, also the WFD contains provisions for international coordination of issues preventing the achievements of the WFD objectives in cross-border river basins.

5. References

- EIA Guidance on <http://europa.eu.int/comm/environment/eia/home.htm>
- SEA Guidance on <http://www.europa.eu.int/comm/environment/eia/home.htm>
- ESPOO on <http://www.unece.org/env/eia/welcome.html>
- BEACON on <http://www.transport-sea.net/>
- Nature Guidance on <http://ec.europa.eu/environment/nature/home.htm>
- WFD Article 4.7 guidance:
 - http://forum.europa.eu.int/Public/irc/env/wfd/library?l=/framework_directive/thematic_documents/environmental_objectives&vm=detailed&sb=Title
- WFD and Hydromorphology – Policy Paper on integration with navigation, hydropower and flood protection policies:
 - http://forum.europa.eu.int/Public/irc/env/wfd/library?l=/framework_directive/thematic_documents/hydromorphology&vm=detailed&sb=Title

6. Abbreviations

BEACON	Building Environmental Assessment Consensus
EIA	Environmental Impact Assessment
ESPOO	The Convention on Environmental Impact Assessment in a Transboundary Context
IBA	Important Birds Area (catalogue elaborated by Birdlife International)
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
SPA	Special Protection Area
UNECE	United Nations Economic Commission for Europe
WFD	Water Framework Directive

Annex 6 Applicable legal rules cited

All the texts published in the Official Journal of the EU can be downloaded from the website

<http://eur-lex.europa.eu/en/index.htm>

The easiest way is to go for a simple search via the natural number: there you enter for example for the TEN-T Guidelines the year 1996 and the natural number 1692, you scroll then down the lists of results, and at the lowest you click on “bibliographic notice”, and there you see where in the Official Journal the TEN-T Guidelines and its amendments have been published all EU official languages:

http://eur-lex.europa.eu/RECH_naturel.do

1. TEN-T Guidelines

1) Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network

OJ L 228, 9.9.1996, p. 1–104

Link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996D1692:EN:HTML>

as amended by:

- Decision No 1346/2001/EC of the European Parliament and of the Council of 22 May 2001 amending Decision No 1692/96/EC as regards seaports, inland ports and intermodal terminals as well as project No 8 in Annex II¹⁹

Link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001D1346:EN:HTML>

- Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the

¹⁹ OJ L 185, 6.7.2001, p. 1–36 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

European Union is founded - Annex II: List referred to in Article 20 of the Act of Accession - 8. Transport policy - F. Trans-European transport network²⁰

- Decision No 884/2004/EC of the European Parliament and of the Council of 29 April 2004 amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network (Text with EEA relevance)²¹

Link: http://ec.europa.eu/ten/transport/legislation/doc/2004_0884_en.pdf

- Council Regulation (EC) No 1791/2006 of 20 November 2006 adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions, by reason of the accession of Bulgaria and Romania²²

2. TEN Regulation

Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks²³

Link:

<http://eur-lex.europa.eu/JOIndex.do?year=2007&serie=L&textfield2=162&Submit=Search>

3. Financial Regulation

Council Regulation (EC, EURATOM) n° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities²⁴, as last amended by Council Regulation (EC, EURATOM) n° 1995/2006 of 13 December 2006²⁵.

Articles mentioned in the application form

Article 93

1 Candidates or tenderers shall be excluded from participation in procurement procedures if:

(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;

(c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

(d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are

²⁰ OJ L 236, 23.9.2003, p. 467–553 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

²¹ OJ L 167, 30.4.2004, p. 1–38 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

²² OJ L 363, 20.12.2006, p.1,2,3, 38-53 (ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, NL, PL, PT, SK, SL, FI, SV)

²³ OJ L 162, 22.06.2007, p. 1

²⁴ OJ L 248, 16.9.2002, p. 1.

²⁵ OJ L 390, 30. 12. 2006, p. 1

established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

(e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

(f) they are currently subject to an administrative penalty referred to in Article 96(1).

Points (a) to (d) of the first subparagraph shall not apply in the case of purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

2. Candidates or tenderers shall certify that they are not in one of the situations listed in paragraph 1. However, the contracting authority may refrain from requiring such certification for very low value contracts, as specified in the implementing rules.

For the purpose of the correct application of paragraph 1, the candidate or tenderer, whenever requested by the contracting authority, must:

(a) where the candidate or tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity;

(b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.

3. The implementing rules shall determine the maximum period during which the situations referred to in paragraph 1 give rise to the exclusion of candidates or tenderers from participation in a procurement procedure. The maximum period shall not exceed 10 years.'

Article 94

A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for this contract:

(a) are subject to a conflict of interest;

(b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;

(c) find themselves in one of the situations of exclusion, referred to in Article 93(1), for this procurement procedure.

Article 95

1. A central database shall be set up and operated by the Commission in compliance with Community rules on the protection of personal data. The database shall contain details of candidates and tenderers which is in one of the situations referred to in Articles 93, 94, 96(1)(b) and (2)(a). It shall be common to the institutions, executive agencies and the bodies referred to in Article 185.

2. The authorities of the Member States and third countries as well as the bodies, other than those referred to in paragraph 1, participating in the implementation of the budget in accordance with Articles 53 and 54, shall communicate to the competent authorising officer information on candidates and tenderers which are in one of the situations referred to in Article 93(1) (e), where the conduct of the operator concerned was detrimental to the Communities' financial interest. The authorising officer shall receive this information and request the accounting officer to enter it into the database.

The authorities and bodies mentioned in the first subparagraph shall have access to the information contained in the database and may take it into account, as appropriate and on their own responsibility for the award of contracts associated with the implementation of the budget.

3. Transparent and coherent criteria to ensure proportionate application of the exclusion criteria shall be laid down in the implementing rules. The Commission shall define standardised procedures and technical specifications for the operation of the database.

Article 96

1. The contracting authority may impose administrative or financial penalties on the following:
(a) candidates or tenderers in the cases referred to in point (b) of Article 94;
(b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

In all cases, however, the contracting authority must first give the person concerned an opportunity to present his observations.

2. The penalties referred to in paragraph 1 shall be proportionate to the importance of the contract and the seriousness of the misconduct, and may consist in:

(a) the exclusion of the candidate or tenderer or contractor concerned from the contracts and grants financed by the budget, for a maximum period of ten years; and/or

(b) the payment of financial penalties by the candidate or tenderer or contractor up to the value of the contract in question.

...

Article 114

1. Grant applications shall be submitted in writing.

2. Grant applications shall be eligible if submitted by the following:

(a) legal persons; grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on their behalf and assume financial liability;

(b) natural persons in so far as this is required by the nature or characteristics of the action or the objective pursued by the applicant.

3. Grants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 93(1), 94 and 96(2)(a).

Applicants must certify that they are not in one of the situations referred to in the first subparagraph. However, the authorising officer may refrain from requiring such certification for very low value grants, as specified in the implementing rules.

4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 96.

Such penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.

4. Implementing Rules for the Financial Regulation

Commission Regulation (EC, EURATOM) n° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, EURATOM) n° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities²⁶ as last amended by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007²⁷

Articles mentioned in the application form

²⁶ OJ L 357, 31.12.2002, p. 1.

²⁷ OJ L 111, 28. 04. 2007, p. 13

Article 134 b (Administrative and financial penalties)

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have made false declarations, have made substantial errors or committed irregularities or fraud, or have been found in serious breach of their contractual obligations may be excluded from all contracts and grants financed by the Community budget for a maximum of five years from the date on which the infringement is established as confirmed following an adversarial procedure with the contractor.

That period may be extended to 10 years in the event of a repeated offence within five years of the date referred to in the first subparagraph.

2. Tenderers or candidates who have made false declarations, have committed substantial errors, irregularities or fraud, may also be subject to financial penalties representing 2 % to 10 % of the total estimated value of the contract being awarded.

Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2 % to 10 % of the total value of the contract in question.

That rate may be increased to 4 % to 20 % in the event of a repeat infringement within five years of the date referred to in the first subparagraph of paragraph 1.

3. The institution shall determine the administrative or financial penalties taking into account in particular the elements referred to in Article 133a(1).

Article 174 (Proof of applicants' eligibility)

Applicants shall declare on their honour that they are not in one of the situations listed in Article 93(1) of the Financial Regulation. The authorising officer responsible may, depending on the analysis of management risks, request the evidence referred to in Article 134. Applicants shall be bound to supply such proof, unless there is a material impossibility recognised by the authorising officer responsible.

5. EC Treaty

Link: <http://eur-lex.europa.eu/en/treaties/index.htm>

Article 87 (AIDS GRANTED BY STATES)

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

Article 154 (TRANS-EUROPEAN NETWORKS)

1. To help achieve the objectives referred to in Articles 14 and 158 and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Community shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

2. Within the framework of a system of open and competitive markets, action by the Community shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link islands, landlocked and peripheral regions with the central regions of the Community.

Article 155

1. In order to achieve the objectives referred to in Article 154, the Community:

- shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest,

- shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation,

- may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Community may also contribute, through the Cohesion Fund set up pursuant to Article 161, to the financing of specific projects in Member States in the area of transport infrastructure.

The Community's activities shall take into account the potential economic viability of the projects.

2. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in Article 154. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

3. The Community may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

Article 156

The guidelines and other measures referred to in Article 155(1) shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.

...

Article 171 (RESEARCH AND TECHNOLOGICAL DEVELOPMENT)

The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.

6. Other relevant legal references

Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operation in the water, energy, transport and postal services sectors

Link: <http://europa.eu/scadplus/leg/en/lvb/l22010.htm>

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

Link: <http://europa.eu/scadplus/leg/en/lvb/l22009.htm>

Annex 7 Definition of cross-border sections of priority projects

(Endorsed by the Committee for Monitoring Guidelines and the Exchange of Information, set up in accordance with Article 18 (2) of the TEN-T Guidelines, on 25 April 2007)

1. CROSS-BORDER SECTIONS

The following notes define practical criteria allowing the identification of cross-border sections of TEN-T priority axes. The identification of a section as cross-border does not automatically imply its eligibility for an increased Community support, as specified in the other relevant criteria in Article 6 of the TEN Regulation.

Criteria for the identification of the cross-border sections of priority axes

In order to be considered as a cross-border section in the meaning of Article 19 b of Decision N° 1692/96/EC or as a cross-border section which ensures via a third country, the continuity of a priority project between two Member States (see Article 2 point 5 of the TEN Regulation), projects have to comply with criteria (1) and (2A) or with criteria (1) and (2B).

(1) The project is a “cross-border” project.

This requires actions/construction works on at least two sides of the border.

In exceptional cases, it could be proposed that a project – involving the construction of a specific infrastructure (for example a bridge or a tunnel) located on the territory (or largely on the territory) of a single Member State at the proximity of the border, and is necessary to link to the network of a neighbouring Member State or a third country – is considered as a cross-border section, when it is requested together by the Member States concerned.

(2A) The project is technically and financially indivisible.

Technically indivisible:

The project's technical indivisibility is determined by the physical configuration of the infrastructure to be built or upgraded, so that one Member State cannot carry out the project independently of the other Member State (for example a bridge or a tunnel).

Financially indivisible:

The project's financial indivisibility is determined by the unique or coordinated management or the financial or the legal structure set up.

(2B) The Member States concerned commit themselves jointly to the project and put in place a common structure for it.

Joint commitment:

A joint commitment requires

- a) a formal agreement at an appropriate level,
- b) an agreed common financial plan or coordinated financial plans, including a single request for community funding, either by the Member States concerned or by one Member State and endorsed by the other Member State(s) concerned,
- c) an agreed common timetable for studies and works including a coordinated date of opening to service¹, and
- d) an agreement² on how the Member States concerned coordinate their procedures for assessing environmental effects as well as for assessing the socioeconomic effects thereof and how they use their best endeavours to conduct a transnational enquiry prior to granting construction permission and within the existing network.

Common structure:

A common structure between the Member States concerned for the implementation of the project (including normally the study and the work phase) must be created by a legally binding agreement at an appropriate level. The common structure could also be of an administrative nature, such as an Intergovernmental Commission dealing with a specific project.

2. ELIGIBILITY CRITERION

Transport related projects involving a cross-border section or a part of such a section shall be eligible to receive Community financial aid if there is a written agreement between the Member States concerned or between the Member States and third countries concerned relating to the completion of the cross-border section. Exceptionally, when a project is necessary to link to the network of a neighbouring Member States or a third country, but does not actually cross the border, the written agreement referred to above, shall not be required.

(ref. Article 3 § 3 of TEN Regulation)

3. EXCEPTIONAL CASES

In exceptional cases and upon request of at least two Member States concerned, the Commission will examine on a case by case basis, whether a project can be considered as cross-border project, in case where the criteria of this document are not fully met. The Committee set up under Article 18(2) of Decision 1692/96/EC will take a decision upon the proposal of the Commission.

1 Studies do not require a common methodology, but at least compatible methodologies, allowing coordination of results.

2 This agreement can form part of the establishment of the common structure.

4. MAXIMUM DIMENSION OF A CROSS-BORDER SECTION

The geographical extension of the cross-border section is defined either by the part which is technically and financially indivisible or for which the Member States concerned will create a common structure.

In the case of Motorways of the Sea, the maximum possible length of the hinterland connections is determined normally by the connections to the closest point on the TEN-T land network.

5. NOTIFICATION TO THE COMMISSION BY MEMBER STATES

The notification to the Commission of a project being identified as a cross-border section must be done at the latest together with the request for an increased rate of Community support.

Annex 8 Questions and answers on non-cumulation of Community funding principle

1. What is the non-cumulation of Community funding principle?

- The non-cumulation of Community funding principle means that:
 - In no circumstances shall the same costs be financed twice by the budget.
 - Grants may not be cumulative.

Hence, expenditure covered by grants from the EU budget, such as TEN-grants, may not be cumulated with other grants from the EU budget for the same part of a project insofar as these grants cover the same expenditure.

- Risk-bearing instruments of the Community or Community financial contributions to such instruments shall not constitute grants.

Additional information:

- It follows from the provisions of **Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund** and Commission Regulation (EC) No 1828/2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 that, for a project or part of a project, eligible expenditure co-financed under an operational programme receiving financial assistance from the Structural Funds and/or the Cohesion Fund cannot benefit from TEN-grant funding.
- The **TEN-Regulation** provides that the Commission may recover all or part of the sums already paid in the event of cumulation of Community aid (double financing) for a "part of a project".²⁸ "Part of a project" is any activity²⁹ that is independent financially, technically or over time and which contributes to the completion of the project.³⁰ Technically independent activities could be for example: (1) Studies and works³¹ for the same project or part of a project; (2) infrastructure works and technical infrastructure equipment (e.g. the actual construction of the railway line is technically independent from ERTMS equipment or electrification of a railway line); (3) different phases of construction, independent over time (different activities concerning the same piece of infrastructure as for example ground works, measures for environmental compensation), or (4) geographically independent sections (pieces of infrastructure from A to B, C to D, which can be started simultaneously, but are then

²⁸ Art. 13(2)(b) TEN-Regulation

²⁹ i.e. action in the sense of Regulation 1605/2002

³⁰ Art. 2 (4) TEN-Regulation, see Annex 2

³¹ As defined in Art. 2 (8) and (9) TEN-Regulation

technically independent). Any technically independent project must also be separable from the financial point of view from other projects or parts thereof.

Hence, when expenditure, for example for ERTMS (European Rail Traffic Management System) 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 in geographical sections, which could be co-financed either by ERDF/Cohesion Fund or TEN-funding.

The regulatory framework does not allow the eligible costs of a part of a project already receiving a TEN- grant to be also included in an operational programme co-financed by the Structural Funds and/or the Cohesion Fund. The Commission will recover all sums already paid in the event of cumulation of Community aid (double financing) for a part of a project.

- It follows from points 1 to 3 that it is permissible to include the eligible costs of a part of a project in an operational programme co-financed by the Structural Funds and/or the Cohesion Fund, and to apply for TEN-funding for a different part of the same project.
- Furthermore, in the context of operational programmes receiving financial assistance from the Structural Funds and/or Cohesion Fund, Community financial instruments other than those Funds cannot provide a substitute for the required national co-funding. This results from Article 53 of Regulation (EC) n° 1083/2006 which provides that the contribution from the Funds, at the level of operational programmes, shall be calculated with reference to (a) either the total eligible expenditure including public and private expenditure or (b) the public eligible expenditure. In this context public expenditure can only be made up by a financial contribution from those funds and national funding.

2. How to prevent cumulation of Community funding?

In order to prevent cumulation of Community funding, it is necessary to ensure that these principles can be effectively implemented, and their implementation verified by the Community institutions. The following guidelines will therefore apply to the funding of projects:

- It is important that project promoters reflect as early as possible on which projects, or parts thereof, they intend to present for TEN-funding and that they reflect on this while elaborating their applications for funding from operational programmes co-financed by the Structural Funds and/ or the Cohesion Fund.
- When an applicant plans to combine funding instruments for different parts of projects, this should be indicated in the application for funding under the operational programme co-financed by the Structural Funds and/ or the Cohesion Fund as well as in the application for TEN funding. The applicant shall clearly indicate in its application for funding which part of the project is co-financed by which instrument. Applicants for TEN-funding are required to indicate this clearly in their applications for funding as well as the beneficiaries of TEN- funding in subsequent associated Project Status Reports.
- When submitting an application, the applicant and the Member State concerned shall ensure by all appropriate means that the eligible costs of the project or parts of a project are not included in any Operational Programme co-financed by the Structural Funds and/or the Cohesion Fund.
- The managing authority of an operational programme co-financed by the Structural Funds or the Cohesion Fund shall ensure that the eligible costs of the project or part

of the project that are financed by grants from another Community financial instrument are not declared under that operational programme.

To do so, it is recommended to the managing authority that it shall:

- ask in the grant application of the project whether an application for financing under the TEN-programme has been requested or obtained, and
- check³², before paying the final balance of a project, that this is in fact the case (in order to address the situation where a project has obtained a TEN financing in the course of its implementation).

- Projects benefiting from a TEN-grant **or** projects of common interest³³ whose eligible costs are included in an Operational Programme co-financed by the Structural Funds or the Cohesion Fund may also make use of the loan guarantee instrument issued by the European Investment Bank (EIB) foreseen in the TEN-Regulation which covers “debt service risks due to demand shortfalls and the resulting unforeseen loss of revenue during the initial operating period of the project” (see Art. 2(12) TEN-Regulation) as long as this kind of expenditure is not declared as eligible expenditure in the operational programme concerned.

Since under the Structural Funds legislation, the eligibility of expenditure is determined by the national authorities in all fields where there are no Community rules on eligibility. Therefore the eligibility of expenditure for the loan guarantee instrument foreseen in the TEN Regulation depends on the provisions of the national eligibility rules.

- Member States shall inform project promoters by all appropriate means and at all stages of the procedure about the principle of non-cumulation of grants, the combination of Community funding as developed in these guidelines and about the resulting obligations. Member States shall inform the Commission without further delay about cases where they suspect double financing.

Project promoters receiving a TEN grant or any grant from an operational programme or another Community funding instrument should be aware that Council Regulation (Euratom, EC) No 2185/96³⁴ as well as the TEN- Regulation provide for the Commission's Anti-Fraud Office (OLAF) to undertake on-the-spot site controls and checks. The Commission, or any representative authorised by it, can provide for monitoring and financial controls. The Court of Auditors can undertake audits, where appropriate, on the spot.

Annex 9 Rules for the reimbursement of translation expenses

At the duly justified request of the Member State, the European Commission will sponsor each translation up to an amount of 2500 € (two thousand five hundred Euros). For each translation re-imbusement request, an official invoice, for the translation services, must be attached.

³² Article 13(2) of the Commission implementing regulation (EC) n° 1828/2006 establishes that the verification of the Managing Authority shall cover procedures to avoid double-financing of expenditure with other Community or national schemes and with other programming periods.

³³ Provided that they fulfil the eligibility criteria set out in the TEN-Regulation

³⁴ Regulation concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities adopted 11 November 1996, OJ L 292, 15.11.1996, p. 2

