Title XVI Trans-European Networks, Articles 170–73 TFEU
(Second Edition of the Oxford Commentary, 2023)

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Forthcoming in M Kellerbauer, M Klamert and J Tomkin (eds.), The EU Treaties and the Charter of Fundamental Rights – A Commentary (2nd ed. Oxford University Press, 2023). This is just a draft, please consult the book for the final polished version.

Abstract: This work offers a concise commentary on Title XVI TFEU prepared for the second edition of the Oxford commentary on the EU Treaties and the Charter of Fundamental Rights and drawing on the key legislative instruments of relevance as well as the most necessary scholarly literature.

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Electronic copy available at: https://ssrn.com/abstract=4539740
TITLE XVI
TRANS-EUROPEAN NETWORKS

Introduction

1 Title XVI introduced by ToM contains provisions to ensure that firms and citizens benefit the most from the internal market though the establishment of trans-European networks in transport, energy, and telecommunications, which are interconnected, interoperable and accessible.

Overview

Article 170 outlines the reasons behind and objectives set for the trans-European networks.

Article 171 details the means to achieve the objectives outlined in Article 170 TFEU.

Article 172 provides the legal basis to adopt measures referred to in Article 171 TFEU and specifies the procedural rules applicable.

Selected bibliography

Anita Rønne, ‘Smart Grids and Intelligent Energy Systems: A European Perspective’ in Martha Roggenkamp et al (eds), Energy Networks and the Law (OUP 2012) 143

Essential case law

Case C-121/14, UK v EP, Council, and Commission, paras 44-45: Pursuant to Article 171(1) TFEU, the EU institutions are required to establish guidelines in order to achieve the objectives referred to in Article 170 TFEU. Those guidelines are to identify projects of common interest and that the EU may support.

Main legal instruments

Regulation (EU) 1315/2013 lays down Union guidelines for the development of the Trans-European transport network.¹

Regulation (EU) 2021/1153 establishes the Connecting Europe Facility (CEF) for the period 2021-2027, laying down its objectives, its budget for the 2021-2027 period, the forms of Union funding and the rules for providing such funding.²

Regulation (EU) 2022/869 contains guidelines for the trans-European Energy infrastructure that aim at improving security of supply, internal market integration, competition and sustainability in the energy sector.¹

Article 170 TFEU  
(ex Article 154 EC)

1. To help achieve the objectives referred to in Articles 26 and 174 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 Union 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 Union 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 island, landlocked and peripheral regions with the central regions of the Union.

Commentary

1 First introduced by the ToM, Article 170 TFEU is premised on the idea that abolishing barriers to trade across borders and establishing competition rules may not suffice to ensure that all potential beneficiaries derive the most from the creation of the internal market as defined in Article 26(2) TFEU. Rather, connecting MS’ infrastructures may be of fundamental importance for exploiting the full potential of the Internal Market. The objective of fostering trans-European networks in the areas of transport, telecommunications and energy infrastructure defined in Article 170 TFEU partially overlaps with the aims set out in 194(1)(d) TFEU to promote the interconnection of energy networks.

2 Infrastructure projects that link areas without internal frontiers in the Internal Market do not only benefit those engaged in cross-border activities by improving their life conditions and business opportunities. They also help diminish the discrepancies in the economic development between MS. The beneficiaries targeted in Article 170 TFEU include economic operators, citizens, and regional and

local communities. Although the MS themselves are not mentioned, they are clearly intended to benefit from trans-European networks as well.

3 Article 170(2) TFEU explicitly refers to the need also to link islands, as well as landlocked and peripheral regions of the EU, thus pointing to the core importance of the goal of **cohesion** that the trans-European networks seek to attain, in particular by promoting the connectivity of regions that might be geographically disadvantaged. Outermost Regions (ORs) lying outside of the European continent are equally included (see Article 349 TFEU).

4 The infrastructure projects covered by Article 170 TFEU include transport, telecommunications, and energy: **three sectors** vital for successful cross-border activities. Each sector is covered by specific Regulations adopted under Articles 171 and 172 TFEU (see Main legal instruments).

5 Article 170(2) TFEU tasks the Union with promoting interoperability, interconnectivity, and accessibility of the national networks. Although interconnected, the **three aims** do not necessarily refer to the same but may be complementary in that they aims at networks to work together seamlessly whilst allowing as many providers and customers as possible to use them.

6 In reaching the objectives set out in Article 170 TFEU, the Union acts within the **paradigm of open and competitive markets**, which stands against the use of overly interventionist methods and promotes reliance on free market forces as a means of perfecting the Internal Market.

**Article 171 TFEU**
(ex Article 155 EC)

1. In order to achieve the objectives referred to in Article 170, the Union:
   - 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 Union may also contribute, through the Cohesion Fund set up pursuant to Article 177, to the financing of specific projects in Member States in the area of transport infrastructure.
The Union’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 170. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

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

Commentary

1 Specifying the way to achieve the objectives set out in Article 170 TFEU, Article 171 TFEU sets out two key approaches:
   (1) EU initiatives that define priorities and provide support (para 1).
   (2) MS coordination among themselves with possible EU assistance (para 2).

Moreover, the EU may decide to involve third countries (para 3).

2 Pursuant to the first and third indents of Article 171(1) TFEU, the EU institutions are required (“shall”) to establish guidelines in order to achieve the objectives referred to in Article 170 TFEU. Those guidelines are to identify projects of common interest (PCIs) that the EU may support.

Under the first paragraph of Article 172 TFEU, those guidelines are to be adopted by the EP and the Council, acting in accordance with the ordinary legislative procedure and after consulting the EESC and the CoR. The ways of providing EU support consist in conducting feasibility studies, giving loan guarantees, interest-rate subsidies, and investment from the Cohesion Fund. The investments of the EU into the trans-European networks are considerable. The Connecting Europe Facility, which supports the development of high performing, sustainable and efficiently interconnected trans-European networks in the fields of transport, energy and digital services, has a budget of EUR 33.7 billion for the years 2021 to 2027, most of which are earmarked for the transport sector.

3 The legislative framework currently in force includes the Connecting Europe Facility, which has the form of Regulation and has been applied from 1 January

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4 Case C-121/14, UK v EP, Council, and Commission, EU:C:2015:749, para 44.
2021, and Regulations with guidelines in the areas where the trans-European networks title applies: transport,\(^7\) energy,\(^8\) and telecommunications.\(^9\)

4 As in any other area of shared competence, the principle of **subsidiarity applies.** The MS co-own the process and, should the necessary conditions of subsidiarity not be met, also merely coordinate among themselves, thus without any necessary and direct EU involvement, which would go beyond coordination. The principle of subsidiarity is given specific expression in Article 172(2) TFEU, which requires the approval of MS for Guidelines and projects of common interest adopted under Title XVI that relate to the territory of a MS.

**Article 172 TFEU**

*(ex Article 156 EC)*

The guidelines and other measures referred to in Article 171(1) shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure 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.

**Commentary**

1 The provision establishes the ordinary legislative procedure (with the consultation of the Economic and Social Committee and the Committee of Regions) for the adoption of measures under Article 171(1) TFEU. **Three key Regulations** now in

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\(^9\) These guidelines were formerly set out in Regulation (EU) 283/2014. The scope of the intervention of the Connecting Europe Facility established most recently by Regulation (EU) 2021/1153 in the area of digital connectivity infrastructure was adjusted to reflect its increasing importance for the economy and for society at large. In this context, it is was considered necessary to set out the digital connectivity infrastructure projects of common interest needed to meet the Union’s Digital Single Market objectives and to repeal Regulation (EU) No 283/2014.
force\textsuperscript{10} have been adopted on this basis. Paragraph 2 provides that MS whose territory is affected by guidelines and projects of common interest (PCIs) have to approve these, which gives concrete expression to the principle of subsidiarity. Article 172 TFEU confers a broad margin of appreciation, on the Member State concerned to give or to refuse its approval to the inclusion of a project in the Union list of PCIs.\textsuperscript{11}

\textsuperscript{10} See Commentary on Article 171 TFEU.