

Client Alert

European Parliament approves new funding opportunities for infrastructure projects

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Summary

On 19 November, the European Parliament (“EP”) voted to approve the Connecting Europe Facility (“CEF”) Regulation.¹ The CEF Regulation is likely to become law early in 2014. The CEF Regulation is a funding instrument which earmarks the EU budget for trans-European transport, energy and telecoms projects. It is an important milestone in determining the EU funds which will be available for the projects in the period 2014-2020.

The intention is that the CEF will provide targeted financing for projects with a trans-European dimension. The EP has agreed to assign the CEF a budget of approximately €29.3 billion (based on 2011 prices) for the next EU financial period, which runs from 2014 to 2020. Of the €29.3 billion sum, €23.2 billion has been allocated to the transport sector; €5.12 billion for energy and €1 billion for telecoms.

The CEF Regulation sets out the conditions, methods and procedures for EU financial assistance to support projects of common interest in the fields of energy, transport and telecommunications. In order to be eligible for CEF funding, companies operating in the energy sector should ensure that their project is included on the EU list of projects of common interest, which was recently adopted in October 2013 and will be updated by the European Commission every 2 years. Funding for projects in the transport sector will be allocated on the basis of calls for tender, to projects which fall within the 9 EU “priority corridors” identified in the Annex of the CEF Regulation. Projects in the telecommunications sector must comply with the EU objectives which will be set out in a separate Regulation, to be voted on by the EP in February 2014.

The CEF Regulation also proposes to extend the pilot phase of the so-called “Project Bond Initiative”, which was first launched in 2012. The initiative will be subject to a full-scale review in 2015, at which stage it is anticipated that Project Bonds will become a permanent funding instrument. Project Bonds are financial instruments which provide credit enhancement to project companies raising senior debt in the form of bonds to finance infrastructure projects.

Next steps: The CEF Regulation must now be approved by the EU Member States in the Council. The EP and Council already informally agreed on the amendments to the Regulation on 27 June 2013, so the formal seal of approval is not anticipated to generate opposition from the Member States. If approved on time, the Regulation will apply from 1 January 2014.

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¹ The adopted text (in draft form) is available [here](#).

1. Conditions for the application for CEF funding

Transport

The CEF Regulation provides that funding will be targeted at projects which are considered to improve cross-border connections, remove bottlenecks and bridge gaps in transport links in the so-called “core network” in the EU. The core network comprises 9 priority corridors. 80-85% of CEF funding for transport is due to go to pre-identified projects of the core network. These pre-identified projects are listed in Annex I of the CEF Regulation. Projects eligible for EU funding in the transport sector are to be selected on the basis of open calls for tender which will be published in the Official Journal of the EU (“OJEU”). The CEF Regulation specifies EU financing shall not exceed 50% for grants for studies and between 20-50% of grants for works, depending on the nature of the works.

Out of the €23.17 billion earmarked for transport projects, €10 billion would be transferred from the Cohesion Fund to be used exclusively in regions of the EU Member States which are eligible for Cohesion Fund money. These are the Member States whose Gross National Income (GNI) per inhabitant is less than 90% of the EU average. Specific calls will be launched for projects implementing the core network or for projects and horizontal priorities identified in Part I of Annex I exclusively in Member States eligible for funding from the Cohesion Fund.

In a separate vote, which also took place on the 19th November 2013, MEPs approved guidelines which set out in more detail the common principles and priorities for completing the Trans-European Transport (“TEN-T”) network.

Energy

CEF funding will support projects in the energy sector which have been identified as “projects of common interest”. These are projects which are considered by the European Commission to “modernise and expand energy infrastructure and increase security of supply”. The list of EU projects of common interest is updated every 2 years, as provided for in the EU’s Trans-European Network for Energy (“TEN-E”) Regulation.² The first list of PCIs was published on 14 October 2013.³ Such projects can receive EU financial assistance for studies and, under certain conditions, for works, in the form of grants or innovative financial instruments (including project bonds). According to the CEF Regulation, the amount of EU financial assistance shall not exceed 50% of the eligible cost of studies and/or works. The funding rates may be increased to a maximum of 75% for actions which, based on the evidence, provide a high degree of regional or Union-wide security of supply, strengthen the solidarity of the Union or comprise highly innovative solutions.

Telecommunications and ICT

The CEF will provide seed funding and technical assistance for broadband infrastructure and services projects. The aim is to stimulate the development of broadband networks and digital services in the EU. The Digital Agenda for Europe sets targets for 2020 of broadband access for all at speeds of at least 30 Mbps, with at least 50% of households subscribing to speeds above 100Mbps. To be eligible for funding, actions in the field of digital service infrastructures must, amongst other things, be ready for deployment, contribute to EU single market policies and have a long-term sustainability strategy. Specific projects will be selected on an annual basis according to EU priorities. The specific objectives which must be pursued for a project in order to be eligible for CEF Funding will be set out in the EU Regulation on guidelines for trans-European networks in the area of telecommunications infrastructure, which is due to be voted by the Parliament in February 2014.⁴ According to the CEF Regulation, EU financial assistance should not exceed 75% of the eligible costs for actions in the field of generic services and for horizontal actions, including infrastructure mapping, twinning and technical assistance.

2. Financial instruments

² Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure, OJ L 115, 25.4.2013, p.39.

³ The EU list of Projects of Common Interest is available [here](#).

⁴ The draft proposal is available [here](#).

The CEF Regulation provides for a variety of different financial instruments which can be used to fund projects in the energy, transport and telecoms sector which comply with the aims set out above. These include:

- Equity instruments, such as investment funds with a focus on providing risk capital for actions contributing to projects of common interest;
- Loans and/or guarantees facilitated by risk-sharing instruments, including enhancement mechanism to Project Bonds, issued by a financial institution on its own resources with a Union contribution to the provisioning and/or capital allocation; or
- Any other financial instruments.

Project Bonds

One of the key financial instruments is the Project Bond Initiative, which the EU plans to use to extend the outreach of the budget set aside for the CEF. Funds available for the Project Bond Initiative provide credit enhancement to project companies raising senior debt in the form of bonds to finance infrastructure projects. The idea is that the improved credit quality of the bonds will facilitate their placement with institutional investors, to help promoters of infrastructure projects attract long-term private sector debt financing.

Under the Project Bond Initiative, the EU budget provides capital contributions to the European Investment Bank (“EIB”) to cover a portion of risk when the EIB provides funding under the Project Bond Initiative to eligible projects. The Project Bond initiative is managed by the EIB. However, the bonds are issued by the project companies themselves, not the EIB or the Member States. The role of the EIB is to provide credit enhancement in the form of a subordinated instrument to support the bonds issued by the project company.

In selecting the projects, the EIB applies the following general criteria⁵:

- i. There must be bond market infrastructure, meaning that project bond credit enhancement is available to bond-financed transactions and not to bank-financed transactions.
- ii. There must be ring fenced assets. Eligible assets must be ring-fenced, as the initiative is aimed to develop specific infrastructure assets rather than supporting corporate balance sheets. This means that the costs and revenues of the assets must be segregated from other assets and liabilities of the project promoter.
- iii. The financial structure of the project must be robust (“bankable”).

The Project Bond Initiative was first introduced in the EU in July 2012, in a pilot phase, with an initial budget of €230 million.⁶ With the introduction of the CEF Regulation, the pilot phase has been extended until 2015. A more permanent implementation of the Project Bond Initiative will be subject to a full-scale evaluation to be carried out in 2015.⁷ According to the CEF Regulation, after the review, “the Commission shall consider proposing appropriate regulatory changes, including legislative changes, in particular if the predicted market uptake is not satisfactory or in the event that sufficient alternative sources of long-term debt financing become available”.⁸

Annex I of the CEF Regulation provides that the Project Bond instrument shall be designed as subordinated debt financing and that it shall rank behind the senior debt but ahead of equity and financing related to equity. In addition, the subordinated debt financing shall not exceed 30% of the total amount of the senior debt issued.

⁵ EIB Guide to Project Bond Credit Enhancement and the Project Bond Initiative.

⁶ Regulation (EU) No 670/2012 of the European Parliament and of the Council of 11 July 2012 amending Decision No 1639/2006/EC establishing a Competitiveness and Innovation Framework Programme (2007 – 2013) and Regulation (EC) No 680/2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks, OJ L 204, 31.7.2012, p.1.

⁷ As provided for in Regulation (EC) No 680/2007 and in Decision No 1639/2006/EC.

⁸ Article 14(3), Parliament Amendments to CEF Regulation.