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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee / Council
No. prev. doc.:	8687/1/19 REV 1
Subject:	Proposal for a Regulation of the European Parliament and of the Council on streamlining measures for advancing the realisation of the trans-European transport network – Progress report

I. CONTEXT AND CONTENT OF THE PROPOSAL

1. On 17 May 2018, the Commission presented the abovementioned proposal to the European Parliament and the Council, as part of the third 'Europe on the Move' package, which is designed to make European mobility safer, cleaner, more efficient and more accessible.
2. The proposal's main objective is to simplify permit-granting rules with the aim of facilitating the completion of the Trans-European Transport Network (TEN-T). It also aims to bring greater clarity to the processes which project promoters need to follow, in particular as regards permit granting, public procurement and other procedures.

3. The proposal aims to reach its main objective by:
 - establishing a single competent authority (one-stop shop) in charge of the overall process and acting as the single entry point for project promoters and other investors;
 - establishing integrated procedures leading to one comprehensive decision;
 - setting deadlines for a two-stage process with a maximum timeframe of three years.

II. WORK AT OTHER INSTITUTIONS

4. At the European Parliament, the Committee on Transport and Tourism (TRAN) was designated as the committee responsible for this file and Mr Dominique Riquet (ALDE, FR) as the rapporteur. The Parliament voted on the report and adopted its first-reading position on 13 February 2019.
5. The European Economic and Social Committee adopted an opinion at the plenary session on 17 October 2018.
6. The Committee of the Regions adopted an opinion on 7 February 2019.

III. STATE OF PLAY IN THE COUNCIL

7. The Working Party on Transport - Intermodal Questions and Networks started its work in June 2018 with a general presentation of the proposal and its impact assessment. The proposal was studied at three further meetings of the Working Party between July and October 2018, resulting in a progress report¹ presented to the Council on 3 December 2018.
8. The Presidency continued its work and has dedicated six meetings to the detailed examination of the file between February and May 2019, based on evolving compromise texts. The compromise texts in general aimed to provide greater clarity and flexibility on a number of provisions in order to ensure that the specificities of national permit-granting procedures, which vary to a great extent across Member States, are better taken into account.

¹ 14226/18.

9. At the Working Party meeting of 10 May, following calls from all delegations, the Presidency presented a compromise² which changes the legal nature of the proposal from a regulation to a directive. The compromise introduced a significant degree of simplification and flexibility for Member States to use most of their national permit granting procedures in place. The single competent authority is defined as the main point of contact for the project promoter and will have a facilitating role in the permit granting procedure, without prejudice to the competence of other authorities involved in the procedure. In addition, the compromise introduced an overall deadline of four years for the completion of the permit granting procedure. This compromise was recognised by all Member States as a big step in the right direction.
10. However, there are a number of issues that will require further work at technical level. The **key issues** can be summarised as follows:
- a) **Scope (Article 1):** The Presidency compromise refers to projects on the core network corridors of TEN-T and sets out the possibility of extending the scope to other projects on the core and comprehensive network. The current formulation allowing for a wider application of the scope seemed to be supported by most delegations. However, some others preferred to limit the scope only to projects of a cross-border nature, while a few suggested other solutions.
 - b) **Single competent authority (Article 2 (d) and Article 5):** In the Presidency compromise the role of the single competent authority is understood as the ‘main point of contact’ for the project promoter and it acts as ‘facilitator’ in the permit-granting process. Some delegations asked for further clarification, in particular regarding the role, responsibility and tasks of the single competent authority.

² 8687/19 + REV 1.

c) **Duration of the permit-granting process (Article 6):** The Presidency proposal provides for a period of four years for the completion of the permit-granting procedure. Several delegations underlined that the feasibility of respecting this deadline depended directly on the question of which permits are to be obtained within the four-year period and which ones are out of the scope of the directive. In this context, some strongly supported the exclusion of certain permitting procedures from the scope, i.e. spatial planning and environmental impact assessment, arguing that these are complex and lengthy processes and are most likely to cause delays, making it very difficult or even impossible to keep to the proposed time-limit.

d) **Organisation of the permit-granting procedure (Article 6a):** The Presidency compromise gives the Member States the flexibility to carry out the permit-granting procedure according to their national specificities but maintains the concept of a detailed application outline to be prepared by the single competent authority. Some delegations had doubts as regards the added value of the detailed application outline, as the national legislation provides for clear requirements for the promoters in this respect.

Furthermore, Member States requested a clarification on the start of the procedure and on the documents to be provided by the promoter at the moment of notification of the project.

e) **Other issues:**

- **Priority status (Article 3):** Some delegations expressed concerns on the feasibility of implementing this provision.
- **Provision of permit granting procedure (Article 4):** As regards the obligation of Member States' authorities to carry out assessments of the effects on the environment that arises simultaneously from relevant Union legislation, a few delegations underlined that Member States authorities should also have the possibility to apply coordinated procedures in addition to joint procedures.

- **European Coordinators (Article 7):** As regards the role of the European Coordinators in the permit granting process for projects that involve two or more Member States, a few delegations stressed that this provision had to be in line with Article 45 of the TEN-T Regulation³ and they insisted on avoiding that new tasks and responsibilities are allocated to the European Coordinators.
- **Transposition (Article 10a):** The Presidency compromise provides for a transposition period of 24 months. This period seemed to be supported by the majority of delegations, although a few would prefer to have a longer period, i.e. of 36 months.

IV. CONCLUSIONS

11. At this stage, two delegations have a parliamentary scrutiny reservation. A scrutiny reservation is maintained by the majority of delegations on the latest Presidency compromise annexed to this report.
12. The discussions at technical level have shown that the issues set out above will need to be addressed under the upcoming Presidency in order to make further progress and reach an agreement on this file. Nevertheless, the work done by the Presidency in taking the file forward has been appreciated by delegations and the Presidency considers that the compromise constitutes a solid basis for future work on the proposal.
13. In the light of the above, the Permanent Representatives Committee and the Council are invited to take note of the progress made on the examination of the proposal.

³ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

*Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on streamlining measures for advancing the realisation of the trans-European transport
network

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

* This text is identical to the annex of doc. 8687/1/19 REV 1 presented to the intermodal WP on 17 May 2019.

⁴ OJ C , , p. .

⁵ OJ C , , p. .

- (1) Regulation (EU) No 1315/2013 of the European Parliament and of the Council⁶ sets out a common framework for the creation of state-of-the-art, interoperable networks for the development of the Internal Market. The trans-European transport networks (TEN-T) have a dual layer structure: the comprehensive network ensures connectivity of all regions of the Union, whereas the core network consists of those elements of the comprehensive network which are of the highest strategic importance for the Union. Regulation (EU) No 1315/2013 defines binding completion targets for implementation, with the core network to be completed by 2030 and the comprehensive network by 2050.
- (2) Notwithstanding the necessity and binding timelines, experience has shown that many investments aiming to complete the TEN-T are confronted with complex permit granting procedures, cross-border procurement procedures and other procedures. This situation jeopardises the on time implementation of projects and in many cases results in significant delays and increased costs. In order to address these issues and make synchronised TEN-T completion possible, harmonised action is necessary at Union level.
- (2a) This Directive should cover project related procedures, including for instance the environmental impact assessment, ~~other environmental assessments related to the project, spatial planning and land use, as well as other procedures.~~ However, the Directive should be without prejudice to the steps undertaken at strategic level and which are not project related, such as strategic environmental assessment, public budgetary planning as well as national or regional transport plans, strategic land planning. **In order to increase the efficiency and ensure high quality project documentation, preparatory works such as preliminary studies and reports should be carried out before the start of the permit granting procedure.**

⁶ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

- (3) Priority treatment should be given to projects covered by this Directive. ~~In the legal frameworks of many Member States priority treatment is given to certain project categories based on their strategic importance for the economy.~~ Priority treatment is characterised by **might provide for** shorter timelines, simultaneous procedures or limited timeframes for appeals while ensuring that the objectives of other horizontal policies are also reached. **In the legal frameworks of many Member States priority treatment is given to certain project categories based on their strategic importance for the economy.** When such a framework exists within a national legal framework, it should automatically apply to projects ~~on the core network corridors provided for under Regulation (EU) No 1315/2013~~ **within the scope of the directive.**
- (4) In order to improve the effectiveness of the environmental assessments and streamline the decision-making process, where the obligation to carry out assessments related to environmental issues of core network projects arises simultaneously from Directive 2011/92/EU, as amended by Directive 2014/52/EU, and from other Union legislation such as Directive 92/43/EEC, Directive 2009/147/EC, Directive 2000/60/EC, Directive 2008/98/EC, Directive 2010/75/EU **and**, Directive 2012/18/EU ~~and Directive 2011/42/EC~~, Member States should ensure that a joint procedure fulfilling the requirements of these Directives is provided.
- (5) Projects on the core network corridors should be supported by efficient permit granting procedures to make clear management of the overall procedure possible and to provide a main entry point for ~~investors~~ **project promoters**. Member States should designate a **single** competent authority in accordance with their national legal frameworks and administrative set-ups **and type of project**.
- (6) The ~~establishment~~ **designation** of a single competent authority at national level acting as the main point of contact for the project promoter for all permit granting procedures should reduce the complexity, improve the efficiency and increase the transparency of the procedures. It should also enhance the cooperation between Member States where appropriate. The procedures should promote a real cooperation between ~~investors~~ **project promoters** and the single competent authority.

- (6a) The single competent authority may also be entrusted with tasks related to the coordination and the authorisation, in compliance with Union and national legislation, of specific projects of common interest aiming at the reconstruction of infrastructure on the core network of the trans-European transport network in the case of natural or man-made disasters.
- (7) The procedure set out by this Directive should be without prejudice to the fulfilment of the requirements defined in the international and Union law, including provisions to protect the environment and human health.
- (8) Given the urgency to complete the TEN-T core network, the simplification of permit granting procedures should be accompanied by a time limit within which competent authorities responsible should take an authorising decision to build the transport infrastructure. This time limit should stimulate a more efficient handling of procedures and should, under no circumstances, compromise the Union's high standards for environmental protection and public participation.
- (9) Member States should endeavour to ensure that appeals challenging the substantive or procedural legality of an authorising decision are handled in the most efficient way possible.
- (10) ~~Cross-border~~ TEN-T infrastructure projects **that involve two or more Member States** face particular challenges as regards the coordination of permit granting procedures. The European Coordinators should be informed about these procedures in order to facilitate their synchronisation and completion.

- (11) Public procurement in cross-border projects of common interest should be conducted in accordance with the Treaty and Directives 2014/25/EU and/or 2014/24/EU. In order to ensure the efficient completion of the cross-border core network projects of common interest, public procurement carried out by a joint entity should be subject to a single national legislation. By way of derogation from the Union public procurement legislation, the applicable national rules should in principle be those of the Member State where the joint entity has its registered office. It should remain possible to define the applicable legislation in an intergovernmental agreement. For reasons of legal certainty, Member States participating in a joint entity set up before [entry into force of Directive] may jointly decide that current procurement strategies remain applicable for that joint entity. **For reasons of legal certainty, current procurement strategies should remain applicable for a joint entity set up before [entry into force of Directive] if the Member States concerned do not agree otherwise.**
- (12) The Commission is not systematically involved in the authorisation of individual projects. However, in some cases, certain aspects of the project preparation are subject to clearance at Union level. Where the Commission is involved in the procedures, it will give priority treatment to the Union projects of common interest and ensure certainty for project promoters. In some cases State aid approval might be required. In line with the Best Practice Code for the conduct of State aid control procedures, Member States may ask the Commission to deal with projects of the TEN-T they consider to be of priority with more predictable timelines under the case portfolio approach or the mutually agreed planning.
- (13) The implementation of infrastructure projects on the TEN-T core network should be also supported by Commission guidelines that bring more clarity as regards the implementation of certain types of projects while respecting the Union acquis. For example the Action Plan for nature, people and the economy⁷ foresees such guidance to bring more clarity in view of respecting the Birds and Habitats Directives. Direct support related to public procurement should be made available for projects of common interests to ensure the best value for public money⁸.

⁷ COM(2017) 198 final.

⁸ COM(2017) 573 final

- (14) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for coordination of those objectives, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (15) For reasons of legal certainty, the permit granting procedures which started prior to the transposition of this Directive should not be subject to the provisions of this Directive.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I - GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Directive shall apply to the permit granting procedures required in order to authorise the implementation of projects on the core network corridors of the trans-European transport network.
2. Member States may decide to extend the application of this Directive to other projects on the core and comprehensive network of the trans-European transport network.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) "authorising decision" means the ~~final act which can be based on a~~ **decision or a set of decisions according to national legal and administrative systems that determines whether or not a project promoter is entitled to proceed with the project implementation, without prejudice to any decision taken in the context of an administrative appeal procedure; the decision or set of decisions may be taken** simultaneously or successively ~~taken~~ by a Member State authority or authorities, not including courts or tribunals, ~~adopted, according to national legal or administrative systems; the authorising decision determines whether or not a project promoter is entitled to proceed with the project implementation without prejudice to any decision taken in the context of an administrative appeal procedure;~~

- (b) "permit granting procedures" means any procedure ~~related to the individual project~~ that has to be followed or step that has to be taken **related to an individual project** as required by the authorities of a Member State, under Union or national law, before the project promoter can implement the project; **It shall** not include ~~ing~~ procedures for the award of public procurements **nor steps undertaken at strategic level and which are not project related, such as strategic environmental assessment, public budgetary planning as well as national or regional transport plans, and strategic land use planning**;
- (b)(i) "Project" means the construction, **adaptation** or modification of a defined section in the transport infrastructure, which leads to improvement of capacity, **safety** and efficiency of the infrastructure and whose implementation requires a permit granting procedure;
- (c) "Project promoter" means the applicant for authorisation of a project implementation or the public authority which initiates a project";
- (d) "single competent authority" means the authority, which is the main point of contact for the project promoter and is responsible for facilitating the permit granting procedures in accordance with this Directive;
- ~~(e) "Cross-border project of common interest" means a project of common interest covering a cross-border section as defined in Article 3 point (m) of Regulation (EU) No 1315/2013 which is managed and implemented by a joint entity established by the Member States concerned.~~

CHAPTER II – PERMIT GRANTING

Article 3

Priority status

Member States shall **endeavour** ~~take the necessary measures~~ to ensure that all authorities **concerned involved in the permit granting procedure, excluding courts and tribunals,** give priority to projects covered by this Directive.

Where specific permit granting procedures for priority projects exist under national law, Member States shall, without prejudice to the requirements and time-limits of this Directive, ensure that projects covered by this Directive are treated under these procedures.

This shall be without prejudice to budgetary decisions.

Article 4

Provision of a permit granting procedure

14. Member States shall provide for a permit granting procedure resulting in the authorising decision, in order to meet the time limit set out in Article 6.
15. In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from Directive 2011/92/EU of the European Parliament and of the Council and **Council Directive 92/43/EEC, Directive 2009/147/EC , and/or** other **relevant environmental** Union law **legislation**, Member States shall ensure that joint procedures within the meaning of Article 2(3) of Directive 2011/92/EU are provided for.

Article 5a

Single Competent Authority

1. The Member State shall ensure that a single competent authority is responsible for facilitating the permit granting procedure for a project leading to the authorising decision.
2. The Member State shall designate a single competent authority at the appropriate administrative level. Member States may, where relevant, designate different authorities as the single competent authority per project or category of projects, **transport mode**, or per geographical area provided that **there is** only one **single competent** authority ~~is responsible~~ per project.
- ~~3. The Member States shall ensure that the single competent authority has at its disposal all the required personnel and material resources in order to perform its tasks.~~
4. The responsibilities of the single competent authority shall consist of the following principles:
 - (a) It is the main point of contact for the project promoter in the procedure leading to the Authorising decision for a given project;
 - (b) It provides the Detailed Application Outline to the project promoter, including the time-limits within the permit granting procedures, in line with the time limit set out in accordance with Article 6;
 - (c) It ~~assists~~ **advises** the project promoter in the submission of all relevant documents and information.

The responsibilities of the single competent authority are without prejudice to the competence of other authorities involved in the permit granting procedure.

- ~~5. When taking the authorising decision~~ ~~the~~ The single competent authority shall ~~ensure~~ **verify** that all the necessary permits, decisions and opinions **for the authorising decision** have been obtained ~~and shall duly justify its decision.~~

Article 6

Duration of the permit granting process

- 1a. The Member States shall set deadlines for the permit granting procedure not exceeding 4 years from the start of the permit granting procedure. The Member States may adopt the necessary measures in order to break down the available period in different steps and according to Union and national law.
- 2a. The period of 4 years shall be without prejudice to administrative appeal procedures and judicial remedies before a court and tribunal.
- 3a. The Member States shall adopt the necessary measures to ensure that in **duly justified** cases ~~or of~~ unforeseeable circumstances, an appropriate extension to the four-year period defined in this article may be granted. The single competent authority shall determine, on a case-by-case basis, the duration of the prolongation and shall duly justify its decision.
4. [deleted]
16. 5. [deleted]
17. 6. [deleted]
18. 7. [deleted]

19.

20. Article 6a

Organisation of the permit granting procedure

1. The notification of the project by the project promoter to the single competent authority shall serve as the start of the permit granting procedure.

- 1a. Member States may define the level of detail of information **and the relevant documents** to be provided by the project promoter when notifying a project, **in order to assess the maturity of the project.**

2. When a project promoter notifies the project to the single competent authority, the single competent authority shall draw up the Detailed Application Outline and communicate it to the project promoter, unless it considers that the project is not mature enough. In this latter case, the single competent authority shall reject the notification and justify its decision.

~~The notification by the project promoter to the competent authority shall serve as the start of the permit granting procedure.~~

3. The detailed application outline shall contain a schedule to prepare the project application file with at least the following points:
 - (a) The individual stages of the procedure and their **indicative** time limits;
 - (b) The material scope and level of detail of information to be submitted by the project promoter;
 - (c) List of necessary permits, decisions and opinions to be obtained **by the project promoter during the permit granting procedure**, in accordance with Union and national law;
 - (d) Authorities and stakeholders to be involved in relationship with the respective obligations, including during the formal phase of the public consultation.
4. The detailed application outline shall remain valid during the permit granting procedure. Any request by the single competent authority additional to what is identified in the detailed application outline shall be duly justified by exceptional and unforeseeable new circumstances.
5. When the project promoter has submitted the project application file, the single competent authority shall ensure that the file is in line with the detailed application outline and adopt the authorising decision within the time limit **set out** in accordance with **Article 6** ~~this directive~~. The single competent authority may only request additional information from the project promoter as regards the material scope and level of detail concerning the elements identified in the detailed application outline.

Article 7

Coordination of cross-border permit granting procedure

21. For projects that involve two or more Member States, Member States shall ensure that the single competent authorities of the Member States concerned **endeavour to** coordinate their timetables and agree on a joint schedule.
22. Member States shall take the necessary measures to ensure that in line with Article 45 of Regulation (EU) No 1315/2013, the European Coordinators receive information on the permit granting procedures and that they may facilitate contacts between the single competent authorities in the context of the permit granting procedures for projects that involve two or more Member States.
23. ~~Without prejudice to the time limits set out under this Directive,~~ Member States shall, if the time limit **set out in Article 6** ~~for the authorising decision~~ is not observed, provide information upon request to the European Coordinators concerned about the measures taken or planned to be taken to conclude the permit granting procedure with the least possible delay.

CHAPTER III - PUBLIC PROCUREMENT

Article 8

Public Procurement in cross-border projects

24. When the procurement procedures are conducted by a joint entity in a cross-border project, Member States shall take the necessary measures to ensure that the joint entity applies the national provisions of one Member State and, by way of derogation from Directives 2014/25/EU and 2014/24/EU, those provisions shall be the provisions determined in accordance with point (a) of Article 57(5) of Directive 2014/25/EU of the European Parliament and of the Council or point (a) of Article 39(5) of Directive 2014/24/EU of the European Parliament and of the Council, as applicable, unless an agreement between the participating Member States provides otherwise. Such an agreement shall in any case provide for the application of a single national legislation in case of the procurement procedures conducted by a joint entity.
- 25.

CHAPTER IV - TECHNICAL ASSISTANCE

Article 9

Technical assistance

[Deleted]

CHAPTER V - FINAL PROVISIONS

Article 10

Transitional provisions

This Directive shall not apply to the permit granting procedures which started before [24 months following the entry into force of this Directive].

Article ~~89~~ shall only apply to such contracts for which the call for competition has been sent or, in cases where a call for competition is not foreseen, where the contracting authority or contracting entity has commenced the procurement procedure after [OJ: 24 months following the entry into force of this Directive force].

~~Member States participating in a joint entity set up before [entry into force of Directive] may jointly decide that Article 8 shall not apply to procurement procedures by that joint entity.~~

Article 8 shall not apply to a joint entity set up before [entry into force of Directive], provided that the procurement procedures of that entity continue to be governed by the legislation determined in accordance with an agreement concluded between the participating Member States prior to that date.

Article 10a

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months following the entry into force of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 11

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President