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NOTE

from: General Secretariat of the Council

to: Delegations

No. Cion prop.: 15813/11 ENER 330 CADREFIN 103 CODEC 1749

Subject: Draft Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC **and amending Regulations (EC) No 714/2009 and 715/2009.**

Delegations will find in Annex compromise proposals from the Presidency, for consideration by delegations in the Energy Working Party meeting on 9 July.

Proposed changes as compared to doc. 5139/3/12 REV 3 are reflected in **bold underlined** text.

Article 8

‘Priority status’ of projects of common interest

1. **When such status exists in national legislation,** projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in **spatial planning and permit granting procedures, including those relating to environmental assessments,** in the manner such treatment is provided for in national legislation applicable to the corresponding type of energy infrastructure.
2. The adoption of the Union-wide list of projects of common interest shall establish, **for the purposes of any decisions issued in the permit granting procedure,** the necessity of **the energy infrastructure capacity which each of these projects is designed to provide .**
3. For the purpose of ensuring efficient administrative processing of the files related to projects of common interest, project promoters and all authorities concerned shall ensure that the most **rapid treatment legally possible is given to these files .**
4. **(a) Member States shall assess which measures to streamline the environmental assessment procedures are possible, and shall inform the Commission of the result. The Commission may give an opinion.**
(b) Subsequently, Member States shall, within **[twelve]** months from the entry into force of this Regulation, take the **practical, non-legislative measures that they have identified.**
(c) Where changes in national legislation are required , Member States shall, by [27 months from the entry into force of this Regulation], make these changes. These measures shall be without prejudice to obligations resulting from Union legislation. The Commission shall, within three months of the entry into force of this Regulation, issue guidance¹ to support Member States in defining adequate **legislative and non-legislative measures and to ensure the coherent application of environmental assessment procedures required under EU legislation for projects of common interest.**

¹ **Note: the Commission is likely to issue this guidance (focusing on streamlining of all relevant environmental procedures) in 2013. Furthermore, it should be noted that the Environmental Impact Assessment Directive (85/337/EEC) is under revision in 2012.**

5. With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EC and Article 4(7) of Directive 2000/60/EC², projects of common interest shall be considered as being of public interest **from an energy policy perspective**, and may be considered as being of "overriding public interest", provided that all the conditions foreseen in these Directives are fulfilled.

Should the opinion of the Commission be required in accordance with Directive 92/43/EC, the Commission and the competent authority pursuant to Article 9, shall ensure that the decision with regard to the "overriding public interest" of a project is taken within the time limit pursuant to paragraph 1 of Article 11.

Article 11

Duration and implementation of the permit granting process

1. The duration of the permit granting process shall consist of two phases and shall not exceed a period of [three years **and six months**]³:
- (a) the pre-application procedure, covering the period between the start of the permit granting process and the acceptance of the submitted application file by the competent authority, shall not exceed two years⁴.

² **Note: delegations are invited to express their views on the proposal of a delegation for a new paragraph: "Alternatives to a project of common interest which would not provide at least the same amount of the same type of infrastructure capacity, capable of serving the same customers, shall be disregarded for the purposes of any consideration of alternative solutions under Article 6(4) of Directive 92/43/EC."**

³ **Note: this period excludes those decisions/appeals as listed in Art. 2(2).**

⁴ **Note: this period includes the environmental assessments to be carried out.**

For the purpose of establishing the start of the permit granting process, the project promoter(s) shall notify the project to the competent authority of the Member State(s) concerned in written form, and shall include a reasonably detailed outline of the project. No later than **one month** [] following the receipt of the notification, the competent authority shall accept or, if it considers the project as not mature enough to enter the permit granting process, refuse the notification in written form. In case of a refusal, the competent authority shall justify its decision. The date of signature of the acceptance of the notification by the competent authority shall serve as the start of the permit granting process. Where two or more Member States are concerned, the acceptance of the notification by the last competent authority concerned shall serve as the date of the start of the permit granting process.

- (b) The statutory permit granting procedure, covering the period from the acceptance of the submitted application file until the [] comprehensive decision **is taken**, shall not exceed [one year **and six months**]. Member States may set an earlier date for the time-limit if considered appropriate.

2. Within one month of the start of the permit granting process, pursuant to paragraph 1(a), the competent authority shall identify, in close cooperation with the other authorities concerned, the scope of material and level of detail of information to be submitted by the project promoter, as part of the application file, to apply for the comprehensive decision. The checklist referred to in point 1(e) of Annex VI shall serve as a basis for this identification. At least one meeting between the competent authority and the project promoter, and, if considered appropriate by the competent authority, other authorities and stakeholders concerned shall take place to this aim. A detailed application outline, which shall include the results of this meeting, shall be transmitted to the project promoter and be made available to the public no later than one month after the meeting.

3. Within three months of the start of the permit granting process pursuant to paragraph 1(a), the competent authority shall elaborate, in close cooperation with the project promoter and other authorities concerned and taking into account the results of the activities carried out under paragraph 2, a detailed schedule for the permit granting process. []⁵.

For projects crossing the border between two or more Member States, the competent authorities of the Member States concerned shall align their timetables and elaborate a joint schedule.

4. The project promoter shall ensure the completeness and adequate quality of the application file and seek the competent authority's opinion on this as early as possible during the pre-application procedure. The project promoter shall **fully** cooperate with the competent authority to meet deadlines and comply with the detailed schedule as defined in paragraph 3.
5. Within one month of the receipt of the application file, the competent authority shall, if necessary, make further requests regarding missing information to be submitted by the project promoter, which may only address subjects identified in the detailed application outline. Within one month of the receipt of the complete application file, the competent authority shall accept the application in written form. Subsequently, requests for additional information may only be made if these are justified by new circumstances and duly explained by the competent authority.
6. **Where the competent authority considers that the permit granting process as set out in paragraph 1 would not be completed before the time limit, it may decide, before its expiry and on a case by case basis, to extend this time limit by a maximum of six months. In this case [], and** in the event of an expiry of the **extended** time-limit, the competent authority shall **inform the Group and** present to the [] Group **concerned** the measures taken or to be taken to conclude the permit granting process with the least possible delay. The Group may request the competent authority to report regularly on progress achieved in this regard.
7. The time limits in the above provisions shall be without prejudice to obligations arising from international and Union legislation.

⁵ **Note: moved to Annex VI(1b).**