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REPORT

From:	General Secretariat of the Council
To:	Council
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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 – General approach

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. The European Economic and Social Committee adopted an opinion at the plenary session on 17 October 2018. The Committee of the Regions adopted an opinion on 7 February 2019.

III. STATE OF PLAY IN THE COUNCIL

5. 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 in detail by the Working Party between July 2018 and May 2019, resulting in two progress reports¹ presented to the Council on 3 December 2018 and 6 June 2019, respectively.

¹ 14226/18
9189/19

6. The Presidency continued the work and dedicated three further meetings to the detailed examination of the file at technical level between September and November 2019. On the basis of the comments and suggestions made by delegations, the Presidency tabled three compromise texts which introduced further clarifications, simplification and flexibility for Member States, the main issues being the following:

- the scope of the draft Directive has been limited from core network corridors to pre-identified sections of the TEN-T core network;
- it has been further clarified which procedures and permits are covered by the proposal;
- the role and responsibility of the designated authority have been further clarified. The designated authority is primarily defined as the main point of contact for information for the project promoter that will provide guidance in the submission of all relevant documents and information, if so requested. The Member States may entrust the designated authority with more extensive responsibilities;
- it has become optional for Member States to provide for the detailed application outline; when so foreseen, it will be provided to the project promoter only if requested.

The compromise proposals were recognised by all Member States as important steps in the right direction.

The Presidency believes that the compromise in the annex provides a significant degree of flexibility requested by Member States to take advantage of their permit granting procedures currently in place, and that it provides added value for the increased efficiency of permit-granting procedures, and therefore contributes to the timely implementation of projects on the TEN-T network.

7. The Working Party has addressed a large number of technical issues and the Presidency considers that the compromise text in the annex represents a balanced solution to those issues.

IV. CONCLUSIONS

8. The Permanent Representatives Committee endorsed the compromise text at its meeting on 20 November 2019.²
9. Ministers are invited to agree on a general approach, as presented in the annex to this report, at the TTE Council (Transport) on 2 December 2019.

² At that occasion, the German delegation announced that it will present a statement for the minutes of the Council. This statement is set out in Addendum 1 to this Report.

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 Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

³ OJ C , , p. .

⁴ OJ C , , p. .

- (1) Regulation (EU) No 1315/2013 of the European Parliament and of the Council⁵ 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. That Regulation 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. This Directive aims to address these issues and make synchronised and timely TEN-T completion possible through harmonised action at Union level.
- (2a) This Directive should cover project related procedures, including those related to the environmental impact assessment. However, this Directive should be without prejudice to urban or land use planning and 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. In order to increase the efficiency of permit granting procedures and ensure high quality project documentation, project promoters should carry out the preparatory works such as preliminary studies and reports before the start of the permit-granting procedure. This Directive should not be applicable to procedures before an administrative appeal authority, a court or a tribunal.

⁵ 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).

- (2aa) This Directive should apply to projects that are part of pre-identified sections of TEN-T core network as listed in the Annex. Projects exclusively related to telematics applications, new technology and innovation should be excluded from the scope as their deployment is not limited to the TEN-T core network. Member States may apply this Directive to other projects on the core and comprehensive TEN-T network, including projects exclusively related to telematics applications, new technology and innovation, in order to enable a harmonized approach for transport infrastructure projects. The publication by national authorities of lists of individual projects that fall under this Directive could increase transparency for project promoters regarding ongoing as well as future works along the trans-European transport network.
- (3) Priority treatment should be given to projects covered by this Directive, where appropriate. Such treatment may include shorter timelines, simultaneous procedures or limited timeframes for appeals while ensuring that the objectives of other horizontal policies, such as environmental policies aiming to avoid, prevent, reduce or offset adverse effects on the environment are also reached in accordance with national and Union law. 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 within the scope of this Directive.
- (4) deleted.
- (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 point of contact for project promoters. Member States should designate one or more authorities in accordance with their national legal frameworks and administrative set-ups, and type of project.

- (6) The designation of authorities 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 real cooperation between project promoters and the designated authority.
- (6a) The designated authority may also be entrusted with tasks related to the coordination and the authorisation, in compliance with Union and national legislation, of specific projects 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 international and Union law, including requirements to protect the environment and human health. This Directive should not lead to lower standards envisaged to avoid, prevent, reduce or offset adverse effects on the environment.
- (8) Given the urgency to complete the TEN-T core network, the simplification of permit-granting procedures should be accompanied by a time limit for procedures aiming at the adoption of 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. It should be possible to extend the time limit for the permit granting procedures in duly justified cases, including when unforeseeable circumstances arise or where necessary for environmental protection. The deadline of the prolongation may for instance be set as a date, period of time or other certain and future event. The extended time limit should not include the time necessary to undertake administrative or judicial appeal procedures.
- (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) TEN-T infrastructure projects that concern 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 should be conducted in accordance with the Treaty and, where relevant, Directive 2014/25/EU⁶ or Directive 2014/24/EU⁷ of the European Parliament and of the Council. In order to ensure the efficient completion of the cross-border core network projects, public procurement carried out by a joint entity should be subject to the national law of one Member State. By way of derogation from the Union law on public procurement, 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, current procurement strategies should remain applicable to a joint entity set up before ... [date of entry into force of this Directive].
- (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 these projects 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.

⁶ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 094 28.3.2014, p. 243).

⁷ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

- (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 economy⁸, presented by the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 27 April 2017, provides guidance and brings more clarity on how to comply with Directive 2009/147/EC and Directive 92/43/EEC. Direct support related to public procurement should be made available for projects of common interests to ensure the best value for public money⁹.
- (14) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, 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 this Directive.

⁸ COM(2017) 198 final.

⁹ COM(2017) 573 final.

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 that are part of pre-identified sections of TEN-T core network as listed in the Annex¹⁰ with the exception of projects exclusively related to telematic applications, new technology and innovation as defined in articles 31 and 33 of Regulation 1315/2013.
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 including projects exclusively related to telematic applications, new technology and innovation referred to in paragraph 1.

¹⁰ The Annex will be added to this Directive and shall be the list of cross-border links and missing links in Section 1 "Core Network Corridors and indicative list of pre-identified cross-border links and missing links" of Part III of the Annex of the draft Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014, as set out in the partial Common Understanding, doc. 7207/1/19 REV 1, once adopted.

Article 2

Definitions

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

- (a) "authorising decision" means the decision or a set of decisions simultaneously or successively taken by a Member State authority or authorities, not including administrative appeal authorities, courts or tribunals, under national legal system and administrative law that determine whether or not a project promoter is entitled to implement the project on the geographical area concerned. The decision or a set of decisions may be of an administrative nature and shall be without prejudice to any decision taken in the context of an administrative appeal procedure;
- (b) "permit-granting procedure" means any procedure that has to be followed related to an individual project falling within the scope of this Directive in order to obtain the authorising decision as required by the authorities of a Member State, under Union or national law. It shall not include procedures related to urban or land use planning, for the award of public procurements, nor steps undertaken at strategic level, which do not refer to a specific project, such as strategic environmental assessment, public budgetary planning as well as national or regional transport plans.

- (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 an authorising decision;
- (c) "project promoter" means the applicant for authorisation of a project implementation or the public authority which initiates a project;
- (d) "designated authority" means the authority which is the main point of contact for the project promoter and aims to facilitate efficient and structured processing of permit-granting procedures in accordance with this Directive.
- (e) deleted.

CHAPTER II – PERMIT GRANTING

Article 3

Priority status

Member States shall endeavour to ensure that all authorities 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 objectives, requirements and time-limits of this Directive, ensure that projects covered by this Directive are handled under these procedures. This shall not prevent Member States from testing specific permit granting procedures for a limited number of projects that may or may not include projects falling under the scope of this Directive, in order to evaluate their potential extension to other projects.

This Article shall be without prejudice to any budgetary decisions.

Article 4

Provision of permit granting procedure

[Deleted]

Article 5

Designated Authority

1. deleted.
2. The Member State shall designate an authority at the appropriate administrative level to act as designated authority. Member States may, where relevant, designate different authorities as the designated authority depending on the project or category of projects, transport mode, or the geographical area provided that there is only one designated authority for a given authorising decision. Member States may empower the designated authority to issue the authorising decision.
3. deleted.
4. The designated authority shall:
 - (a) be the main point of contact for information for the project promoter in the procedure leading to the Authorising decision for a given project;
 - (b) provide, where foreseen by national legislation, the Detailed Application Outline referred to in Article 6a to the project promoter, including the indicative time-limits within the permit-granting procedures, in line with the time limit set out in accordance with Article 6;
 - (c) if requested, provide guidance to the project promoter in the submission of all relevant documents and information, including all the necessary permits, decisions and opinions which have to be provided and obtained for the authorising decision. Where the designated authority is empowered to issue the authorising decision, that authority shall verify that all the necessary permits, decisions and opinions for the authorising decision have been obtained. If Member States so foresee, the designated authority may also provide guidance to the project promoter what additional information and/or documents should be delivered in case a notification has been rejected.

This paragraph is without prejudice to the competence of any other authorities involved in the permit-granting procedure.

5. deleted.

Article 6

Duration of the permit-granting process

1. The Member States shall provide for a permit-granting procedure and 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.

2. The four-year period referred to in paragraph 1 shall be without prejudice to obligations arising from Union and international legal acts and shall not include periods necessary to undertake and to follow-up upon administrative and judicial appeal procedures and judicial remedies before a court or tribunal.
 - 2.a. The four-year period referred to in paragraph 1 shall be without prejudice to the adoption of a specific act of national legislation finalising the permit granting procedure. Where the permit granting procedure is finalised through a national legislative act, the preparatory work, on the basis of which the national legislative act is adopted, shall be concluded within the deadline referred to in paragraph 1. The preparatory work shall be considered to end when the specific act of national legislation is introduced to the national parliament.

3. The Member States shall adopt the necessary measures to ensure that, in duly justified cases, an appropriate extension to the four-year period referred to in this Article may be granted. The duration of the prolongation shall be determined on a case-by-case basis and shall be duly justified. This shall also apply to consecutive prolongations.
4. deleted.
5. deleted.
6. deleted.
7. deleted.

Article 6a

Organisation of the permit-granting procedure

1. The project promoter shall notify the project to the designated authority. The notification of the project by the project promoter shall serve as the start of the permit-granting procedure.
 - 1a. In order to assess the maturity of the project, 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. If the project is not mature enough, the notification shall be rejected and the decision shall be justified.
2. deleted.

3. Member States shall take the necessary measures to ensure that project promoters receive general information as guidelines for notification, where relevant according to the mode of transport, about the necessary permits, decisions and opinions that may be required for implementing a project.

That information shall, with regard to the different permits, decisions and opinions include the following:

- general information about the material scope and level of detail of information to be submitted by the project promoter,
- applicable time limits or, if there are no such time limits indicative time limits, as well as
- the authorities and stakeholders normally involved in consultations linked to the different permits, decisions and opinions.

That information shall be easily accessible to all relevant project promoters, in particular through information portals (electronic or physical).

4. In order to ensure a successful notification, the Member States may provide that the designated authority shall establish, upon request by the project promoter, a detailed application outline comprising the following information customised for the individual project:
 - (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) A 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.

5. The detailed application outline shall remain valid during the permit-granting procedure. Any amendment to the detailed application outline shall be duly justified.
6. When the project promoter has submitted the complete project application file, the authorising decision shall be adopted within the time-limit set out in Article 6.

Article 7

Coordination of cross-border permit-granting procedure

1. For projects that concern two or more Member States, Member States shall ensure that the designated authorities of the Member States concerned endeavour to coordinate their timetables and to agree on a joint schedule concerning the permit-granting procedure.
2. 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 designated authorities in the context of the permit-granting procedures for projects that concern two or more Member States.
3. Member States shall, if the time limit set out in Article 6 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

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 Council¹¹ or point (a) of Article 39(5) of Directive 2014/24/EU of the European Parliament and of the Council¹², 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 for procurement procedures conducted by a joint entity.

¹¹ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 094 28.3.2014, p. 243).

¹² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

CHAPTER IV - TECHNICAL ASSISTANCE

Article 9

Technical assistance

[Deleted]

CHAPTER V - FINAL PROVISIONS

Article 10

Transitional provisions

This Directive shall not apply to projects for which the permit-granting procedures have started before ... [24 months after the date of entry into force of this Directive].

Article 8 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 ... [24 months after the date of entry into force of this Directive].

Article 8 shall not apply to a joint entity set up before ... [date of entry into force of this Directive], provided that the procurement procedures of that entity continue to be governed by the legislation applicable to its procurements on 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. They shall immediately 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

The Annex will be added to this Directive and shall be the list of cross-border links and missing links in Section 1 "Core Network Corridors and indicative list of pre-identified cross-border links and missing links" of Part III of the Annex of draft Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014, as set out in the partial Common Understanding, doc. 7207/1/19 REV 1, once adopted.
