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Dossier interinstitutionnel:
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RAPPORT

Origine:	Secrétariat général du Conseil
Destinataire:	Comité des représentants permanents/Conseil
N° doc. préc.:	8687/1/19 REV 1
Objet:	Proposition de règlement du Parlement européen et du Conseil concernant des mesures de rationalisation en vue de progresser dans la réalisation du réseau transeuropéen de transport – Rapport sur l'état des travaux

I. CONTEXTE ET TENEUR DE LA PROPOSITION

1. Le 17 mai 2018, la Commission a présenté au Parlement européen et au Conseil, dans le cadre du troisième train de mesures "L'Europe en mouvement", la proposition visée en objet, dont l'objectif est de rendre la mobilité européenne plus sûre, plus propre, plus efficace et plus accessible.
2. La proposition a pour objectif principal de simplifier les règles d'octroi des autorisations en vue de faciliter l'achèvement du réseau transeuropéen de transport (RTE-T). Elle vise également à apporter une plus grande clarté concernant les procédures que les promoteurs de projet doivent appliquer, en particulier les procédures d'octroi des autorisations, de passation de marchés publics et autres.

3. La proposition vise à atteindre son principal objectif en:
- créant une autorité compétente unique (guichet unique), qui gérerait l'ensemble de la procédure et ferait office de point d'entrée unique pour les promoteurs de projets et les autres investisseurs;
 - établissant des procédures intégrées conduisant à une décision globale;
 - fixant des échéances pour une procédure en deux étapes étalée sur trois ans maximum.

II. TRAVAUX MENÉS PAR LES AUTRES INSTITUTIONS

4. Au Parlement européen, la commission des transports et du tourisme (TRAN) a été désignée comme la commission chargée de ce dossier et M. Dominique Riquet (ALDE, FR) a été désigné en tant que rapporteur. Le Parlement a voté sur le rapport et a adopté sa position en première lecture le 13 février 2019.
5. Le Comité économique et social européen a adopté un avis lors de sa session plénière du 17 octobre 2018.
6. Le Comité des régions a adopté un avis le 7 février 2019.

III. ÉTAT D'AVANCEMENT DES TRAVAUX AU SEIN DU CONSEIL

7. Le groupe "Transports - Questions intermodales et réseaux" a débuté ses travaux en juin 2018 par une présentation générale de la proposition et de son analyse d'impact. Le groupe a examiné la proposition lors de trois autres réunions tenues entre juillet et octobre 2018, à l'issue desquelles il a élaboré un rapport sur l'état des travaux¹, qui a été présenté au Conseil le 3 décembre 2018.
8. La présidence a poursuivi ses travaux et a consacré six réunions à un examen détaillé du dossier entre février et mai 2019, sur la base de textes de compromis qui ont évolué. Les textes de compromis visaient, d'une manière générale, à apporter plus de clarté et de souplesse concernant un certain nombre de dispositions, afin que les spécificités des procédures nationales d'octroi des autorisations, qui varient considérablement d'un État membre à l'autre, soient mieux prises en compte.

¹ Doc. 14226/18.

9. Lors de la réunion du groupe du 10 mai, à la suite de demandes formulées par toutes les délégations, la présidence a présenté un texte de compromis² qui modifie la nature juridique de la proposition en transformant le règlement en directive. Ce texte de compromis introduit une simplification et une souplesse considérables pour les États membres, en leur permettant d'utiliser la plupart des procédures nationales d'octroi des autorisations dont ils disposent. L'autorité compétente unique est définie comme le "principal correspondant" du promoteur du projet et jouera un rôle de facilitateur dans le cadre de la procédure d'octroi des autorisations, sans préjudice des compétences d'autres autorités associées à la procédure. Par ailleurs, le texte de compromis introduit un délai global de quatre ans pour l'achèvement de la procédure d'octroi des autorisations. Tous les États membres ont reconnu que ce texte de compromis constituait un pas important dans la bonne direction.
10. Néanmoins, un certain nombre de questions nécessiteront des travaux supplémentaires au niveau technique. Les **principales questions** peuvent être résumées comme suit:
- a) **Champ d'application (article 1^{er}):** le texte de compromis de la présidence fait référence aux projets sur les corridors du réseau central du RTE-T et prévoit la possibilité d'élargir le champ d'application à d'autres projets concernant le réseau central et le réseau global. Le libellé actuel, qui permet un champ d'application plus large, a semblé être soutenu par la plupart des délégations. Néanmoins, certaines autres délégations ont indiqué préférer que le champ d'application soit limité aux seuls projets de nature transfrontière, tandis que quelques-unes ont suggéré d'autres solutions.
 - b) **Autorité compétente unique (article 2, point d), et article 5):** dans le texte de compromis de la présidence, le rôle de l'autorité compétente unique est interprété comme étant celui du "principal correspondant" du promoteur du projet, qui agit en tant que "facilitateur" dans le cadre de la procédure d'octroi des autorisations. Certaines délégations ont demandé davantage de précisions, en particulier ce qui concerne le rôle, la responsabilité et les tâches de l'autorité compétente unique.

² Doc. 8687/19 + REV 1.

- c) **Durée de la procédure d'octroi des autorisations (article 6):** la proposition de la présidence prévoit un délai de quatre ans pour l'achèvement de la procédure d'octroi des autorisations. Plusieurs délégations ont souligné que la faisabilité du respect de ce délai dépendait directement de la question de savoir quelles autorisations devront être obtenues dans le délai de quatre ans, et lesquelles sont exclues du champ d'application de la directive. Dans ce contexte, certaines délégations ont résolument soutenu l'exclusion de certaines procédures d'octroi des autorisations du champ d'application (aménagement du territoire et analyses d'impact environnemental), faisant valoir qu'elles sont complexes et longues et fortement susceptibles d'occasionner des retards, ce qui rendrait le respect du délai proposé très difficile, voire impossible.
- d) **Organisation de la procédure d'octroi des autorisations (article 6 bis):** le texte de compromis de la présidence offre aux États membres la souplesse nécessaire pour mener la procédure d'octroi des autorisations conformément à leurs spécificités nationales, mais il maintient le principe d'une description détaillée des modalités de soumission devant être élaborée par l'autorité compétente unique. Certaines délégations ont émis des doutes quant à la valeur ajoutée d'une telle description, étant donné que la législation nationale prévoit des exigences claires pour les promoteurs à cet égard.

Par ailleurs, les États membres ont demandé des éclaircissements concernant le début de la procédure et les documents à fournir par le promoteur au moment de la notification du projet.

e) **Autres questions:**

- **Statut prioritaire (article 3):** certaines délégations ont fait part de leurs préoccupations concernant la faisabilité de la mise en œuvre de cette disposition.
- **Prévision d'une procédure d'octroi des autorisations (article 4):** en ce qui concerne l'obligation qu'ont les autorités des États membres d'effectuer une évaluation des incidences sur l'environnement, qui découle simultanément de plusieurs actes législatifs pertinents de l'Union, quelques délégations ont souligné que les autorités des États membres devraient également avoir la possibilité d'appliquer des procédures coordonnées, en plus des procédures conjointes.

- **Coordinateurs européens (article 7):** en ce qui concerne le rôle joué par les coordinateurs européens dans le cadre de la procédure d'octroi des autorisations pour les projets concernant deux États membres ou plus, quelques délégations ont souligné que cette disposition devait être conforme à l'article 45 du règlement sur le RTE-T³ et elles ont insisté sur le fait qu'il convenait d'éviter de confier des tâches et des responsabilités nouvelles aux coordinateurs européens.
- **Transposition (article 10 bis):** le texte de compromis de la présidence prévoit un délai de transposition de vingt-quatre mois. La majorité des délégations a semblé favorable à ce délai, même si quelques-unes ont indiqué préférer un délai plus long, de trente-six mois.

IV. CONCLUSIONS

11. À ce stade, deux délégations émettent une réserve d'examen parlementaire. La majorité des délégations maintient une réserve d'examen sur le dernier texte de compromis de la présidence, qui figure à l'annexe du présent rapport.
12. Il ressort des discussions menées au niveau technique que les questions exposées ci-dessus devront être examinées au cours de la prochaine présidence afin de continuer à progresser et d'aboutir à un accord sur ce dossier. Néanmoins, les efforts que la présidence a déployés pour faire avancer le dossier ont été appréciés par les délégations et la présidence estime que le texte de compromis constitue une base solide pour les travaux futurs sur la proposition.
13. Compte tenu de ce qui précède, le Comité des représentants permanents et le Conseil sont invités à prendre note des progrès accomplis dans le cadre de l'examen de la proposition de règlement.

³ Règlement (UE) n° 1315/2013 du Parlement européen et du Conseil du 11 décembre 2013 sur les orientations de l'Union pour le développement du réseau transeuropéen de transport et abrogeant la décision n° 661/2010/UE (JO L 348 du 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 [...] . 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. [...] Priority treatment [...] **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 [...] **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 [...] , 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 [...] **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 [...] **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 [...] **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) [...] 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 [...] **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 [...] by a Member State authority or authorities, not including courts or tribunals [...];

- (b) "permit granting procedures" means any procedure [...] 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 [...] 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) [...]

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 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 [...] **legislation**, Member States shall ensure that joint procedures within the meaning of Article 2(3) of Directive 2011/92/EU are provided for.

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 [...] per project.
 3. [...]
 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 [...] **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. [...] **The** single competent authority shall [...] **verify** that all the necessary permits, decisions and opinions **for the authorising decision** have been obtained [...].

Article 6

Duration of the permit granting process

- 1 [...] . 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.
- 2 [...] . The period of 4 years shall be without prejudice to administrative appeal procedures and judicial remedies before a court and tribunal.
- 3 [...] . The Member States shall adopt the necessary measures to ensure that in **duly justified** cases **or** [...] 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.

[...]

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** [...] . 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. [...] 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

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 **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 [OJ: 24 months following the entry into force of this Directive force].

[...]

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,

<i>For the European Parliament</i>	<i>For the Council</i>
<i>The President</i>	<i>The President</i>
