

Bryssel den 21 maj 2019
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9189/19

**Interinstitutionellt ärende:
2018/0138 (COD)**

**TRANS 326
CODEC 1057**

RAPPORT

från:	Rådets generalsekretariat
till:	Coreper/rådet
Föreg. dok. nr:	8687/1/19 REV 1
Ärende:	Förslag till Europaparlamentets och rådets förordning om rationaliseringsåtgärder för att påskynda förverkligandet av det transeuropeiska transportnätet – Lägerapport

I. FÖRSLAGETS BAKGRUND OCH INNEHÅLL

1. Den 17 maj 2018 lade kommissionen fram ovannämnda förslag för Europaparlamentet och rådet som en del i det tredje paketet inom ”Europa på väg” som har utformats för att göra mobiliteten i Europa säkrare, renare, effektivare och mer tillgänglig.
2. Förslagets huvudsyfte är att förenkla reglerna för beviljande av tillstånd för att underlätta fullbordandet av det transeuropeiska transportnätet (TEN-T). Det är också ämnat att skapa större klarhet i de förfaranden som projektansvariga måste följa, särskilt när det gäller tillståndsgivning, offentlig upphandling och andra förfaranden.

3. Förslaget syftar till att nå sitt främsta mål genom att
- inrätta en enda behörig myndighet (en enda kontaktpunkt) som tar det fulla ansvaret för den övergripande processen och fungerar som enda kontaktpunkt för projektansvariga och andra investerare,
 - inrätta integrerade förfaranden som leder fram till ett övergripande beslut,
 - fastställa tidsfrister för en tvåstegsprocess med en maximal tidsram på tre år.

II. ARBETET I ÖVRIGA INSTITUTIONER

4. Vid Europaparlamentet utsågs utskottet för transport och turism som ansvarigt utskott i ärendet och Dominique Riquet (ALDE, FR) som föredragande. Europaparlamentet röstade om sitt betänkande och antog sin ståndpunkt vid första behandlingen den 13 februari 2019.
5. Europeiska ekonomiska och sociala kommittén avgav ett yttrande vid plenarsammanträdet den 17 oktober 2018.
6. Regionkommittén avgav ett yttrande den 7 februari 2019.

III. LÄGETSRAPPORT OM ARBETET I RÅDET

7. Arbetsgruppen för intermodala transporter och transportnät påbörjade sitt arbete i juni 2018 med en allmän presentation av förslaget och dess konsekvensbedömning. Förslaget granskades vid ytterligare tre möten i arbetsgruppen mellan juli och oktober 2018, vilket ledde till en lägesrapport¹ som lades fram för rådet den 3 december 2018.
8. Ordförandeskapet fortsatte med sitt arbete och ägnade sex möten åt att noggrant granska ärendet mellan februari och maj 2019 baserat på kompromisstexter i förändring. Syftet med kompromisstexterna var i allmänhet att skapa större klarhet och flexibilitet vad gäller ett flertal bestämmelser för att säkerställa att de nationella tillståndsförfarandenas särdrag, som varierar kraftigt mellan medlemsstater, beaktas bättre.

¹ 14226/18.

9. På uppmaning av samtliga delegationer lade ordförandeskapet vid arbetsgruppens möte den 10 maj fram ett kompromissförslag² som ändrar förslagets rättsliga karaktär från en förordning till ett direktiv. I och med kompromissförslaget introduceras avsevärd förenkling och flexibilitet för medlemsstaterna att använda större delen av deras nuvarande nationella tillståndsförfaranden. Den enda behöriga myndigheten definieras som den huvudsakliga kontaktpunkten för den projektansvarige och myndigheten kommer att ha en underlättande roll i tillståndsförfarandet utan att detta påverkar andra myndigheters befogenheter i förfarandet. Vidare fastställdes i kompromissförslaget en generell tidsfrist på fyra år för fullbordandet av tillståndsförfarandet. Denna kompromiss erkändes av alla medlemsstater som ett stort steg i rätt riktning.
10. Det finns dock ett flertal frågor som kommer att kräva ytterligare arbete på teknisk nivå. **Nyckelfrågorna** kan sammanfattas på följande vis:
- a) **Tillämpningsområde (artikel 1):** Ordförandeskapets kompromissförslag avser projekt för det transeuropeiska transportnätets stomnätsskorridorer och fastställer möjligheten att utvidga tillämpningsområdet till andra projekt för stomnätet och det övergripande nätet. Att den nuvarande formuleringen tillåter en bredare tillämpning av tillämpningsområdet verkade stödjas av de flesta delegationer. Andra föredrog dock att begränsa tillämpningsområdet endast till projekt av gränsöverskridande natur, medan ett fåtal föreslog andra lösningar.
 - b) **En enda behörig myndighet (artikel 2 d och artikel 5):** I ordförandeskapets kompromissförslag anges den enda behöriga myndigheten som den huvudsakliga kontaktpunkten för den projektansvarige, och den verkar som mellanhand i tillståndsförfarandet. Somliga delegationer bad om vidare klargörande särskilt vad gäller den enda behöriga myndighetens roll, ansvar och uppgifter.

² 8687/19 + REV 1.

- c) **Tillståndsförfarandets varaktighet (artikel 6):** Ordförandeskapets förslag fastställer en period på fyra år för fullbordandet av tillståndsförfarandet. Flera delegationer betonade att möjligheten att hålla tidsfristen är direkt beroende av frågan om vilka tillstånd som ska anskaffas inom perioden på fyra år och vilka som är utanför direktivets tillämpningsområde. Mot denna bakgrund stödde somliga starkt att vissa tillståndsförfaranden skulle undantas från tillämpningsområdet, dvs. fysisk planering och miljökonsekvensbedömningar, med argumentet att dessa komplexa och långa processer sannolikt kommer att orsaka förseningar, vilket gör det svårt eller rent av omöjligt att klara den föreslagna tidsfristen.
- d) **Organisering av tillståndsförfarandet (artikel 6a):** Ordförandeskapets kompromissförslag ger medlemsstaterna tillräcklig flexibilitet att utföra tillståndsförfarandet i enlighet med sina nationella särdrag men bibehåller principen om en detaljerad beskrivning av ansökan, som ska förberedas av den enda behöriga myndigheten. Somliga delegationer var skeptiska vad gäller mervärdet av den detaljerade beskrivningen av ansökan då det i nationell lagstiftning fastställs tydliga krav på de projektansvariga i detta avseende.

Vidare efterfrågade medlemsstaterna ett klargörande om inledandet av förfarandet och om de dokument som den projektansvarige ska tillhandahålla vid underrättelsen om projektet.

- e) **Övriga frågor:**
- **Prioriterad status (artikel 3):** Somliga delegationer uttryckte betänkligheter över möjligheten att genomföra denna bestämmelse.
 - **Bestämmelser om tillståndsförfarandet (artikel 4):** När det gäller den skyldighet som medlemsstaternas myndigheter har att genomföra bedömningar av miljöpåverkan och som uppstår parallellt genom relevant unionslagstiftning, poängterade ett fåtal delegationer att medlemsstaternas myndigheter också bör ha möjligheten att tillämpa samordnade förfaranden utöver gemensamma förfaranden.

- **Europeiska samordnare (artikel 7):** Vad gäller de europeiska samordnarnas roll i tillståndsförfarandena för projekt som involverar två eller fler medlemsstater underströk ett fåtal delegationer att denna bestämmelse behöver ligga i linje med artikel 45 i TEN-T-förordningen³ och de insisterade på att undvika att nya uppgifter och ansvarsområden fördelas till de europeiska samordnarna.
- **Införlivande (artikel 10a):** I ordförandeskapets kompromissförslag fastställs en införlivandeperiod på 24 månader. Denna period verkade stödjas av majoriteten av delegationerna även om ett fåtal skulle ha föredragit en längre period på 36 månader.

IV. SLUTSATSER

11. I detta skede vidhåller två delegationer en parlamentsreservation. En granskningsreservation bibehålls av en majoritet av delegationerna mot ordförandeskapets senaste kompromissförslag som återges i bilagan till denna rapport.
12. Diskussionerna på teknisk nivå har visat att de ovannämnda problemen måste behandlas under det kommande ordförandeskapet för att ytterligare framsteg och en överenskommelse ska kunna nås i ärendet. Trots detta har ordförandeskapets arbete med att driva detta ärende framåt uppskattats av delegationerna, och ordförandeskapet anser att kompromissen utgör en stadig grund för framtida arbete med förslaget.
13. Mot bakgrund av det ovan anförda uppmanas Coreper och rådet att notera de framsteg som har gjorts i behandlingen av förslaget.

³ Europaparlamentets och rådets förordning (EU) nr 1315/2013 av den 11 december 2013 om unionens riktlinjer för utbyggnad av det transeuropeiska transportnätet och om upphävande av beslut nr 661/2010/EU (EUT L 348, 20.12.2013, s. 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>
