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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
N° prev. doc.:	ST 12165/1/22 REV 1
Subject:	Proposal for a Regulation of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network, amending Regulation (EU) 2021/1153 and Regulation (EU) No 913/2010 and repealing Regulation (EU) 1315/2013 - New Presidency compromise on Article 47

Delegations will find attached a compromise on Article 47 of the TEN-T proposal with a view to its examination at the Working Party on Transport - Intermodal Questions and Networks on 25 October 2022.

Risks to security or public order

1. **Member States shall assess the potential risks to security or public order arising from participations of or contributions of any kind by a natural person of a third country or an undertaking of a third country in a project of common interest and ensure that the infrastructure of the trans-European transport network is protected against such risks.**
2. **Member States shall take the following elements into consideration when assessing such risks:**
 - (a) **the ownership structure of the undertaking of a third country concerned and where applicable of the undertaking in which the participation or contribution is planned, including the ultimate beneficial owner and participation in the capital;**
 - (b) **the approximate value of the participation of or contribution by a natural person of a third country or an undertaking of a third country in the project of common interest;**
 - (c) **the products, services and business operations of the natural person of a third country or the undertaking of a third country concerned, and where applicable of the undertaking in which the participation or contribution is planned, that affect the trans-European network;**
 - (d) **the Member States in which the natural person of a third country or the undertaking of a third country concerned and where applicable the undertaking in which the participation or contribution is planned conduct relevant business operations affecting the trans-European transport network;**
 - (e) **the funding of the contribution or participation and its source;**
3. **In determining whether the participation or contribution of a natural person of a third country or an undertaking of a third country is likely to affect infrastructure**

on grounds of security or public order, the Member State may also consider its potential effects on, inter alia on:

- (a) supply of inputs essential for the building, operation and maintenance of the infrastructure;**
- (b) access to sensitive information, including personal data, or the ability to control such information in conjunction with the building, operation and maintenance of the infrastructure.**

In determining whether the participation or contribution of a natural person of a third country or an undertaking of a third country is likely to affect security or public order, the Member State may also take into account, in particular:

- (a) whether the undertaking of the third country concerned is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding;**
- (b) whether the natural person of a third country or the undertaking of a third country concerned have already been involved in activities affecting security or public order in a Member State; or**
- (c) whether there is a serious risk that the natural person of a third country or the undertaking of a third country concerned engage in illegal or criminal activities.**

- 4. Whenever the Member State considers that the participation of or contribution of any kind by a natural person of a third country or an undertaking of a third country is likely to affect infrastructure on the trans-European transport network on grounds of security or public order, the Member State shall adopt appropriate measures to mitigate such risk and inform the European Commission.**
- 5. Paragraphs 1 to 4 shall not apply to foreign direct investments notified to the Commission and other Member States pursuant to Article 6(1) of Regulation (EU) 2019/452.]**