

Note by the Presidency accompanying document ST 15152/3/19 REV 3

The purpose of this document is to better explain the compromises of the Presidency in case no meeting of the Working Party is possible due to COVID-19 restrictions. The Presidency wants to give more clarity and mirror the explanations usually done by the chair of the Working Party. The proposed compromises stay as close as possible to the General approach but, nevertheless, make an important leeway for bringing positions of the co-legislators closer on the most crucial elements of the negotiations, namely the role of the authority and the organization of the permit-granting procedure.

Delegations are invited to submit written comments on the proposed compromises no later than 3 April 2020. Depending on the evolution of the situation linked to COVID-19, the written comments received on the compromise proposals, and bilateral consultations with the Member States, a possible second version of compromises will be prepared and uploaded to the Delegates Portal at a later stage.

Finally, the Presidency wishes to thank the Member States for their flexible approach in times when conventional working methods are disrupted. Also, the Presidency wants to reassure the Member States that this file remains the priority of the HR PRES and that the HR PRES will strive to close a deal with the European Parliament.

Please see below the list of compromises and explanations.

Article 5.2.

Compromise in line 77:

2a. 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.

In such a case, Member States shall ensure that there is only one designated authority per project and per permit-granting procedure.

The compromise aims to clarify that, when Member State decides to designate different authorities to act as the designated authority (depending on the project or category of projects, transport mode, or the geographical area), it will ensure that there is only one designated authority per project and per permit-granting procedure to obtain the authorising decision. This provision was very important to the European Parliament, as it is very close to the notion of the “one-stop-shop” operationality and provides for clarity of the permit-granting process to the project promoter

Compromise in line 79:

2ac. The designated authority shall transmit the authorising decision to the project promoter, in line with Article 6a paragraph 6a.

The compromise clearly defines that it is the task of the designated authority to transmit the authorising decision to the project promoter, regardless of it being empowered to take such a decision. By defining the role of the designated authority in this respect, there is a certainty that the project promoter will receive the authorising decision from the designated authority. Consequently, the designated authority completes the process from the beginning (by receiving the notification of the project by the project promoter) to the end (by transmitting the authorising decision to the project promoter). This also rests the promoter assured that the process will begin and end in the designated authority. This provision was very important to the European Parliament, as it is once again very close to the notion of the “one-stop-shop” operationality and provides for clarity of the permit-granting process to the project promoter.

Compromise in line 80:

2ad. Member States may empower the designated authority to establish indicative time limits for different intermediary steps of the permit-granting procedure in accordance with Article 6(1), without prejudice to the 4-year time limit set in accordance with that provision.

The compromise aims to clarify the provision in Article 6(1) of the General approach, namely that 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. It is a „may clause“, as the Presidency is aware of the delicate nature of this provision for the Member States. For the European Parliament, it was very important to work on the wording to give more clarity, and this compromise goes in that direction, by specifically mentioning the indicative time limits for different intermediary procedural steps of the permit-granting procedure.

Article 5.4.

Compromise in line 93:

(a) be the main point of contact for information for the project promoter and for other relevant authorities involved in the procedure leading to the authorising decision for a given project

The compromise introduces a new element to the proposal, insofar as the designated authority will be the main point of contact not only for the project promoter but also for other authorities involved in the permit-granting procedure. This is consistent with the notion of a coordinating role of the designated authority.

Compromise in line 95:

(ba) oversee that the timeframe of the permit granting procedure is observed, in particular record any extension of the time-limit referred to in Article 6(3);

The compromise aims to strengthen the role of the authority but only in terms of coordination, harmonization and overseeing the permit-granting procedure timewise. There is also a specific reference to the prolongations, as it is very important to the European Parliament to keep them limited and observed.

Compromise in line 96:

(bc) notify the authorising decision to the project promoter;

As already mentioned in line 79, the intention is to give more clarity and certainty to the project promoter. By adding the transmission of the authorising decision as one of the tasks of the designated authority it is clarified that this is the final act of the designated authority in the permit-granting procedure.

Article 6.3.

Compromise in line 109:

(...) When an extension has been granted in accordance with the first sentence, the project promoter shall be informed of the reasons thereof. Member States may grant any subsequent extension only in exceptional circumstances.

Once again, the compromise aims to give certainty to the project promoter. With this wording, it is ensured that the promoter will be informed of the granted prolongation, whether the prolongation is requested by the promoter or the authorities involved in the permit-granting procedure.

Article 6a

Compromise in line 136:

The project promoter shall notify the project to the designated authority **or, where appropriate, the joint authority.** The notification of the project by the project promoter shall serve as the start of the permit-granting procedure.

The set-up of a joint authority is a „may clause“ and was included in the mandate for the 2nd trilogue, approved in the CRP on 13 March. This compromise simply takes that into account and caters for the possibility that the project promoter might need to notify the project to the joint authority (in a specific case of a project which involves the joint authority).

Compromise in line 142:

In order to ensure a successful notification, the Member States **shall take the necessary measures to** ~~may~~ provide that the designated authority ~~establishes~~, upon request by the project promoter, a detailed application outline comprising the following information customised for the individual project.

During the meetings and discussions with the European Parliament and in-depth explanations from the side of both co-legislators on these provisions, this seemed to be one of the most crucial elements for the European Parliament. The proposed compromise changes the General approach text and is much stronger, but the aim is that the request for detailed application outline by the promoter should come only if the promoter is not acquainted with the permit-granting procedure well enough after receiving the general information as guidelines for notification (Article 6a3 of the GA). And if the promoter requests it, the aim of the detailed application outline, as already specified in the General approach, is to further clarify the procedure. In this respect, the designated authority truly facilitates the process of permit-granting with the aim of speeding up the time needed to finish the procedure. The provision „upon request of the project promoter“ is kept.

Compromise in line 148:

5a. The designated authority may provide information to the project promoter supplementing the elements referred to in paragraph 4 upon request.

The compromise also takes on a more „project promoter friendly“ approach, by taking into account that a situation in which the promoter would still need additional information (apart from the elements outlined in paragraph 4) may occur. In that case, the designated authority may provide the promoter with such information (if it deems necessary).

Compromise in line 149:

5b. The project promoter may contact individual authorities for specific permits, decisions or opinions which are part of the authorising decision.

The compromise more or less states the obvious however it reiterates that the designated authority performs a coordinating role and that specific permits, decisions, and opinions may require direct contact between the project promoter and relevant authorities.

Compromise in line 151:

6a. The designated authority compiles the required permits, decisions and opinions and transmits the authorising decision to the project promoter.

The aim of the compromise is to mention that, apart from the new task of transmitting the authorising decision to the project promoter, the designated authority compiles the required permits, decisions, and opinions, and this is once again consistent with the coordinating and facilitating role of the designated authority.

Proposed compromise on New Article 10a - Reporting - Lines 175 - 177

1. The Commission shall report to the European Parliament and to the Council on the implementation and the results of this Directive by [five years after the date of transposition of this Directive].

2. The report shall be based on information to be provided by Member States every two years and for the first time by [two years after the date of transposition of this Directive] concerning the number of permit-granting procedures under the scope of this Directive, the average length of the permit-granting procedure, the number of permit-granting procedures exceeding the time limit and the reasons thereof and the establishment of any joint authority during the reporting period.

The compromise aims to come closer to the European Parliament and to take into account Amendment 34 of the European Parliament. The compromise also uses standard text on reporting obligations based on Member States information to be provided every two years. We believe that this will not cause too much of additional administrative burden for the Member States but could be very useful in determining the efficiency of this directive. The elements to be reported from the side of the Member States are really the basic ones.



Council of the European Union
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NOTE

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
N° prev. doc.:	ST 15152/3/19 REV 3
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

Delegations will find attached an explanatory document prepared by the Presidency in relation to the compromise proposals included in document ST 15152/3/19 REV 3.