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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
N° prev. doc.:	6454/19
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 - Comments by the Netherlands

Delegations will find attached written comments by the Netherlands on the above-mentioned proposal.

Dutch Position Paper on the proposal for a regulation on streamlining measures for advancing the realisation of the TEN-T network

In this position paper the Netherlands would like to present its views on the Streamlining TEN-T Regulation and contribute to the ongoing discussion. We endorse the importance of simplifying and streamlining the administrative and decision-making procedures for cross-border cooperation on the TEN-T network, as outlined in the Commission proposal. However, the proposal should be proportionate and should help, not hinder, member states in applying new European requirements in their own national legislation on planning procedures.

The new Dutch Environment and Planning Act (*Omgevingswet*)

The Netherlands has already made arrangements to streamline decision-making on infrastructure projects. The Elverding Committee concluded in 2008 that the main causes of delay are government bureaucracy and inconsistency, shortcomings in official preparations and inadequate budgets. A particular concern is that up to 100 permits can be required for a road in the implementation phase. The current Transport Infrastructure (Planning Procedures) Act (*Tracéwet*) allows coordinated permitting by the national government and gives the central authority the power to overrule municipal and provincial authorities if necessary.

The new Dutch Environment and Planning Act is expected to come into force in 2021, after 10 years of meticulous preparation and dialogue. The Act combines and simplifies the rules for spatial projects and will replace or integrate 26 laws, including the Water Act, the Crisis and Recovery Act and the Spatial Planning Act. The Act also introduces a new decision-making instrument for large, complex projects involving multiple sectors: the project decision.

- The project decision can be used for all manner of projects, regardless of their complexity and size, by various competent authorities, such as the water management authority, the provincial authority or the minister concerned, in consultation with the interior minister.
- The project decision alters a municipality's environment and planning strategy (*omgevingsplan*), which contains all the spatial and environmental rules for an area.
- The competent authority for the project decision can include all the implementation permits required in a single decision. The reason for not making a fully integrated decision mandatory is to ensure maximum flexibility. If necessary, permission may be granted in stages, in consultation with the developer.
- The project decision procedure has no fixed time limits or timetable.

Streamlining TEN-T

The proposed regulation imposes a mandatory framework for permit decision-making, mandatory application to all core network projects, mandatory integration of all decisions, and fixed time limits and timetables for projects of different types. The Netherlands prefers legislation that allows flexibility, customisation and the option of centralised decision-making about permits if necessary.

- A regulation has direct effect in all member states, while a directive requires member states to achieve targets and allows them to decide how to implement its requirements in their national legal systems. In most member states the authorisation procedures are complex and time-consuming, and the Commission has identified this as a problem. A directive seems a more appropriate and proportionate instrument for ensuring that member states remove these barriers. Unlike a directive, a regulation must be very detailed so that it is directly applicable in national law. The Commission proposal is currently so unclear that it is not directly applicable. In the Netherlands we have worked consistently to streamline our procedures and adapt our legislation. A directive could be implemented more easily. This might also be the case for other member states.
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- The proposed procedure would apply to all TEN-T core network projects. Because of this broad scope, the procedure would also apply to relatively small and uncomplicated projects and to projects that require few permits. It would apply to telematics projects, for instance. The Netherlands sees several ways of limiting the scope. In its opinion of 6 February 2019 (COTER-VI/044), the Committee of the Regions proposes giving the member states full authority in deciding which projects the regulation should apply to. The Netherlands supports this option. Another possibility would be to limit the scope to cross-border projects.
- The Commission proposal requires member states to grant all the necessary permits in one procedure, and does not allow them to divide the permits into groups, such as strategic and implementation permits. In the Netherlands we work a lot with market expertise (DBFM contracts), and implementation permits are shifted to the phase in which the market takes the lead. The Commission proposal hampers the use of the market's knowledge and expertise, and forces decisions to be made at too early a stage. We prefer a procedure in which the competent authority can choose which permits are integrated and granted at one time, and which permits are applied in a later phase.
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- We have positive experiences with decision coordination via a one-stop shop. But the proposed one in the form of a single competent authority that adopts a comprehensive decision does not accord with the principle of subsidiarity. Furthermore, the Commission proposal lacks any balanced instruments for using the expertise of decentralised government bodies. Although the proposal allows advice to be given to other government authorities, it does not allow partial consent. This could reduce governmental and public support. Our conclusion is that the one-stop shop should be a competent authority with a coordinating role, with the power to overrule if necessary.
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- In the Netherlands' experience, a legal provision requiring fixed time limits and timetables does not help to accelerate procedures for all types of projects in every phase of the process. In most TEN-T core network projects, the project promoter is the same as the competent authority. It makes no sense to lay down the internal procedures of the project promoter/competent authority in a regulation. In these cases, monitoring and reporting to parliament on the timely implementation of projects might be a better solution.