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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 - Further comments by Poland

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

PL proposals related to Smart TEN-T (ST 6454/19).

Recital 2a

This Directive should cover project related procedures, **excluding any environmental permit, leading to enable the project promoter to commence the construction works** including for instance the environmental impact assessment, other environmental assessments related to the project, spatial planning and land use, as well as other procedures. 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.

Justification for PL-proposal on Recital 2a:

It is not clear where the scope of the directive ends. From the discussion so far it appears that this is the moment the investor commences construction. Nevertheless the use permit for may fit for example into proposed entry. PL representative will emphasize that the proposed provision is too general and requires clarification in order to unambiguously define the ending date of the binding Directive.

Recital 2a of the proposed directive provides that its regulation covers the environmental impact assessment procedure. According to the previously presented position, in PL opinion, the environmental decision should be excluded from the scope of the directive. Report on the impact on the environment contains a description of at least three analysed variants of the project implementation. Subsequent decisions and permits are obtained for one variant indicated in the environmental decision. The introduction of the solution proposed by the PRES would require significant changes in the decision-making process as well as established share of competences between the authorities. It would provoke effects opposite of the intended. PL, therefore, sustains the request to exclude an environmental decision from the proposed regulation.

Recital 6

The ~~establishment~~ **designation** of a single competent authority at national level acting as the main sole 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 investors and the single competent authority.

Justification for PL- proposal on Recital 6:

In the PL opinion the word "establishment" in the first sentence (*... of a single competent authority at national level ...*) should be replaced with the word "**designation**" which clearly indicates that there is no need to establish a new institution (see: Article 5).

Art. 2 (a) "authorising decision"

"authorising decision" means the final act which can be based on a set of decisions simultaneously or successively taken by a Member State authority or authorities, not including courts or tribunals, adopted, according to national legal or administrative systems, **leading to enable the project promoter to commence the construction works**; the authorising decision determines whether or not a project promoter is entitled to proceed with the project without prejudice to any decision taken in the context of an administrative appeal procedure;

Justification for PL- proposal on Art. 2 (a) "authorising decision":

In the definition of "*authorizing consolidated decision*" the procedure for issuing it is defined in general terms (it may be based on a decision or a set of decisions taken simultaneously or successively by the authority or authorities of a Member State), but the outcome of the decision is ultimately unclear, what purpose is it supposed to serve? Does the permitting decision execute, among other things, the expropriation of real estate for the implementation of road investment, divisions of the real estate? Therefore is the consequence of its issuing a transfer of ownership to the investor which in turn means the right to enter the land and start construction works? Further substantive provisions of the directive also do not determine the effects of the issuing of the "*authorizing consolidated decision*". The provision should clearly indicate the effect of the decision, i.e., for example, indicate that the final stage is, for example, the commencement of construction. At the moment the entry is not clear.

Art. 2 (b) "permit granting procedures"

"permit granting procedures" means ~~any~~ procedures that has to be followed or step that has to be taken as required by the authorities of a Member State, under Union or national law, **leading to enable the project promoter to commence the construction works**, not including procedures for the award of public procurements;

Justification for PL- proposal on Art. 2 (b) "permit granting procedures"

"Permit granting procedures" – it would be necessary to specify which stage is covered by the procedure, i.e. do the procedures concern the stage to the moment of start the construction of the road by the investor, or maybe to the moment of completion of building a road or until the road is put into use? At present this does not in any way result from the proposed provisions.

Art. 2 (e) "Cross-border project"

"Cross-border project" means a project covering a cross-border section as defined in Article 3 point (m) of Regulation (EU) No 1315/2013 which is **managed and** implemented by ~~a joint entity established by~~ the concerned Member States.

Justification for PL – proposal on Art. 2 (e) "cross border project":

The proposed definition of the cross-border section raises the doubts of the PL party in connection with the use of the following wording: *cross-border section as defined in Article 3 point (m) of Regulation (EU) No 1315/2013 which is managed and implemented by a joint entity established by the Member States concerned*. Definition included in Regulation 1315/2013 does not indicate the need to establish a joint infrastructure manager.

Art. 3 Priority status

Where specific permit granting procedures for priority projects exist under national law, Member States shall, without prejudice to the ~~requirements~~ **objectives** and time-limits of this Directive, ensure that projects covered by this Directive are treated under these procedures.

Justification for PL – proposal on Art. 3 Priority status:

In PL granting procedures for priority projects are represented by the so-called special laws. At the current situation the special laws grant faster procedures than those included in the proposed Directive. In order to guarantee a possibility of the application of the special laws and fast track procedures to the projects covered by this Directive a replacement of the requirements by objectives is needed.

Art. 6a par. 2.

When a project promoter notifies the project to the single competent authority, the single competent authority ~~shall~~ **may** 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.

Art. 6a additional paragraphs

Member States may not include the Detailed Application Outline phase when the details of the procedures and steps to be followed are established in their national legislation. If the Detailed Application Outline phase is not included in the permitting process, Member States shall ensure that the information about the legislation regulating the permit granting process is available to the public.

Member States may define the exact scope of the authorizing decision and documents to be provided by the project promoter when submitting the project application file.

Member State may require that the environmental and water permits are presented by the project promoter when submitting the project application file.

Justification for PL proposal- on Art. 6a par. 2

It is necessary to make the provisions related to the Detailed Application Outline requirement more flexible. Some MS have already effective systems defined in national law regarding the obligation to provide information. The obligation to introduce a detailed application outline should only apply to those Member States which do not have clearly defined procedures and their steps in national law.

Art. 6a par. 3

1. 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 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 in accordance with Union and national law; **including those to be provided by the project promoter at the application phase.**

Justification for PL proposal- on Art. 6a par. 3

Proposal allow the Single Competent Authority to indicate the permits that the project promoter should provide by submitting the *application file*.