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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
N° prev. doc.:	8687/19
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 Estonia

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

Comments by the Estonian delegation

Streamlining measures for advancing the realisation of the trans-European transport network

Reference documents:

COM(2018) 277 final – original proposal
8687/19 – latest Council Working Document

Main positions:

1. The interpretation of the Directive has to be clarified (different interpretations below are referred to in Point A and Point B)
2. Permit granting procedures within the meaning of the Directive should not include project-based Strategic Environmental Assessments (SEA) and project-based spatial planning.
3. If project-based SEA and spatial planning are not excluded, the maximum period for permit granting procedure should be longer than 4 years.

As an underlying principle, the Estonian delegation highlights the importance of clarity when it comes to the interpretation of the proposal.

Point A

If according to Article 6a(1), a Member State can ask the project promotor to submit the documentation relating to project-based spatial plans, project-based Strategic Environmental Assessment, Environmental Impact Assessment and engineering designs (incl. preliminary design and detailed technical design) with the project notification (i.e. these processes are not included in the 4-year permit granting period foreseen in Article 6), then this needs to be stated clearly in Directive to avoid any future complications when transposing the Directive.

The following change would be required:

Article 6a	
<i>Organisation of the permit granting procedure</i>	
1.	Member States may define <u>the required documentation and</u> the level of detail of information to be provided by the project promoter when notifying a project.

Changes in other provisions of the Directive are possibly required to reflect this approach.

Point B

However, if the Directive is interpreted in way where all project-based processes (excluding preliminary studies and feasibility studies, but including project-based spatial plans, SEA, EIA, preliminary design and detailed technical design documentation, different construction permits etc.) have to be completed within a 4-year permit granting period, Estonia believes that this

may hamper the implementation of future large-scale cross-border linear spatial objects (i.e. roads, railways, tunnels). A major point of concern here is that rushing these processes may result in the project not being perceived as legitimate by local administrations, inhabitants and civil society in general.¹

In this case, processes and permits relating to project-based spatial plans and Strategic Environmental Assessment must be clearly excluded from the 4-year permit granting period with the following change:

Article 1

Definitions

- (b) "permit granting procedures" means any procedure, **excluding those relating to project-based spatial planning and project-based Strategic Environmental Assessment**, 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, before the project promoter can implement the project, not including procedures for the award of public procurements;

The current Presidency text² excludes Strategic Environmental Assessments (SEA) from the 4-year permit granting period, but includes project-based spatial plans. However, procedures related to SEA and project-based spatial plans are very much integrated to one another and in some Member States they are always conducted simultaneously within the same, interlinked process, in accordance with the provisions of the SEA Directive³. As a result, an approach that excludes SEA, but includes spatial planning is not practically feasible.

In addition, permit granting procedure of a transport infrastructure project is a sequential process where one step affects another i.e. it is not always possible to start one step until the previous one is either completed or has progressed significantly (e.g. a precondition for a construction permit is a detailed technical design; a precondition for a detailed technical design is a relevant preliminary design and a spatial plan). Therefore, an essential question is the following – at what point in this sequential process should the Directive start to take effect? Our position is that the permit granting procedure should not include processes, which are usually conducted in an initial phase of a project i.e. project-based Strategic Environmental Assessment and spatial plans, as these provide significant input for subsequent processes. Once these have been completed and the necessary permits/administrative acts obtained, they should

¹ See also recital 49 of Regulation 1315/2013 (TEN-T Regulation):

(49) The interests of regional and local authorities, as well as those of local civil society affected by a project of common interest, should be appropriately taken into account in the planning and construction phase of projects.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1315>

² 8687/19 of 17.04.2019

³ See also Article 4(1) of Directive 2001/42/EC (SEA Directive):

Article 4(1) The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0042>

be submitted to the single competent authority as part of the project notification, triggering the permit granting procedure, which is currently defined as lasting a maximum of 4 years. The single competent authority can then assess the maturity of the project and outline the next steps towards an eventual construction permit.

Length of the permit granting procedure

If the Directive is to be interpreted according to Point A, the 4-year maximum period for a permit granting procedure should not be problematic. The same goes for permit granting procedures, which exclude project-based SEA and project-based spatial planning.

If the Directive is to be interpreted according to Point B and the permit granting procedure does include project-based SEA and spatial planning, the maximum period needs to be lengthened considerably. The exact number of years should be subject to a thorough analysis and reasoned discussions. We would also like to underline that the length of the permit granting procedure directly depends on what is included in the permit granting procedure within the meaning of the Directive.