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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 - Further comments by the Netherlands

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

Comments NL directive Streamlining TEN-T

Recital 2A

The Netherlands works with an integrated procedure in which the spatial planning and EIA are part of the key/main decision. It is our experience that this helps to speed up decision making.

Recital 8

....should ~~take an Authorising decision~~ **approve a development consent**

Justification:

Se article 2A

Recital 9

....Of an ~~authorising decision~~ **a development consent**

Justification:

Se article 2A

Article 2(A)

~~"authorising consolidated decision" the project without prejudice to any decision taken in the context of an administrative appeal procedure.~~ **'Development' consent means the decision of the competent authority or authorities of a Member State, not including courts or tribunals, which entitles the developer to proceed with the project.**

Justification:

NL does not in itself object to the use of a new term in Article 2. However, the definition of the authorizing decision, especially through the qualification of "final act" "based on a set of decisions simultaneous or successive taken", does not relate well to the qualification included later in the definition that the authorizing decision determines whether or not a project promoter is entitled to proceed with the project. In that case you can't speak of a final act-decision. For three reasons the Netherlands proposes - now that a directive has been chosen - to stay closer to the definitions used in 2011/92/EU (EIA Directive)

1. Firstly because of the addition of recital 2a, which states that the directive also covers the environmental impact assessment procedure.
2. Secondly, by referring to the EIA procedure, it makes sense to use the terms from the 2011/92/EU directive and only if the definitions of development consent and project are insufficient and not applicable, to use new definitions.
3. Working with a key/main decision instead of a final decision has the advantage that the project can continue while not yet all kinds of implementation (or contractors) permits are issued. In the Netherlands, we have taken legal measurements to ensure that the issuing of those implementation decisions can be done later in the process (also see Article 5a). It is stipulated that the decision about implementing permits cannot hinder the implementation of the development consent. Non-cooperating licensing authorities may be overruled in the case of refusal.

Article 5.5

When ~~taking the authorizing decision~~ **adopting the development consent** the single competent authority shall ensure that all the necessary permits, decisions and opinions have been obtained and shall duly justify its decision. **In addition, Member States take measures to ensure that the permits necessary for the implementation of the project, insofar as they are not part of the development consent, will actually be obtained.**

Justification:

The fifth paragraph - see comment on Article 2 - assumes that the authorizing decision is a final decision - 'all necessary permits, decisions and opinions have been obtained. In NL it is practice? that with the development consent the project can continue, but this does not exclude that all kinds of (contractors) permits to realize the project have yet to come. We (NL) have taken legal measurements that ensure the issuing of those implementation decisions.

Article 6a.2

When a project promoter notifies the project to the single competent authority, the single competent authority shall 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. ~~The notification by the project promoter to the competent authority shall serve as the start of the permit granting procedure.~~

Justification:

The planning of the decision making process is part of the competence of the authority.

Article 6a.3c

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) **An initial indication of the possible** ~~List of~~ necessary permits, decisions and opinions to be obtained in accordance with Union and national law;
- (d) Authorities and stakeholders to be involved in relationship with the respective obligations, including during the formal phase of the public consultation.

Justification:

We think that section 3c is not realistic. At this stage of the process, a lot is still unknown and depending on the outcome of the EIA procedure and the method of selecting the contractor. It would be better to add to part c the words 'as far as is known, or to speak of 'an initial indication of the possible necessary permits'.