



Council of the European Union
General Secretariat

**Interinstitutional files:
2018/0138(COD)**

Brussels, 12 March 2019

WK 3534/2019 INIT

LIMITE

**TRANS
CODEC**

WORKING PAPER

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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 Poland

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

Polish written proposal on the *Regulation on streamlining measures for advancing the realisation of the trans-European transport network*

I. INTRODUCTION

The experience of Poland shows that the main difficulties regarding to the implementation of infrastructural investments were caused by:

- delimitation of the area necessary for the implementation of the investment;
- land acquisition.

As a result, the process of investment preparation was significantly longer than the duration of the construction works and lasted even several years. In 2003 actions aimed to overcome investment barriers started. As a consequence the special laws regulating rules of investment preparation in the field of national roads (2003), railway lines (2008), airports (2009) and the Central Transport Port (2018) were introduced into the legal order.

Advantages for project promoter due to adoption of special laws in Poland:

- implementation of integrated (consolidated) decision – One decision replacing a number of administrative decisions issued under the general legal regime in separate proceedings. In Poland the same decision determines the location of the investment and approves expropriation of property. Then the construction permit is granted (in the case of railway investments, the construction permit is issued in a separate procedure, but by the same authority). This results in a significant shortening of the time for issuing a decision;
- indication which authority is the “single competent authority” if the decision covers an area of more than one province;
- order of immediate enforceability.

Previously, there were two or three-stage processes of locating and land acquisition. These stages are now being merged and the process of location and expropriation is covered by a single decision.

II. CONSOLIDATED DECISION

According to Article 2 p. (a) of the latest version of Regulation proposal consolidated decision means the decision or set of decisions taken by a Member State authority or authorities, not including courts or tribunals, adopted in accordance with national law that determines whether or not a project promoter is to be granted authorisation to build the transport infrastructure needed to complete a project without prejudice to any decision taken in the context of an administrative appeal procedure;”.

In Poland, in the scope of the road investments the consolidated decision, combines the decision on the location of the road with the construction permit. Therefore, it should be considered as **consolidated decision which, apart from the building permit, expropriates real estate, as well as approves the division of real estate**. In the case of a railway investment, the construction permit is issued in a separate decision, but by the same body (single competent authority).

Therefore Polish solutions are consistent with the provisions included in the project of the Regulation.

Obtaining the above mentioned decision is the basis for commencing construction works.

III. SINGLE COMPETENT AUTHORITY

In Poland the **Consolidated decision** (consisted of: location decision, approval of a division of land, transfer of land ownership, construction permit) is issued by authority named *Wojewoda* (single competent authority).

Wojewoda is body representing government administration at the level of a province (województwo). Poland is divided into 16 provinces, so depending on the location of the investment, the decision is issued by **one** of the 16 competent bodies. The special law indicates which authority is the “single competent authority” if the decision covers an area of more than one province.

IV. ENVIRONMENTAL DECISIONS

Above mentioned permits are **preceded by separate environmental decisions**. This decisions are issued under separated regulations that implement EU environmental directives.

Poland's propose to **exclude environmental decisions from the scope of the Regulation**.

The experience gained so far from work on the Regulation shows that due to the application of various legal regulations in different EU countries (including Poland) it seems unattainable to include environmental decisions in a Consolidated decision. In Poland the environmental decision is issued by specialized bodies dedicated to environmental issues. Due to the specific nature of this procedure, as well as having in mind effectiveness of whole investment process, in our opinion, **the investment procedure subject to the Regulation should start after obtaining all environmental decisions decision.**

In view of the above justification, PL proposes the following amendments to the RO Presidency compromise proposal doc. 6454/19 (in red):

Article 1

- The following wording of Article 1(1) is proposed:

This Regulation sets out requirements applicable to the administrative procedures followed by the competent authorities of Member States **in which current state of implementation of TEN-T transport infrastructure in terms of compliance with the TEN-T Regulation requirements reaches below [35%]**, in relation to the authorisation and implementation of all projects of common interest on the core network of the trans-European transport network.

Comment: Poland believes that there are countries that should accelerate the speed of implementation of the TEN-T network. In this countries the implementation of the TEN-T core network projects is affected by complex administrative procedures and regulatory uncertainty, which can lead to increased costs and delays. On the other hand, there are countries that has already implemented effective measures to improve infrastructure investments.

In that case Poland may support the proposal for the adoption of this regulation **only in countries that are lagging behind** in the process of implementation of the TEN-T core network.

Article 49.3 of the TEN-T Regulation requires the Commission to publish, every two years, a **progress report on the implementation of the trans-European transport network** and present it to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Poland considers this report as a suitable tool to indicate which countries should be subject to the Regulation. In our opinion, these should be Member States in which current state of implementation of TEN-T transport infrastructure in terms of compliance with the TEN-T Regulation requirements reaches below indicated level [for example 35%].

and/or

- Renewing the proposal, supported by some EU countries, to introduce Article 1(2) as follows:

“Measures streamlining investments processes already in force in the Member States shall be considered as fulfilling the requirements of this Regulation.”

Comment: In the opinion of PL, insofar as the idea of simplifying and speeding up the process of issuing construction permits and awarding public contracts in relation to projects of common interest on the TEN-T network is correct, institutional solutions included in the draft Regulation of the European Parliament and Council on streamlining measures for advancing the realisation of the trans-European transport network attached will not contribute to this objective.

Studies of realisation barriers in infrastructure projects so far indicate on the national level what kind of problems investors and contractors of infrastructural investment are facing. In general, the largest problems still occur on the line ordering party – contractor, and not investor – administration responsible for issuing the relevant decisions in the investment process.

Therefore, PL proposes that the application of the provisions of the drafted Regulation by the Member States should be optional.

To sum up, PL proposes that the text of the Regulation (or the text of the preamble) should make reference to the existing legislation of a Member State in the field of improvement of spending of investment funds, such as special acts.

Article 4

Integration Coordination of permit granting procedures

1. ~~In order to meet the time limits set out in Article 6 and reduce the administrative burden related to the authorisation and the completion of projects of common interest, All At least the following permit granting procedures resulting from the applicable national and Union law concerning: location decision, approval of a division of land, transfer of land ownership, construction permit, issued simultaneously or successively shall be adopted in accordance with one of the schemes resulting in one coordinated and shall result in only one comprehensive consolidated decision.~~

Comment: PL propose to indicate the minimum scope to be met by the 'consolidated decision'. In each country its scope can be wider. The article clarifies that the mentioned decision could be issued simultaneously or successively.

3. — The preparation of environmental reports by the project promoter;

~~pPreliminary studies and preparatory assessments may start or be carried out before the start of the permit granting process to ensure the maturity of the notified project.~~

Granting of any environmental permit is not subject to the permit granting procedures according to this Regulation.

Comment: Poland's propose to exclude environmental decisions from the scope of the Regulation.

The experience gained so far from work on the Regulation shows that due to the application of various legal regulations in different EU countries (including Poland) it seems unattainable to include environmental decisions in a Consolidated decision. In Poland the environmental decision is issued by specialized bodies dedicated to environmental issues. Due to the specific nature of this procedure, as well as having in mind effectiveness of whole investment process, in our opinion, the investment procedure subject to the Regulation should start after obtaining all environmental decisions decision.

Article 5 bis

Integrated scheme

The single competent authority shall issue the consolidated decision following joint procedures. The consolidated decision in accordance to Article 4 p. 1 and 3, issued by the single competent authority shall be the sole legally binding decision resulting from the permit granting procedure. Where other authorities are concerned by the project, they shall give their opinion as input to the procedure, in accordance with national legislation. These opinions shall be taken into account by the single competent authority.

Comment: For Poland the only acceptable *scheme* proposed by the Romanian Presidency is the "Integrated scheme". However, it is acceptable only on condition that the consolidated decision **does not cover the environmental decision**. This is the *sine qua non* condition for Polish support for this solution.

~~6a. The single competent authority may also be entrusted with tasks related to the coordination and the authorisation, in compliance with Union and national legislation, of specific projects of common interest aiming at the reconstruction of infratructure on the core network of the trans-European transport network in the case of natural or man-made disasters.~~

Comment: PL doubts the need for this provision.

Article 6

Duration and implementation of the permit granting procedure

- 4. The project promoter shall cooperate fully with the single competent authority and during the application phase shall comply with the detailed application outline, and deadlines therein, to compile and submit the application file to the single competent authority.**

~~**The project promoter shall undertake the preparation of environmental reports in line with national and Union law, and as set out in the detailed application outline to compile the necessary application file within an acceptable timeframe. Where appropriate or required by applicable law, public consultations shall take place and contribute to the preparation of the application file.**~~

~~In order to ensure that the application file is complete and of adequate quality, the project promoter shall seek the single competent authority's opinion on its application as early as possible during the pre-application procedure. The project promoter shall cooperate fully with the single competent authority to meet deadlines and comply with the detailed application outline as defined in paragraph 4.~~

Comment: PL proposes that the procedure laid down by this project should start once the environmental decision has been obtained and should not be subject to this Regulation.