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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
N° prev. doc.:	15152/3/19 REV 3 + COR 1
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 Member States

Delegations will find attached written comments by Hungary (Annex I), the Czech Republic (Annex II), Poland (Annex III), Portugal (Annex IV), Ireland (Annex V), Estonia (Annex VI), Cyprus (Annex VII) and the Netherlands (Annex VIII) on the Presidency compromise distributed under doc. ST 15152/3/19 REV3 + COR 1.

Annex I

Comments by Hungary

Please find here some comments on the latest proposal of the Presidency (ST 15152/19 REV3) but first let me express gratitude for the new compromise proposals. We definitely appreciate your efforts to have a successful round of negations with the European Parliament whenever it will be possible.

Please note that for the lines **175-177, 142 and 80** we are rather negative and we do not support the new proposals.

On lines **175-177** (New Article 10a - Reporting)
We are quite sceptical on the reporting obligation of the Member States. Why the Member States would be obliged to report every two years? Especially taking into account that the Commission would only make a report five years after the date of transposition.
We also have to consider that the Directive if adopted is to facilitate the completion of the TEN-T core network by 2030. In the best case scenario the Directive is adopted this year and implemented by 2023. So the first report by the Commission would come by 2028 which makes a very little time till 2030 to consider any significant change (if needed) in the permit granting procedures in order to make possible the completion of the TEN-T core network.

On **line 142** we would like to keep the may provision as it is in the Council GA.

On **line 80** we do not see a need to spell out that Member States may delegate powers to establish indicative time limits for different intermediary steps in a permit-granting procedure. This is always a possibility.

Please note that that it goes without saying that we keep our position expressed so many times at the working party meetings on the main political questions.

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Annex II

Written comments by the Czech Republic
to the 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

The Czech Republic perceives two main difficulties within the proposed compromises – in line 77 and 149. We believe it is important to keep the establishment of different designated authorities on voluntary basis and to keep the administrative burden as minimal as possible.

Article 5 - Designated authority
Line 76:
2. Each Member State shall designate at the appropriate administrative level an authority acting as designated authority.
The Czech Republic can support this compromise.

Line 77:
2a. Member States may, where relevant, designate different authorities as the designated authority depending on the project or category of projects, transport mode, or the geographical area.
In such a case, Member States shall ensure that there is only one designated authority per project and per permit-granting procedure.
As far as this line goes, the Czech Republic prefers the wording of the GA as follows:
"The Member State shall designate an authority at the appropriate administrative level to act as designated authority. Member States may, where relevant, designate different authorities as the designated authority depending on the project or category of projects, transport mode, or the geographical area provided that there is only one designated authority for a given authorising decision. Member States may empower the designated authority to issue the authorising decision."
In general, the purpose of the GA should be an establishment of a following rule – projects falling under the scope of this legislative proposal should be treated exclusively by one authority. The designated authority represents sole contact point for the project promoter. To this extent, we fully support the message of the text and would, therefore, prefer the wording of the GA.
In a case that the PRES maintains the proposed modified wording, we would like to express our hope that the modified text still follows the original meaning. In this case, the Czech Republic can accept the proposed compromise by the PRES under the circumstance that the sentence is slightly modified in order to avoid multiple interpretations:
In such a case, Member States shall ensure that there is only one designated authority per project. ~~and per permit-granting procedure.~~
Additionally, if our assumption about the meaning of the proposed line is wrong, we would like to receive an explanation from the PRES, which could later be revised again by the Member States.

Lines 78 - 79:
2ab. Member States may empower the designated authority to issue the authorising decision.
2ac. The designated authority shall transmit the authorising decision to the project promoter, in line with Article 6a paragraph 6a.
The Czech Republic can support these compromises.

Line 80:
2ad. Member States may empower the designated authority to establish indicative time limits for different intermediary steps of the permit-granting procedure in accordance with Article 6(1), without prejudice to the 4-year time limit set in accordance with that provision.

The Czech Republic can support the compromise as long as the "may clause" is used.

Lines 93 - 96:
(a) be the main point of contact for information for the project promoter and for other relevant authorities involved in the procedure leading to the authorising decision for a given project;
(ba) oversee that the timeframe of the permit granting procedure is observed, in particular record any extension of the time-limit referred to in Article 6(3);
(bb) notify the authorising decision to the project promoter;
The Czech Republic can support these compromises.

Article 6 – Duration of permit-granting procedure
Line 109
(…) When an extension has been granted in accordance with the first sentence, the project promoter shall be informed of the reasons thereof. Member States may grant any subsequent extension only in exceptional circumstances.
The Czech Republic strongly prefers to keep the last sentence of the GA instead of the last one of the PRES compromise. From our perspective, the term "exceptional circumstances" appears vague and offers a vast array of interpretations.
To avoid misinterpretations of this line and to assure better clarity, we express our strong support of the GA, thus proposing the following change of the line:

"(…) When an extension has been granted in accordance with the first sentence, the project promoter shall be informed of the reasons thereof. ~~***Member States may grant any subsequent extension only in exceptional circumstances.***~~ ***This shall also apply to consecutive prolongations."***

Article 6a - Organisation of the permit-granting procedure
Line 136:
The project promoter shall notify the project to the designated authority or, where appropriate, the joint authority. The notification of the project by the project promoter shall serve as the start of the permit-granting procedure.
The Czech Republic can support the compromise as long as the set-up of a joint authority is a "may clause".

Line 142
In order to ensure a successful notification, the Member States shall take the necessary measures to provide that the designated authority establishes, upon request by the project promoter, a detailed application outline comprising the following information customised for the individual project
The Czech Republic prefers to use a "may clause" instead of "shall". We believe that it should be up to Member states whether they want to implement it or not.

The Czech Republic has a previous experience with a similar tool, which the detailed application outline is aiming to be. It was implemented into the Czech Building Code approx. in 2006. It was modified later until complete exclusion from the legislation. Below, we are listing some of the reasons why.

Firstly, it is necessary to mention that the country is overall missing a sufficient number of trained and skilled experts with sufficient years of sound professional experience in administrative procedure itself and satisfactory background in the field of construction (even on theoretical level), who could conduct a permit granting procedure. This lack can be noticed even on the labour market,

where this kind of experts is seemingly lacking. Therefore, the efficiency of current procurement system lies in the ability to reduce the administrative burden of those key experts.

In order to do so, an IT system was created to reduce the administrative burden that prepared a detailed application outline comprising of all the criteria and requirements a project promoter should later present to the authority. The system compared the project with existing registers and a wide range of geographical data. This sort of tool was only optional and provided two key aspects why it lost its popularity and was stopped being used. Firstly, the moment the outline was issued, it became legally binding so no changes could have been negotiated. Secondly, it often required project promoter to obtain a much longer list of partial-permissions or opinions to be included in the project promoter's application compared to the standard procedure. Since it represented indeed complete detailed evaluation of the project, just because the IT systems usually do not have a common principle incorporated.

From our perspective and experience, the establishment of the detailed application outline poses an additional administrative burden on designated authority.

In general, the Czech Republic is not a supporter of the changes made to the proposal's existing lines modifying the meaning from a voluntary approach into an obligation (typically substitution of "may" for "shall").

The Member States worked tirelessly to achieve General Approach compromise among all. Reaching such an agreement can sometimes be fragile and, therefore, the Czech Republic would like to respect this sort of agreement that has already been done.

Line 148
5a. The designated authority may provide information to the project promoter supplementing the elements referred to in paragraph 4 upon request.
The Czech Republic can support this compromise.

Line 149
5b. The project promoter may contact individual authorities for specific permits, decisions or opinions which are part of the authorising decision.
This compromise is in direct contradiction with the line 93:
(the designated authority should:)
(a) be the main point of contact for information for the project promoter ***and for other relevant authorities involved*** *in the procedure leading to the* ***a****~~A~~uthorising decision for a given project;*
As well as it is in contradiction with the idea that the designated authority should play the role of a sole contact point. The possibility to contact individual authorities can cause confusion since it is not clear who is the partner for any relevant authority involved – whether the designated authority or the project promoter (e.g. in contradiction with line 151, too). The designated authority bears certain responsibilities, mainly to coordinate the whole process. Therefore, the project promoter should not even have the possibility ("may clause") to interfere in the process without any previous coordination.

Line 151
6a. The designated authority compiles the required permits, decisions and opinions and transmits the authorising decision to the project promoter.
The Czech Republic can support this compromise; however, we would like to draw attention to this line being in contradiction with line 149 regarding the sole contact point mechanism.

New Article 10a - Reporting

Lines 175 - 177

1. The Commission shall report to the European Parliament and to the Council on the implementation and the results of this Directive by [five years after the date of transposition of this Directive].

2. The report shall be based on information to be provided by Member States every two years and for the first time by [two years after the date of transposition of this Directive] concerning the number of permit-granting procedures under the scope of this Directive, the average length of the permit-granting procedure, the number of permit-granting procedures exceeding the time limit and the reasons thereof and the establishment of any joint authority during the reporting period.

The Czech Republic understands the need to receive feedback; therefore, it can support the compromises.

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Annex III

Polish written comments

to the 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
Revised four-column table (15152/3/19 REV 3)

Lines 79, 96, 151
In our view the compilation of permit decisions by the designated authority and their notification to the project promoter will delay the whole procedure and make it too complicated, thus bringing an opposite result to the one required. First of all, an additional action will have to be taken by designated authority which will take time and may cause delays. Secondly, the authorizing decision is delivered not only to the investor, but also to all parties involved in the proceedings (e.g. the owners of the real estate through which the investment will run). The fact that the decision is communicated to them by a different authority than the one that issued it, will create uncertainty and confusion as to which authority the party should appeal to in case it is necessary (it may give the impression that the designated authority is the one that has issued a decision). Thirdly, PL would like to point out that the transmission of the authorizing decision to the project promoter and the other involved parties, requires a detailed verification of the date on which it was effectively delivered to them. The time limits for appeals are counted based on this date. This would mean that the designated authority would have to carry out the procedural steps that should be taken by another authority. Fourthly, the receipt of an authorizing decision by the designated authority will result in the processing of a large amount of personal data of the parties to the proceedings, including names, addresses and details concerning a given real estate. However, the General Data Protection Regulation requires that personal data be processed only if it is actually necessary for the performance of a given statutory task. In this case, it cannot be assumed that the processing of the parties' data by the designated authority would be necessary for the performance of the statutory task, which is to issue a decision authorizing the investor to start the investment.
Line 93
In our opinion the proposed amendments will introduce uncertainties. It is rather unclear how to transpose into national law the provision that one authority is "the main point of contact" for the other authorities. As a general rule, every authority acts on the basis and within the limits given by the law. In our opinion, the proposed provision may delay the procedure instead of improving or accelerating it. In addition, if we accept this amendment together with the one that is proposed in line 149, there may be a risk that the parties will find it difficult to determine which authority they should contact during the procedure.
Line 95
We have reservation concerning this amendment due to the fact that it grants the designated authority the power and even duty to oversee that the timeline of permit granting procedure is observed. This would mean that such a designated authority would have to be empowered with the control instruments that could affect the work of the institutions that are independent from the State (i.e. courts, local authorities). We find it impossible for implementation.

Line 109
Poland cannot accept the amendments regarding the second sentence. While the first sentence, concerning the obligation to give reasons for an extension of the period for issuing the authorization decision is not in doubt, the provision in the second sentence, according to which further extensions may occur only in exceptional cases, is unacceptable. In line with the General Approach, each time extension will require appropriate justification and should be assessed depending on the individual circumstances relevant for the case. In our view, that solution, together with the provision of all legal means to control the legality of the extension, is sufficient and there is no reason for introducing such a restrictive measure as proposed in line 109.
Line 142
Poland cannot accept the proposed amendments. At the stage of notification of the investment to the designated authority, it is impossible to provide a *Detailed Application Outline (DAO*) suited to the individual investment, as it is too early stage for that. Poland is strongly in favour of resigning from the obligation for designated authority to provide a *DAO*. In our opinion, it should be optional for Member States, therefore we are strongly in favour of maintaining a 'may' clause as in GA.
Line 149
We do not see a need to highlight that project promoter may contact individual authorities. This provision together with line 93 provides no added value.
Line 151
The provision whereby the designated authority 'compiles' all decisions and then transmits them to the investor raises strong objections not only for the reasons described in detail in the position paper to lines 79, 96 and 151, but also because it is incompatible with cases where the process of obtaining an authorizing decision is of a phased nature, as in Poland. The phased nature of the procedure means that it is necessary to complete individual stages which end with partial decisions. Only upon completion of the first phase, the project promoter can move to subsequent phase and apply for another decision. The need to wait for all decisions to "compile" them by the designated authority would make impossible the application of procedures such as the ones that effectively function in Poland at the moment.

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Annex IV

Comments by Portugal

Line 76 – PT can accept the text in a spirit of compromise.

Line 77 – PT can accept the text in a spirit of compromise, and despite our doubts regarding the consequences of replacing "for a given authorising decision" with "per permit-granting procedure".

Lines 76-77 – We are not totally sure how would the last sentence of the CONS text would read. Is it "Member States may empower the designated authority to issue the authorising decision"?

Line 93 – We prefer to keep the text of the CONS.

Line 109:

- We can accept replacing "prolongation" with "extension" in a spirit of compromise with the EP.
- PT strongly prefers the text of the CONS ("CONS "This shall also apply to consecutive prolongations [or extensions]") and would prefer not to have the compromise ("When an extension has been granted in accordance with the first sentence, the project promoter shall be informed of the reasons thereof. Member States may grant any subsequent extension only in exceptional circumstances."), as we believe that this compromise proposal could limit the choice of Member States.

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Annex V

Comments by Ireland

First of all, IE would like to convey our thanks to the Presidency for their continued efforts on this proposal during these very challenging times. Our preference of course remains for the text of the General Approach but with regard to the compromise text presented in the revised four column table IE has the following comments:

Lines 76 – 80

On line 77, we think this is too restrictive and would place unwarranted financial and administrative burden on Member State authorities. The text of the General Approach, that there is "only one designated authority for a given authorising decision" provides sufficient clarity on the role of the designated authority as the point of contact for the project promotor, bearing in mind that an authorising decision may consist of a number of individual decisions.
On line 79, we are wary of the compromise text as it moves the designated authority role away from what was agreed in the General Approach. Ireland is concerned that the compromise text has moved towards the integration of the permit granting procedures. We cannot support this.
On line 80, we don't believe this is necessary and is adequately covered in Article 6.

Lines 93, 95-96

On line 93, this appears to move towards the integration of permit granting procedures: does this mean that the designated authority now has to inform project promoters of individual legally binding decisions being taken by individual statutory authorities? We cannot support this.
On lines 95-96, again this appears to move the role of the designated authority away from what was envisaged in the General Approach, and is akin to an integration of procedures which we cannot support.

Line 109

We can accept the compromise text.

Line 136, 142, 148-149, 151

On line 136, we can accept the compromise text.
On line 142, we cannot accept the compromise text: the text of the General Approach should be maintained.
On lines 148-149 we can accept the compromise text but in line 148 suggest inclusion of "The designated authority may, **where it deems necessary,** provide information…." We read Line 149 as confirming the designated authority's has a coordinating role only for permit granting procedures which is welcome.
On line 151, we have concerns over the onus placed on the designated authority, without reference to the project promoter's own responsibility report in to the designated authority when they have been granted the required permits etc. We think this goes beyond the coordinating role envisaged in the General Approach.

Line 175 – 177

No objection in principle to putting reporting arrangements in place but the timelines are very tight: by the time this Directive is adopted and transposed and considering the aim of this Directive is to "make synchronised and timely TEN-T completion possible through harmonised action at Union level", i.e. by 2030.

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Annex VI

Comments by Estonia

Line 76 - Estonia prefers the wording of the General Approach but is willing to accept the provided compromise.
Line 77 – Overall a bit confusing. We are not sure whether we could support it. We would require further explanation of the compromise in line 77.
Line 79 - Estonia prefers the wording of the General Approach but is willing to accept the provided compromise.
Line 80 - Estonia prefers the wording of the General Approach but is willing to accept the provided compromise.
Line 93 - Estonia prefers the wording of the General Approach but is willing to accept the provided compromise.
Line 95 – To what extent the authority would have the power to influence the process besides monitoring it?
Line 109 – Would it be possible to grant extension in exceptional circumstances only once? Or also several times?
Line 142 - Estonia prefers the wording of the General Approach but is willing to accept the provided compromise.
Line 148 - Estonia prefers the wording of the General Approach but is willing to accept the provided compromise.
Line 149 - Estonia prefers the wording of the General Approach but is willing to accept the provided compromise.
Line 151- - Estonia prefers the wording of the General Approach but is willing to accept the provided compromise.
Line 175-177 – We support many others who said that the proposed administrative burden is not necessary. We cannot support these lines.

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Annex VII

Comments by Cyprus

Thank you for the new compromise proposal (ST 15152/19 REV3) and please find here below Cyprus' comments:

Line 77:

We believe that the flexibility to designate different authorities as the designated authority depending on the project will lead to too much fragmentation of the operation, rules and consistency of the designated authority and may be counterproductive. We propose the following:

2a. Member States may, where relevant, designate different authorities as the designated authority depending on the ~~project or~~ category of projects, transport mode, or the geographical area.

Lines 79, 93, 95 and 96:

We have strong reservations with the new responsibilities and increased role of the designated authority in the permit granting process.

For this reason, we do not agree with the inclusion of paragraph 2ac (Line 79) and paragraphs (ba), (bb) (Lines 93, 95 and 96) and the Council GA provision should be maintained.

Line 142:

We would like to maintain the Council GA provision:

*4. In order to ensure a successful notification, the Member States **may** provide that the designated authority shall establish, upon request by the project promoter, a detailed application outline comprising the following information customised for the individual project:*

Line 151:

See comments for Lines 79, 93, 95 and 96.

For this reason, we do not agree with the inclusion of paragraph 6a and the Council GA provision should be maintained.

Lines 175-177:

It is our understanding that the reporting obligations for MS (every 2 years) and for the Commission (5 years) is to receive feedback and make necessary amendments to the Regulation, always aiming at completing the Core TEN-T Network by 2030. With this time frame, we are of the opinion that constructive feedback and amendments will not be practically applicable to justify the inclusion of this additional administrative task.

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Annex VIII

Comments by the Netherlands

The Netherlands can be quite flexible on many lines, and supports the idea of coming to the end of the negotiations with the EP. However, the remaining C-items still need to be addressed at Working Party level, and discussed with the EP. We are therefore very interested in the view of the presidency how to tackle this last stage of negotiations, and would welcome an insight of the presidency its strategy.

Below you may find comments by the Netherlands on the lines we have some difficulty with. All the other lines we can agree with, even though I can echo the general remark by Sweden that some of the compromise texts would create an additional burden without creating real added value.

- Line 109, article 6.3
  We do not agree to the second adding concerning the exceptional circumstances, however, if the presidency it deems right, it may be used as leverage towards the EP.

- Line 142, article 6a
  We do not agree, the Netherlands prefers to stick to the general approach. With this amendment the legislator goes into details. We support the comments thus far made by Hungary, Germany, Sweden and the Czech Republic on this line.

- Line 149, article 6a and 5b
  With this amendment, the legislator undermines the role of the designated authority. We advise to delete this amendment. However, it is not a red line for us.

- Line 175-177, article 10a
  The Netherlands does not agree with this amendment. The European policy for the European Transport Network TEN-t has a comprehensive monitoring system. We believe there is enough data about the development of the network and prefer to limit the administrative burden (and streamline the process. We support the comment thus far made by Hungary and Germany on this line.
