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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	AT comments on Art. 7-10 and Annex VI of the TEN-E Regulation (ST 6872/21)

Delegations will find in the annex the AT comments on Art. 7-10 and Annex VI of the TEN-E Regulation (ST 6872/21).

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NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Presidency revised proposal for Articles 7, 8, 9 and 10 and Annex VI of TEN-E Regulation

Delegations will find in annex the Presidency revised proposal for Articles 7, 8, 9 and 10 and Annex VI of the TEN-E Regulation.

Written comments can be sent to the Presidency and GSC in copy, energy@consilium.europa.eu, until 18 March.

CHAPTER III

PERMIT GRANTING AND PUBLIC PARTICIPATION*Article 7***‘Priority status’ of Union’s list projects~~projects of common interest~~**

1. The adoption of the Union list shall establish, for the purposes of any decisions issued in the permit granting process, the necessity of those projects from an energy policy perspective, without prejudice to the exact location, routing or technology of the project.
2. For the purpose of ensuring efficient administrative processing of the application files related to projects of common interest, project promoters and all authorities concerned shall ensure that those files are treated in the most rapid way possible.
3. Without prejudice to obligations resulting from Union law, where such status exists in national law, projects of common interest shall be granted the status of the highest national significance possible and be appropriately treated in the permit granting processes — and if national law so provides, in spatial planning — including those relating to environmental assessments, in the manner such treatment is provided for in national law applicable to the corresponding type of energy infrastructure.
4. ~~All dispute resolution procedures, litigation, appeals and judicial remedies related to projects of common interest in front of any national courts, tribunals, panels, including mediation or arbitration, where they exist in national law, shall be treated as urgent, if and to the extent to which national law provides for such urgency procedures in accordance with the urgency procedures provided for in national law.~~
5. Member States shall assess, taking due account of the existing guidance issued by the Commission on streamlining the environmental assessment procedures for projects of common interest, which legislative and non-legislative measures are necessary to streamline the environmental assessment procedures and to ensure their coherent application and shall inform the Commission of the result.

Commented [AT1]: As already said in the EWP: The implementation of this provision into national law means an enormous legislative effort. The priority status for PCIs in the approval procedure already results from Article 7 para 3. Consequently it is already laid down in AT legislation that PCI projects are to be treated with urgency by the national authority within the permit granting process.

The addition “if and to the extent to which national law” is a clarification and can be accepted, if the national legislation does not need to have these urgency procedures.

If Art 7 (4) actually leads to improvements due to national procedural provisions of certain member states it seems reasonable that national judicial procedures concerning PCI (e.g. in front of national courts or tribunals) are also to be treated with urgency in order to accelerate permit granting. However, it would be necessary to also enshrine this in national legislation.

6. By [1 September 2022], Member States shall take the non-legislative measures that they have identified under paragraph 5.

7. By [1 January 2023], Member States shall take the legislative measures that they have identified under paragraph 5. Those measures shall be without prejudice to obligations resulting from Union law.

8. ~~Provided that all the conditions set out in these Directives are fulfilled, with regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective, and may be considered as having an overriding public interest.~~

Should the opinion of the Commission be required in accordance with Directive 92/43/EEC, the Commission and the competent authority referred to in Article 9 of this Regulation shall ensure that the decision with regard to the overriding public interest of a project is taken within the time limit set out in Article 10(1) of this Regulation.

Article 8

Organisation of the permit granting process

1. By [1 January 2022], at the latest, each Member State shall update, where necessary, the designation of one national competent authority which shall be responsible for facilitating and coordinating the permit granting process for projects of common interest.

2. The responsibility of the competent authority referred to in paragraph 1 and/or the tasks related to it may be delegated to, or carried out by, another authority, per project of common interest or per particular category of projects of common interest, provided that:

(a) the competent authority notifies the Commission of that delegation and the information therein is published by either the competent authority or the project promoter on the website referred to in Article 9(7);

(b) only one authority is responsible per project of common interest, and it is the sole point of contact for the project promoter in the process leading to the comprehensive decision for a given project of common interest, and coordinates the submission of all relevant documents and information.

Commented [AT2]: AT would like to ask for the rationale behind this deletion.

The competent authority may retain the responsibility to establish time limits, without prejudice to the time limits set in Article 10.

3. Without prejudice to relevant requirements under international and Union law, the competent authority shall facilitate the issuing of the comprehensive decision as defined in article 2 (2).
~~The comprehensive decision shall be the final proof that the project of common interest has achieved ready to build status and there shall be no other requirements for any additional permits or authorisations in that respect.~~ The comprehensive decision shall be issued within the time limit referred to in Article 10(1) and (2) and in accordance with one of the following schemes:

Commented [AT3]: AT takes note that this sentence was deleted as the “comprehensive decision” is already defined in Art 2 para 2.

- (a) integrated scheme : the comprehensive decision shall be issued by the competent authority and shall be the sole legally binding decision resulting from the statutory permit granting procedure. Where other authorities are concerned by the project, they may, in accordance with national law, give their opinion as input to the procedure, which shall be taken into account by the competent authority;
- (b) coordinated scheme : the comprehensive decision comprises multiple individual legally binding decisions issued by several authorities concerned, which shall be coordinated by the competent authority. The competent authority may establish a working group where all concerned authorities are represented in order to draw up a permit granting schedule in accordance with Article 10(4)(b), and to monitor and coordinate its implementation. The competent authority shall, in consultation with the other authorities concerned, where applicable in accordance with national law, and without prejudice to time limits set in accordance with Article 10, establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued. The competent authority may take an individual decision on behalf of another national authority concerned, where the decision by that authority is not delivered within the time limit and where the delay cannot be adequately justified; or, where provided under national law, and to the extent that this is compatible with Union law, the competent authority may consider that another national authority concerned has either given its approval or refusal for the project where the decision by that authority is not delivered within the time limit. Where provided under national law, the competent authority may disregard an individual decision of another national authority concerned if it considers that the decision is not sufficiently substantiated with regard to the underlying evidence presented by the national authority concerned; in doing so, the competent authority shall ensure that the relevant requirements under international and Union law are respected and shall duly justify its decision;

- (c) collaborative scheme : the comprehensive decision shall be coordinated by the competent authority. The competent authority shall, in consultation with the other authorities concerned, where applicable in accordance with national law, and without prejudice to time limits set in accordance with Article 10, establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued. It shall monitor compliance with the time limits by the authorities concerned.

The competence of the authorities concerned could either be incorporated into the competence of the national competent authority designated in line with Article 8(1) or they would maintain, to a certain extent, their independent competence in line with the respective permitting scheme chosen by the Member State in line with this paragraph to facilitate the issuing of the comprehensive decision and cooperate with the national competent authority accordingly.

Where an authority concerned does not expect to deliver an individual decision within the set time limit, that authority shall inform the competent authority without delay duly justifying the delay. Subsequently, the competent authority shall set another time limit within which that individual decision shall be issued, in compliance with the overall time limits set out in Article 10.

Acknowledging the national specificities in planning and permit granting processes, Member States may choose among the three schemes referred to in points (a), (b) and (c) of the first subparagraph to facilitate and coordinate their procedures and shall opt to implement the most effective scheme. Where a Member State chooses the collaborative scheme, it shall inform the Commission of its reasons therefor.

4. Member States may apply different schemes set out in paragraph 3 to onshore and offshore projects of common interest.
5. Where a project of common interest requires decisions to be taken in two or more Member States, the respective competent authorities shall take all necessary steps for efficient and effective cooperation and [and communication](#) ~~coordination~~ among themselves, including the steps referred to in Article 10(5). Member States shall endeavour to provide joint procedures, particularly with regard to the assessment of environmental impacts.

6. By [31 July 2022] and for each specific Regional Group per priority offshore grid corridor, as defined in Annex I, national competent authorities in Member States belonging to the respective Group, shall jointly create unique points of contact, ‘offshore one-stop shops’, for project promoters, which shall be responsible for facilitating and coordinating the permit granting process for offshore grids for renewable energy projects of common interest, taking into account also the need for coordination between the permitting process for the energy infrastructure and the one for the generation assets. The offshore one-stop shops shall act as a repository of existing sea basin studies and plans, aiming at facilitating the permitting process of individual projects of common interest and coordinate the issuance of the comprehensive decisions for such projects by the relevant national competent authorities. Each Regional Group per priority offshore grid corridor, with the assistance of the national competent authorities in the Members States belonging to the Group, shall set-up the offshore one-stop shops depending on regional specificities and geography and determine their location, resource allocation and specific rules for their functioning.

Article 9

Transparency and public participation

1. By [1 May 2023], the Member State or competent authority shall, ~~where applicable~~ in collaboration with other authorities concerned, publish an updated manual of procedures for the permit granting process applicable to projects of common interest to include at least the information specified in point (1) of Annex VI. The manual shall not be legally binding, but it may refer to or quote relevant legal provisions. The national competent authorities, ~~when relevant, may shall~~ coordinate and find synergies with neighbouring countries in developing their manual of procedures.
2. Without prejudice to environmental law, and any requirements under the Aarhus and Espoo Conventions and relevant Union law, all parties involved in the permit granting process shall follow the principles for public participation set out in of point (3) of Annex VI.

3. The project promoter shall, within an indicative period of three months following the start of the permit granting process pursuant to Article 10(1)(a), draw up and submit a concept for public participation to the competent authority, following the process outlined in the manual referred to in paragraph 1 and in line with the guidelines set out in Annex VI. The competent authority shall request modifications or approve the concept for public participation within three months of receipt. In so doing, the competent authority shall take into consideration any form of public participation and consultation that took place before the start of the permit granting process, to the extent that such public participation and consultation has fulfilled the requirements of this Article.

Where the project promoter intends to make significant changes to an approved concept, it shall inform the competent authority thereof. In that case the competent authority may request modifications.

4. Where it is not already required under national law at the same or higher standards, **at least one public consultation shall be carried out by the project promoter, or, where required by national law, by the competent authority,** before submission of the final and complete application file to the competent authority pursuant to Article 10(1)(a). That public consultation shall be without prejudice to any public consultation to be carried out after submission of the request for development consent pursuant to Article 6(2) of Directive 2011/92/EU. The public consultation shall inform the stakeholders referred to in point (3)(a) of Annex VI about the project at an early stage and shall help to identify the most suitable location or trajectory, also in view of adequate climate adaptation [and environmental protection](#) considerations for the project, and the relevant issues to be addressed in the application file. The public consultation shall comply with the minimum requirements set out in point (5) of Annex VI. The project promoter shall publish on the website referred to in paragraph 7 of this Article a report explaining how the opinions expressed in the public consultations were taken into account by showing the amendments made in the location, trajectory and design of the project or by justifying why such opinions have not been taken into account.

Commented [AT4]: As said in the EWP:

Art 9 Abs 4: The new provision that project promoters shall report how they have taken into account the opinions expressed in the public consultation can contribute to transparency. However, AT would like to question this with respect to the efforts needed.

As for the public consultation, national obligations should be obeyed and the pre-consultation phase should be optional (for all projects).

For the sake of transparency the public consultation according to this Art 9 Abs 4 should take place before submission of the application file.

Many reports in the pre-consultation phase may lead to transparency but also takes a lot of time in quite strict time regime for PCI projects.

The last sentence in para 4 is new compared to the actual TEN-E Regulation. It is not clear whether this is another (a second report of the project promoter) or the same report as in the second subparagraph of paragraph 4 (it seems that this are two reports). It is questionable if two reports are really necessary.

The project promoter shall prepare a report summarising the results of activities related to the participation of the public prior to the submission of the application file, including those activities that took place before the start of the permit granting process.

The project promoter shall submit the reports referred to in first and second subparagraphs together with the application file to the competent authority. The comprehensive decision shall take due account of the results of these reports.

5. For cross-border projects involving two or more Member States, the public consultations pursuant to paragraph 4 in each of the Member States concerned shall take place within a period of no more than two months from the date on which the first public consultation started.
6. For projects likely to have significant transboundary impacts in one or more neighbouring Member States, where Article 7 of Directive 2011/92/EU and the Espoo Convention are applicable, the relevant information shall be made available to the competent authority of the neighbouring Member States concerned. The competent authority of the neighbouring Member States concerned shall indicate, in the notification process where appropriate, whether it, or any other authority concerned, wishes to participate in the relevant public consultation procedures.
7. The project promoter shall establish and regularly update a dedicated project website with relevant information about the project of common interest, which shall be linked to the Commission website and the transparency platform referred to in Article 23 and which shall meet the requirements specified in point (6) of Annex VI. Commercially sensitive information shall be kept confidential.

Project promoters shall also publish relevant information by other appropriate information means open to the public.

Article 10

Duration and implementation of the permit granting process

1. The permit granting process shall consist of two procedures:

(a) the pre-application procedure, covering the period between the start of the permit granting process and the acceptance of the submitted application file by the competent authority, shall take place within an indicative period of two years. Member States may set an earlier time-limit, where considered appropriate. In this case the pre-application procedure shall not exceed the time-limit set by the Member State.

The pre-application procedure shall include the preparation of any environmental reports by the project promoters, as necessary, including the climate adaptation documentation.

For the purpose of establishing the start of the permit granting process, the project promoters shall notify the project to the competent authority of the Member States concerned in written form, and shall include a reasonably detailed outline of the project. No later than three months following the receipt of the notification, the competent authority shall acknowledge or, if it considers the project is not mature enough to enter the permit granting process, reject the notification in written form, including on behalf of other authorities concerned. In the event of a rejection, the competent authority shall justify its decision, including on behalf of other authorities concerned. The date of signature of the acknowledgement of the notification by the competent authority shall mark the start of the permit granting process. Where two or more Member States are concerned, the date of the acceptance of the last notification by the competent authority concerned shall mark the start of the permit granting process.

The competent authorities shall ensure that permit granting is accelerated in line with this Chapter for each category of projects of common interest. To that end, the competent authorities shall adapt their requirements for the start of the permit granting process and for the acceptance of the submitted application file, to make them fit for projects ~~which~~, that due to their nature, dimension or lack of requirement for environmental assessment under national law ~~smaller scale~~, may require less authorisations and approvals for reaching the ready-to-build phase, and, therefore, might not require the benefit of the pre-application procedure referred to in article 9 and article 10 paragraph 4. ~~Such smaller scale projects may include gas and electricity smart grids and electrolyzers.~~

(b) the statutory permit granting procedure, covering the period from the date of acceptance of the submitted application file until the taking of the comprehensive decision, shall not exceed one year and six months. Member States may set an earlier time-limit, where considered appropriate. In this case the permit granting procedure shall not exceed the time-limit set by the Member State.

Commented [AT5]: AT would like to stress that this addition to the text does NOT reflect the suggestion that was made by AT in the previous AT comments: AT suggested that – to be seen in connection with Art 9 – only IN CASE the pre-consultation procedure does NOT become optional, this addition in Art 10 Abs 1 lit a and b and Abs 2 on timelines should be made. --> As the pre-consultation did NOT become optional, this addition is incomplete and should be DELETED from an AT point of view.

Commented [AT6]: “As necessary” seems rather vague: It should be clarified who decides when under which circumstances what kind of reports and documentation is needed. Does this concern reports required by the EIA directive, habitat directive, etc.?

Commented [AT7]: It should be clarified what kind of “environmental assessment” is meant here – an environmental impact assessment? It should be considered to include concrete provisions and references to directives (e. g. birds directive) or regulations added.

Commented [AT8]: See above on Art 10 para 1. This addition should be deleted.

2. The competent authority shall ensure that the combined duration of the two procedures referred to in paragraph 1 does not exceed a period of three years and six months or a shorter period set by the Member States. However, where the competent authority considers that one or both of the two procedures of the permit granting process will not be completed within the time limits set out in paragraph 1, it may decide, before their expiry and on a case by case basis, to extend one or both of those time limits. In principle, the competent authority should extend the deadline for both procedures combined by a maximum of nine months. ~~by a maximum of nine months for both procedures combined.~~

In that case, the competent authority shall inform the Group concerned and present it with concerned the measures taken or to be taken for the conclusion of the permit granting process with the least possible delay. The Group may request the competent authority to report regularly on progress achieved in that regard and the measures shall be made publicly available.

3. Any valid studies conducted and permits or authorisations issued for a given project of common interest, before entering the permit granting process in line with this Article, shall be taken into consideration by the competent authorities in the permit granting process and no longer required, as long as they are considered valid in national law.
4. In Member States where the determination of a route or location undertaken solely for the specific purpose of a planned project, including the planning of specific corridors for grid infrastructures, cannot be included in the process leading to the comprehensive decision, the corresponding decision shall be taken within a separate period of six months, starting on the date of submission of the final and complete application documents by the promoter.

In that case, the extension period referred to in paragraph 2 sentence 3 shall be reduced to six months, including for the procedure referred to in this paragraph. The extension of the deadline referred to in paragraph 2 sentences 4 and 5 can also be applied accordingly after the procedure mentioned in this paragraph has been carried out.

Commented [AT9]: As said in the EWP:

Art 10 para 2: AT wants to add that it does not accept the new provision that exclusively the national competent authority shall be responsible for ensuring the duration of the two procedures („The competent authority shall ensure that the combined duration of the two procedures referred to in paragraph 1 does not exceed a period of three years and six months.“) The duration of permit granting largely depends on factors which cannot be influenced by the competent authority (e. g. due to parties that deliberately delay the permit granting, sometimes deliberately making unjustified arguments that make new analyses or expert opinions necessary; or due to long processes of environmental impact assessments).

Commented [AT10]: In order to enhance transparency, if permit granting exceeds the indicative time period of Article 10, it should be added that the defined measures to conclude the permit granting process within the least possible delay should be made publicly available for each project – see text proposal.

5. The pre-application procedure shall comprise the following steps:

(a) ~~no later than 12 months after~~ ~~upon the acknowledgement of~~ the notification pursuant to point (a) of paragraph 1, the competent authority shall determine, on the basis of the checklist referred to in point (1)(e) of Annex VI, and in close cooperation with the other authorities concerned, and where appropriate on the basis of a proposal by the project promoter, the scope of the reports and documents and the level of detail of information to be submitted by the project promoter, as part of the application file, to apply for the comprehensive decision;

(b) the competent authority shall draw up, in close cooperation with the project promoter and other authorities concerned and taking into account the results of the activities carried out under point (a), a detailed schedule for the permit granting process in line with the guidelines set out in point (2) of Annex VI;

~~For cross-border projects involving two or more Member States, the competent authorities of the Member States concerned shall coordinate to prepare a joint schedule, in which they align their timetables;~~

(c) upon receipt of the draft application file, the competent authority shall, where necessary, on its own behalf or on behalf of other authorities concerned, request the project promoter to submit missing information relating to the requested elements referred to in point (a). Within three months of the submission of the missing information, the competent authority shall accept for examination the application in written form or digital platforms. Requests for additional information may only be made where they are justified by new circumstances.

6. The project promoter shall ensure that the application file is complete and adequate and seek the competent authority's opinion on that matter as early as possible during the pre-application procedure. The project promoter shall cooperate fully with the competent authority to meet deadlines and comply with the joint schedule referred to in paragraph 5(b).

7. Competent authorities shall ensure that any legislative amendments introduced during the permit granting process do not affect the duration of any permit granting procedure started before the entry into force of those amendments.

8. The time limits laid down in this Article shall be without prejudice to obligations arising from international and Union law, and without prejudice to administrative appeal procedures and judicial remedies before a court or tribunal.

Commented [AT11]: AT would like to ask for the rationale behind this addition.

ANNEX VI

GUIDELINES FOR TRANSPARENCY AND PUBLIC PARTICIPATION

(1) the manual of procedures referred to in Article 9(1) shall at least contain:

- (a) specifications of the relevant pieces of legislation upon which decisions and opinions are based for the different types of relevant projects of common interest, including environmental law;
- (b) the list of relevant decisions and opinions to be obtained;
- (c) the names and contact details of the Competent Authority, other authorities and major stakeholders concerned;
- (d) the work flow, outlining each stage in the process, including an indicative time frame and a concise overview of the decision-making process for the different types of relevant projects of common interest;
- (e) information about the scope, structure and level of detail of documents to be submitted with the application for decisions, including a checklist;
- (f) the stages and means for the general public to participate in the process;
- (g) modalities in which the competent authority, other authorities concerned and the project promoter shall demonstrate that the opinions expressed in the public consultation were taken into account, for example by showing what amendments were done in the location and design of the project or by justifying why such opinions have not been taken into account;

~~(h) as much as possible, translations of its content in all languages of the neighbouring Member States to be realized in coordination with the respective neighbouring Member States;~~

(2) the detailed schedule referred to in Article 10(5)(b) shall at least specify the following:

- (a) the decisions and opinions to be obtained;
- (b) the authorities, stakeholders, and the public likely to be concerned;
- (c) the individual stages of the procedure and their duration;
- (d) major milestones to be accomplished and their deadlines in view of the comprehensive decision to be taken;
- (e) the resources planned by the authorities and possible additional resource needs;

(3) without any prejudice to the requirements for public consultations under environmental law, to increase public participation in the permit granting process and ensure in advance information and dialogue with the public, the following principles shall be applied:

(a) the stakeholders affected by a project of common interest, including relevant national, regional and local authorities, landowners and citizens living in the vicinity of the project, the general public and their associations, organisations or groups, shall be extensively informed and consulted at an early stage, when potential concerns by the public can still be taken into account and in an open and transparent manner. Where relevant, the competent authority shall actively support the activities undertaken by the project promoter;

(b) competent authorities shall ensure that public consultation procedures for projects of common interest are grouped together where possible including public consultations already required under national law. Each public consultation shall cover all subject matters relevant to the particular stage of the procedure, and one subject matter relevant to the particular stage of the procedure shall not be addressed in more than one public consultation; however, one public consultation may take place in more than one geographical location. The subject matters addressed by a public consultation shall be clearly indicated in the notification of the public consultation;

(c) comments and objections shall be admissible from the beginning of the public consultation until the expiry of the deadline only;

(4) the concept for public participation shall at least include information about:

(a) the stakeholders concerned and addressed;

(b) the measures envisaged, including proposed general locations and dates of dedicated meetings;

(c) the timeline;

(d) the human resources allocated to the respective tasks;

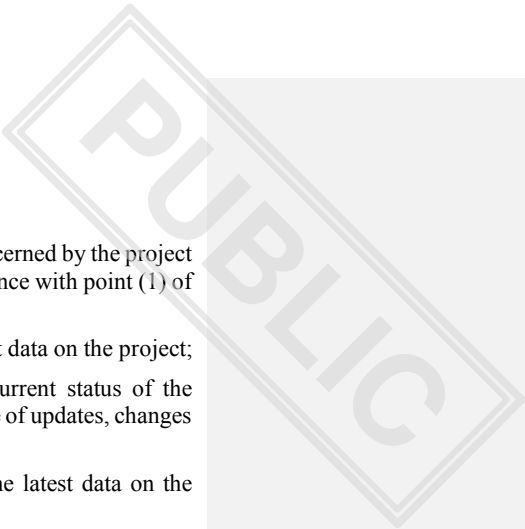
(5) in the context of the public consultation to be carried out before submission of the application file, the relevant parties shall at least:

(a) publish an information leaflet of no more than 15 pages, giving, in a clear and concise manner, an overview of the description, purpose and preliminary timetable of the development steps of the project, the national grid development plan, alternative routes considered, types and characteristics of the potential impacts, including of cross-border or transboundary nature, and possible mitigation measures, which shall be published prior to the start of the consultation; The information leaflet shall furthermore list the web addresses of the website of the project of common interest referred to in Article 9(7), the transparency platform referred to in Article 23 and of the manual of procedures referred to in point (1);

(b) publish the information on the consultation on the website of the project of common interest referred to in Article 9(7), on the bulletin boards of the offices of local administrations, and, at least, in ~~two~~one local media outlets;

(c) invite in written or electronic form relevant affected stakeholders, associations, organisations and groups to dedicated meetings, during which concerns shall be discussed;

(6) the project website referred to in Article 9(7) shall at least publish the following information:

- 
- (a) the date when the project website was updated last;
 - (b) translations of its content in all languages of the Member States concerned by the project or on which the project has a significant cross-border impact in accordance with point (1) of Annex IV;
 - (c) the information leaflet referred to in point (5) updated with the latest data on the project;
 - (d) a non-technical and regularly updated summary reflecting the current status of the project, including geographic information, and clearly indicating, in case of updates, changes to previous versions;
 - (e) the implementation plan as set out in Article 5(1) updated with the latest data on the project;
 - (f) the funds allocated and disbursed by the Union for the project;
 - (g) the project and public consultation planning, clearly indicating dates and locations for public consultations and hearings and the envisaged subject matters relevant for those hearings;
 - (h) contact details in view of obtaining additional information or documents;
 - (i) contact details in view of conveying comments and objections during public consultations.

Note from the Presidency: Most MS presented some concerns with the wording regarding one stop shops and some suggested its deletion. We propose to wait for Commission's answers about this topic and we will come back to it on the second round. Regarding dates, we took good note of MS comments and we will leave this point also for the second round, we will need to align all dates of Regulation.

The **deadline** for comments on this proposal is March 18th.
