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NOTE

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
N° prev. doc.:	ST 7461/20 ST 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

Delegations will find attached explanations provided by the Presidency concerning the questions and concerns raised by delegations on specific lines of the four column table distributed under doc. ST 15152/3/19 REV 3 + COR 1.

Explanations by the Presidency regarding the compromise proposals distributed under doc. ST 15152/3/19 REV 3 + COR 1

Line 77, Article 5.2a:

2a. **A** Member State~~s~~ 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 the Member State shall ensure** ~~provided~~ that there is only one designated authority **per project and per permit-granting procedure** ~~for a given authorising decision~~.

It should be clarified that the compromise proposal does not change the substance of the provision as contained in the General Approach as it does not prescribe that a Member State must designate the designated authority per project and per permit-granting procedure. The purpose of the last sentence is to simply clarify that, where a Member State decides to designate different authorities as the designated authority, it shall do so provided that the project level is the lowest level at which an authority may be designated. This is to cater for the importance the Parliament attaches to the one-stop-shop functionality of the authority, namely that the project promoter should have to address only one designate authority in order to start the permit granting procedure. The provision allows a Member State to designate an authority for categories of projects, per transport mode or per geographical area. It does not require to designate a different authority for every project. It does not, therefore, entail additional administrative and financial burden.

*Furthermore, the addition of the wording **per permit-granting procedure** aims to clarify that all tasks of the designated authority as defined in Article 5(4) shall be executed by one such authority for a single permit-granting procedure corresponding to a single project (cf. definition of permit granting procedure and project in Article 2(b) and 2(b)(i)).*

It should also be clarified that the General Approach does not provide for application of a rule by which projects falling under the scope of this proposal should be treated exclusively by one authority which is also a single contact point for the project promoter. It is stated in Article 2(d) that the designated authority is the main point of contact whereas Article 5(2) enables Member State to designate different authorities as the designated authority. Such flexibility is retained with this compromise.

Line 79, Article 5.2ac; Line 96, Article 5.4bb; and Line 151, Article 6a.6a:

(79) **2ac. The designated authority shall transmit the authorising decision to the project promoter, in line with Article 6a paragraph 6a.**

(96) **(bb) notify the authorising decision to the project promoter;**

(151) **6a. The designated authority compiles the required permits, decisions and opinions and transmits the authorising decision to the project promoter.**

The compromise proposals on the transmission of the authorising decision aim to provide a role to the designated authority at the very end of the permit-granting procedure. This is important in order to have an appropriate overview, to be able to report on the permit-granting procedures and to ensure proper implementation of the directive. Moreover, notification of the authorising decision by the designated authority is in line with the role of the designated authority, namely the facilitation and structured processing of permit-granting procedures as provided in Article 2(d). This is done by providing that the designated authority remains the main point of contact to the project promoter in a procedure leading to the authorising decision. The start of the permit-

granting procedure is the notification of the project by the project promoter to the designated authority, as provided in Article 6a(1) of the General Approach. Transmission of the authorising decision to the project promoter by the designated authority indicates completion of the permit-granting procedure and brings more transparency and structure to the permit-granting process.

Furthermore, it should be clarified that compromises do not imply that the designated authority would have to have specific powers over other authorities; this is left to the national administrative system. It does also not prevent the different authorities involved in a permit-granting procedure to issue their decisions or permits to the project promoter. Indeed, according to Article 2, the authorising decision may be a set of decisions adopted successively. It is left to the Member States to define the status of this transmission to the project promoter; it does not have to be an additional act that could be challenged legally.

Line 80, Article 5.2ad:

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.

With this compromise, the Presidency tried to find a balance between the detailed original Commission proposal supported by the Parliament and the more generic nature of the General Approach that follows the lines of a directive. As there are limited options for the Council to move in the direction of the Parliament, this could be a compromise that provides the Member States with a suggestion, being a „may clause", without infringing on their powers, and at the same time reassures the Parliament that the spirit of the proposal is kept.

Line 93, Article 5.4a:

(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;

It should be clarified that this compromise does not mean that the designated authority has to inform project promoters of individual decisions taken by other authorities involved in the permit-granting process and is in no way meant to move the proposal in the direction of integration of the permit-granting procedure. By adding other relevant authorities involved, the Presidency simply made the effort to additionally highlight the element of main point of contact, without forcing the Parliament's idea of a sole point of contact. Provision in this line should be read keeping in mind the tasks of the designated authority defined in Article 5. As the designated authority does not necessarily have decision-making competence, unless decided so by the Member State, its facilitation tasks will be performed in close cooperation with other authorities involved in the permit-granting process as clarified by this compromise. It should be noted that good information exchange between different authorities involved is key to having smooth-running procedures, but the compromise proposal is still leaving it to the Member States to define the relationships between authorities.

Line 95, Article 5.4ba:

(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);

As indicated before, the designated authority performs tasks related to the facilitation of the permit-granting procedure and does not have to be empowered to take decisions unless decided so by the Member State. Therefore, overseeing the timeframe of the permit-granting procedure and extension of time limits does not entail empowering the designated authority to exercise control over other authorities involved in the permit-granting procedure. However, as the text of the General

Approach does not go beyond providing that the Member State shall set deadlines for the permit-granting procedure not exceeding 4 years from its start, the Presidency considers it useful to clearly define that keeping track of the timeframe and extensions is the role of the designated authority. This will add to the transparency of the process and might also stimulate more efficient handling of procedures, in line with Recital 8.

It should be also noted that the designated authority is not only the main point of contact, providing information and guidelines, but also facilitates efficient and structured processing of permit-granting procedures (Article 2(d)), thus performing a coordinating role within the scope of its responsibilities.

Line 109, Article 6.3:

3. ~~The~~ Member States shall adopt the necessary measures to ensure that, in duly justified cases, an appropriate extension to the four-year period referred to in this Article may be granted. The duration of the **extension** ~~prolongation~~ shall be determined on a case-by-case basis and shall be duly justified. **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 compromise is trying to bridge a significant gap between the position of the Parliament and Council. The rapporteur has named two main elements of dissatisfaction with the General Approach in all encounters with the Presidency. Apart from the single competent authority, this paragraph has been the second main point of worry, namely that provision in this line of the General Approach might imply that the Member States may extend deadlines indefinitely. Compromise aims to establish that subsequent extensions should be subject to further conditions that need to be fulfilled for their granting when compared to initial extensions. Therefore, the compromise text provides still the possibility to extend the period; however this should be justified by exceptional circumstances. It does not exclude that there would be more than one extension. Finally, it should be noted that the administrative and judicial appeal procedures and judicial remedies are not counted in the 4 year period.

Line 142, Article 6a.4:

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

One of the key objectives of the legal act remains the facilitation of the permit-granting procedure for the project promoters. The Parliament has repeatedly insisted on this point. In many cases, the project promoters will be familiar with the permit-granting procedures, and will not require additional information to prepare for the permit-granting procedure. However, in case the project promoter would like to receive information specific to the individual project, it seems appropriate that this is provided. The following wording suggested by Germany could be a good compromise approach to this question:

"In order to ensure a successful notification, the Member States **shall provide appropriate guidelines for project promoters. If** ~~take the~~ **necessary** ~~measures to may provide that~~ the **project promoter may ask the** designated authority ~~shall establishes, upon request by the project promoter~~, **for** a detailed application outline comprising the following information customised for the individual project."

Line 149, Article 6a.5b:

5b. The project promoter may contact individual authorities for specific permits, decisions or opinions which are part of the authorising decision.

*The General Approach clearly made the designated authority the **main** point of contact for the project promoter. The General Approach thus does not prevent contacts of the project promoter with other authorities. In many cases, such direct contacts (for instance with the EIA authorities) are useful to smoothen the permit granting. The compromise proposal therefore simply spells out what was implicitly foreseen in the General Approach.*

Lines 175, 176 and 177, Article 10a:

(175) **Article 10a**

Reporting

(176) **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].**

(177) **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.**

As some Member States rightfully indicated there is indeed already a comprehensive monitoring system when it comes to the TEN-T Regulation. The elements mentioned in article 10a.2 are however not part of this reporting. The burden on Member States would nevertheless be very limited as obligatory reporting is already provided in the context of TEN-T and the additional requested data is limited to a very small number of indicators: (1) the number of permit-granting procedures under the scope of this directive, (2) the average length of the permit-granting procedure, (3) the number of permit-granting procedures exceeding the time limit and the reasons thereof as well as (4) if there are any joint authorities established in the reporting period. The Presidency considers that, to assess the effectiveness of the approach of facilitation of the permit-granting procedure, it is necessary to provide data on the implementation of this directive. This will make it possible to evaluate whether such an approach is contributing to the timely implementation of projects falling under the scope of this proposal. In any case, the nature of a directive requires some form of reporting to keep track of the implementation of the directive. However, as rightfully indicated by several delegations, in the second round of compromises, the Presidency will take into account the need to align the reporting deadlines for the Member States and the Commission.