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NOTE

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
N° prev. doc.:	ST 15152/4/19 REV 4
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 Poland on the Presidency compromise distributed under doc. ST 15152/4/19 REV 4.

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

26 May 2019

Please find below PL comments on a revised Presidency proposal for the mandate for the third trilogue with the European Parliament (ST 15152/2/19 REV 4).

- **Line 43:** Poland is strongly in favour of keeping the provisions of the general approach. Therefore the directive shall apply to the permit-granting procedures required in order to authorise the implementation of projects that are part of pre-identified sections of TEN-T core network as listed in the Annex¹.
- **Line 78:** Poland proposes to replace the phrase "can easily find" by the following wording: **Member States shall take all the necessary measures to provide the easily available information ensure that the for the project promoters can easily find information about the identity of the designated authority in charge of a given project**
- **Line 94:** The compromise proposed by PREZ HR involves deleting the word "main" before the term "contact point" and extending the role of the contact point to include the obligation to provide information not only to the project promoter, but also to other authorities involved in the decision-making process. The new wording indicates that the "designated authority" will be an information point not only for the investor, but also for all other authorities participating in the procedure leading to the issuing decision authorizing the specific project. This provision in Polish conditions would be extremely difficult to implement. The biggest problem is the last part of the sentence, assigning the function of an information point to a specific project. Therefore, we are not talking about the general authority providing general information or interpretations, but on the personalized provision of guidelines / information on a given project which we consider as an unacceptable interference in the proceedings. It would violate the division of competences between the various bodies involved in the decision-making process. In our view only the authority conducting the proceedings is competent to apply the procedure which regulates the decision. And only the appeal body and administrative courts, may interfere in the interpretation of the given regulations. Therefore, it seems impossible to implement this regulation in our law.

PL proposes a compromise solution which will determine that, the designated authority is an information point for authorities participating in the procedure aimed at issuing an authorisation decision, but this function is generally of an abstract (overall) nature, detached from the reality of a specific procedure.

¹ Annex will be added to this Directive and shall be the list of cross-border links and missing links in Section 1 "Core Network Corridors and indicative list of pre-identified cross-border links and missing links" of Part III of the Annex of the draft Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014, as set out in the partial Common Understanding, doc. 7207/1/19 REV 1, once adopted.

(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,
- **for relevant authorities responsible for issuing required permits, decisions and opinions with regard to the procedure leading to the authorising decision;”**

The first tiret (indent) will clearly link the contact for information to a specific project. *A contrario*, the lack of such a link in the second tiret (indent) will mean that the information provided to the authorities by the 'designated authority' is of an abstract (overall) nature and concerns the procedure in general and not a specific case.

- **Line 96:** This provision has a significant impact on the role of the 'designated authority'. However, the proposed wording suggests that the 'designated authority' is to replace the leading authority in deciding on the termination of proceedings if leading authority failures to meet the deadline for issuing the decision.

In PL view, it would be better solution to soften the provision and to limit the role of the 'designated authority' to monitoring whether the deadline for issuing a decision is complied.

~~“(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);”~~

- **Line 97:** Poland welcomes the deletion of the previous provision on "transmitting" the authorizing decision by 'designated authority'. Nevertheless, the issue of the compilation by the 'designated authority' of permits, decisions and opinions remains questionable. The provision in this respect is very unclear. The provision can be understood that it is the 'designated authority' that takes over the function of the investor in order to obtain all the necessary partial decisions. Then the project promoter applies only for the final 'authorising decision'. This would mean an unacceptable interference, contrary to the principles of subsidiarity and proportionality, with the power of Member States to shape the national investment process.

Poland proposes to impose an obligation on individual authorities issuing decisions to inform the designated authority about this decision. Consequently, an alternative solution is as follows:

~~“(bb) compile the required permits, decisions and opinions and notify the authorising decision to the project promoter;”~~

(151) 6a. Relevant authorities involved in the procedure leading to the authorising decision shall notify the designated authority that required permit, decision, opinion or the authorising decision has been issued. The notification shall include general information about the decision issued by the authority and shall not include personal data of parties involved in the proceeding. The designated authority compiles the required permits, decisions and opinions and transmits the authorising decision to the project promoter.

- **Line 110**

(...) "A further extension may be granted once, under the same conditions". – Poland suggests restoring the provisions of the general approach, as they give more flexible for MS.

- **Line 138:** In Poland's view, a 2-month period is sufficient. What is more the Member States should be given the flexibility to shorten this period. Therefore, PL proposes to give a new wording to the second paragraph and to add a third paragraph in art. 6a, so that this provision would be worded as follows:

*"2. In order to assess the maturity of the project, Member States may define the level of detail of information and the relevant documents to be provided by the project promoter when notifying a project. **If the project is not mature enough, the notification shall be rejected in the period set out by the Member States and the decision shall be justified. The period referred to in the second subparagraph may be no longer than two months after the notification**".*

- **Line 143:** Poland holds its negative position on the obligatory preparation of "Detailed Application Outline". In our view it is impossible to prepare the "Detailed Application Outline" adapted to a given investment project at the notification stage. Poland is in favour of restoring the provisions of the general approach:

"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:"