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NOTE

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
N° Cion doc.:	9075/18 + ADD 1 - ADD 3
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 delegations

Delegations will find attached additional written comments by Germany on the above proposal.

Brussels, 17.5.2018
COM(2018) 277 final

2018/0138 (COD)

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**

{SEC(2018) 228 final} - {SWD(2018) 178 final} - {SWD(2018) 179 final}

GERMAN PROPOSALS

Initial remarks:

Key assumption is to split the permit granting procedure into 3 phases:

1.

Pre-application (Art. 6 (2) 2 months + “x” + 3 months): notification of the project; acknowledgement by the authority; close cooperation project promotor / authority; preparation of all necessary documentation by the project promotor; most important: environmental impact assessment report; finalisation and submission of the complete application file to the single competent authority; information of the project promotor about missing or incomplete documentation (Art. 6 (3) by the single competent authority within 3 months.

Justification: The preparation of application documents - especially of the necessary environmental reports and analyses - differs from case to case. Additionally there may be overlapping with the time that is needed for procedures upstream of the permit granting procedure, e.g. spatial planning procedures, which may have influence on the course and content of the preparation of application documents. It is therefore impossible to include it in a timely

limited phase of joint cooperation between authority and project promotor as foreseen in the COM proposal. Furthermore EIA report and other environmental reports connected with it, have to be presented to the public and to other authorities in order to receive their comments. This (legal requirement) is now included in phase 2 (assessment of the application).

2.

Phase of assessment of the application (2 months + 2 years): The permit granting procedure will continue with the acknowledgement of the application file by the single competent authority. At first the project promotor and the authority shall set up an indicative **detailed assessment outline** based on estimates and legal requirements for time limits within two months. As soon as that outline is agreed, the key obligation of the phase of assessment (two years) may start. Two years are necessary especially with regard to Article 6 (4) (a) (iii). Public participation and input of other authorities often require amendments of the original plan, which may necessitate fundamental changes. This could also cause a complete revision of the application file. The amendments of Article 6(6) and 6(7) take this into account.

3.

Decision-making phase: *[Proposal will follow at a later date. (see Art. 6 (8))]*

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

CHAPTER I GENERAL PROVISIONS

Article 1

Subject matter and scope

This Regulation sets out requirements applicable to the administrative procedures followed by the competent authorities of Member States in relation to the authorisation and implementation of ~~all~~ projects of common interest **or integral components of projects of common interest** on the core network of the trans-European transport network **which are specified in the annex of this regulation.** (*→ We need a more precise description, either a financial threshold or a project list as an annex like in Regulation (EU) No 347/2013. Depending on the wording here the definitions in Art. 2 (d) and (f) should be amended.*)

This Regulation shall not apply to administrative procedures in Member States where permit granting procedures constantly fall below 3 years and 5 months.

Article 2

Definitions

For the purposes of this Regulation, the definitions set out in Regulation (EU) No 1315/2013 shall apply. The following definitions shall also apply:

²³ COM(2017) 198 final.

²⁴ COM(2017) 573 final

- (a) "comprehensive decision" means the decision or set of decisions taken by a Member State authority or authorities not including courts or tribunals 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;
- (b) "permit granting procedures" means every procedure that has to be followed or step that has to be taken ~~before~~ **by** the authorities of a Member State, under Union or national law, before the project promoter can implement the project;
- (c) "Project promoter" means the applicant for authorisation for a private project or the public authority which initiates a project";
- (d) "single competent authority" means the authority which ~~the Member State designates~~ **as an one stop shop** is responsible for performing the duties arising from this Regulation **for a project in terms of Art. 1.**
- (e) "Cross-border project of common interest" means a project of common interest according to Article 7 of Regulation (EU) No 1315/2013 covering a cross-border section as defined in point (m) Article 3 of that Regulation which is implemented by a joint entity.
- (f) **"Project of common interest" means a project according to Article 3(a) of Regulation (EU) No 1315/2013 or integral components of such a project that lead to improvement of capacity and efficiency of the infrastructure.**

CHAPTER II – PERMIT GRANTING

Article 3

'Priority status' of projects of common interest

1. Each project of common interest on the TEN-T core network shall be subject to an integrated permit granting procedure managed by a single competent authority ~~designated by each Member State~~ in accordance with Articles 5 and 6.
2. **If a Commission opinion is necessary in a procedure, the time limits defined in Article 6 shall be extended where applicable by the duration of the review by the Commission plus two months for an appraisal by the single competent authority. The Commission opinion shall be deemed to be in favour of the project promoter if the Commission does not issue an opinion within two months after receipt of the request for an opinion.**
- ~~3. Where priority status exists under national law, projects of common interest shall be granted the status with the highest national significance possible, and be treated as such in permit granting procedures, where and in the manner such treatment is provided for in national legislation applicable to the corresponding types of transport infrastructure.~~
- ~~4. To ensure efficient administrative procedures related to projects of common interest, project promoters and all authorities concerned shall ensure that the most rapid treatment legally possible is given to these projects, including as regards the resources allocated.~~

Article 4

Integration 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 completion of projects of common interest, all the administrative procedures resulting from the applicable law, both national and of the Union, shall be integrated and result in only one comprehensive decision. **This shall be without prejudice to procedures upstream or downstream of the permit granting procedure under national law.** (*→ this refers to separate procedures like regional planning or expropriation*).
2. In the case of projects of common interest for which the obligation to carry out assessments of the effects on the environment arises simultaneously from Directive 2011/92/EU of the European Parliament and of the Council and other Union law¹, Member States shall ensure that joint procedures within the meaning of Article 2(3) of Directive 2011/92/EU are provided for.

Article 5

Single competent permit granting authority

1. By ... *(OP please insert the date one year of the entry into force of this Regulation)*, ~~each~~ Member States shall ~~designate~~ **ensure that a one** single competent authority **which** shall be responsible for facilitating the permit granting process **for a project of common interest** including for making the comprehensive decision.
2. The responsibility of the single competent authority referred to in paragraph 1 and/or the tasks related to it may be delegated to, or carried out by, another authority at the appropriate administrative level, per project of common interest, **per project components according to Article 2 f)** or per particular category of projects of common interest, under the following conditions:
 - (a) only one authority is responsible per project of common interest;
 - (b) the authority is the sole point of contact for the project promoter in the procedure leading to the comprehensive decision for a given project of common interest, and
 - (c) the authority ~~coordinates~~ **monitors** the **timely** submission of all relevant documents and information **by the project promoter**.

The single competent authority may retain the responsibility to establish time limits, without prejudice to the time limits set in accordance with Article 6.
3. The single competent authority shall issue the comprehensive decision within the time limits specified in Article 6 **(8)**. It shall do so following joint procedures.

The comprehensive decision issued by the single competent authority shall be the sole legally binding decision resulting from the statutory permit granting procedure. Where other authorities are concerned by the project, they may give their opinion as input to the procedure, in accordance with national legislation. This opinion shall be taken into account by the single competent authority.
4. When taking the comprehensive decision, the single competent authority shall ensure that the relevant requirements under **national**, international and Union law are

¹ Add a footnote referring to examples for what is to be carried out according to Union law (see EIA Directive to Art. 2 (3))

respected and shall duly justify its decision.

5. If a project of common interest requires decisions to be taken in two or more Member States, the respective competent authorities shall take all the necessary steps for efficient and effective cooperation and coordination among themselves. Without prejudice to obligations arising under applicable Union and international law, Member States shall endeavour to provide for joint procedures, particularly with regard to the assessment of environmental impacts.

Article 6

Duration and implementation of the permit granting procedure

1. The permit granting procedure shall consist of the pre-application phase, **the phase of assessment of the application** and the ~~phase of the assessment of the application and the decision-making phase~~ by the single competent authority.
2. **The project promoter shall notify the single competent authority of the Member States concerned about the project in writing, including a detailed description of the project. No later than two months following the receipt of the above notification, the single competent authority shall either acknowledge it or, if it considers that the project is not mature enough to enter the permit granting procedure, reject the notification in writing. If the single competent authority decides to reject the notification, it shall justify its decision (→ from para. 3). The pre-application phase, covering covers the period from the date of signature of the acknowledgement of the notification by the competent authority start of the permit granting procedure to the date of signature of the acknowledgement of the comprehensive application file by submission of the complete application file to the single competent authority, shall in principle not exceed two years. 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 the material scope and level of detail of information to be submitted by the project promoter as early as possible during the pre-application phase. (→ from para. 4a and 5)**
3. In order to ~~launch~~ **continue the permit granting procedure phase of assessment of the application**, the project promoter shall ~~notify~~ **provide** the single competent authority of the Member States concerned **with a comprehensive application file** ~~about the project in writing, and shall including a detailed description of the project the outcome of the impact assessment by the project promoter as well as the environmental impact assessment report. Within the period of three months from the date of submission, the competent authority makes a request regarding missing information to be submitted by the project promoter. (→ from para. 7)~~ **The competent authority shall acknowledge in writing the completeness of the application file and communicate it to the project promoter. No later than two months following the receipt of the above notification, the single competent authority shall either acknowledge it or, if it considers that the project is not mature enough to enter the permit granting procedure, reject the notification in writing. If the single competent authority decides to reject the application notification, it shall justify its decision. (→ to 2) The date of signature of the acknowledgement of the notification comprehensive application file by the competent authority shall serve as the start of the phase of assessment of the application of the permit granting procedure. If two or more Member States are concerned, the date of the acceptance of the last notification by the competent authority concerned shall serve as the date of the start of the phase of assessment of the application permit granting procedure.**

4. Within ~~three~~ **two** months of the start of the **phase of assessment** ~~permit-granting procedure~~, the single competent authority, in close cooperation with the project promoter and other authorities concerned and taking into account the information submitted by the project promoter on the basis of the ~~notification~~ **application file** referred to in paragraph 3, shall establish and communicate to the project promoter an **indicative** detailed **assessment** ~~application~~ outline, containing:
- ~~(a)~~ the material scope and level of detail of information to be submitted by the project promoter, as part of the application file for the comprehensive decision
 - ~~(a)~~ a schedule for the permit granting process, identifying at least the following:
 - (i) the decisions and opinions to be obtained;
 - (ii) the authorities, ~~and~~ stakeholders **concerned**, and the **formal phase of public likely to be concerned consultation**;
 - (iii) the individual stages of the procedure and their **statutorily determined as well as expected time limits** duration;
 - (iv) major milestones to be accomplished and their deadlines in view of the comprehensive decision to be taken;
 - (v) the resources planned by the authorities and possible additional resource needs.
5. ~~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. (→ to para. 2)~~ The project promoter shall cooperate fully with the single competent authority to meet deadlines and comply with the detailed **assessment** ~~application~~ outline as defined in paragraph 4.
6. The ~~project promoter~~ **single competent authority** shall ~~submit~~ **assess** the application file based on the detailed application outline within the period of ~~24~~ **21** months from the **date of establishment of the detailed receipt of that detailed application file assessment outline**. After the expiry of that period, the detailed application outline **detailed assessment outline** is no longer considered applicable, unless the single competent authority ~~decides to~~ prolongs that period, on the basis of a justified request from the project promoter. **In case that a necessary public consultation or contributions of authorities or stakeholders require fundamental amendments of the application file the phase of assessment shall be prolonged until these results or contributions are available. The single competent authority shall determine the extension on case by case logic. Objections are only [shall only be] possible during the phase of public consultation.**
7. ~~At the latest within the period of two months from the date of submission of the complete application file, the competent authority shall acknowledge in writing the completeness of the application file and communicate it to the project promoter. The application file submitted by the project promoter shall be considered as being complete, unless, within the period of two months from the date of submission, the competent authority makes a request regarding missing information to be submitted by the project promoter. (→ to para. 3)~~ **That request New requests for further information shall be limited, as regards the material scope and level of detail, to the elements identified in the detailed application outline detailed assessment outline. Any additional request for information shall may only be made result from exceptional and unforeseen new circumstances if this is necessary for finalizing the procedure and shall be** is duly justified by the single competent

authority. **As a consequence, the time limit defined in Art. 6.6. may be extended. The single competent authority shall determine and duly justify the extension on a case by case logic.**

8. *[German proposal for para. 8 will follow at a later date]*
9. The ~~time limits in the~~ above provisions shall be without prejudice to obligations arising from Union, **national** and international legal acts, **including requirements regarding the participation of other authorities and the public** as well as to administrative appeal procedures and judicial remedies before a court or tribunal.

Article 7

Coordination of cross-border permit granting procedure

1. For projects that involve two or more Member States, the **respective** competent authorities of the Member States concerned shall align their timetables and agree on a joint schedule.
2. The European Coordinator referred to in Article 45 of Regulation (EU)² No 1315/2013 shall be empowered to closely follow the permit granting procedure for cross-border projects of common interest and to facilitate contacts between the involved competent authorities.
3. Without prejudice to the obligation to comply with the time limits under this Regulation, if the time-limit for the comprehensive decision is not observed, the competent authority shall immediately inform the European Coordinator concerned about the measures taken or to be taken to conclude the permit granting procedure with the least possible delay. The European Coordinator may request the competent authority to regularly report on progress achieved.

CHAPTER III PUBLIC PROCUREMENT

Article 8

Public Procurement in cross-border projects of common interest

1. Public procurement in cross-border projects of common interest shall be conducted in accordance with the Treaty and Directives 2014/25/EU and/or 2014/24/EU.
2. In case the procurement procedures are conducted by a joint entity set up by the participating Member States, that entity shall apply the national provisions of one of those Member States and, by way of derogation from these Directives, those provisions shall be the provisions determined in accordance with point (a) of Article 57(5) of Directive 2014/25/EU of the European Parliament and of the Council or point (a) of Article 39(5) of Directive 2014/24/EU of the European Parliament and of the Council, as applicable, unless an agreement between the participating Member States provides otherwise. Such an agreement shall in any case provide for the application of a single national legislation in case of the procurement procedures conducted by a joint entity.

CHAPTER IV TECHNICAL ASSISTANCE

Article 9

Technical assistance

On the request of a project promoter or Member State, in accordance with the relevant Union funding programs and without prejudice to the Multi-Annual Financial Framework, the Union shall make available technical assistance for the implementation of this Regulation and the facilitation of the implementation of projects of common interest.

CHAPTER V FINAL PROVISIONS

Article 10

Transitional provisions

This Regulation shall not apply to the administrative procedures which started before the date of its entry into force.

Article 11

Entry into force

This Regulation shall enter into force ~~on the twentieth day~~ **two years** following ~~that the day~~ of its publication in the Official Journal of the European Union. (*→ According to the first draft of the Regulation it shall apply to projects to be submitted as of the twenty-first day following its entry into force. Given that the Regulation establishes new procedures in the Member States, this transitional period is too short. This will be especially true if it is necessary to actually establish new official structures with the corresponding equipment and manpower or to amend national regulations. Appropriate precautionary measures will require a budgetary lead time of one to two years.*)

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President