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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 written comments by Poland on the above proposal.

Article 1

- The following wording of Article 1(1) is proposed:

This Regulation sets out requirements which **may be** 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 on the core network of the trans-European transport network.

Justification:

Polish legal system in force already provides for the possibility of efficient preparation of investments, in particular road and rail investments, also on the TEN-T core network. Having in mind that the current system works well, the introduction of the proposed changes may potentially have a negative impact on the pace of preparation of these investments.

In the case of road and rail investments on the trans-European transport network, Polish legal regulations ensure their optimally quick preparation. The authorisation of a road investment realisation, issued after having obtained a decision on environmental conditions, determines not only the location of the road but also provides for the transfer of ownership of the property to the investor, approves the division of the property and the construction design. For a rail investment, the province governor is the only authority (in each province) issuing the location decision and the construction permit. The introduction of additional changes as a result of which the responsibility of specialised administrative authorities will be taken over by the one single authority (e.g. concerning the issuance of environmental decisions or approvals under the water legislation) will result in the prolongation of the decision-making process as well as, inter alia, accumulation of cases in this one single authority issuing comprehensive decisions.

The changes proposed by the European Commission de facto move the preparatory process a few years back, so that the achievement of the objectives assumed by the Commission will not be possible. The draft regulation omits the issue of transfer of ownership to the investor, what in the case of Polish road investment will cause disorganisation of authorities and regulatory uncertainty. Thus, it will lead to the prolongation of the process (which has been running smoothly for years) and delays in the realisation of road investment.

Given the above, in the opinion of Poland, Member States should have the discretion to decide if they will apply the draft provisions and to what extent. Thus, Article 1 of the draft regulation, which defines the persons and matters covered by the proposed legal solutions, should be redrafted to indicate the optional application of the provisions of the Regulation by Member States.

- It is proposed to add Article 1(2):

It is proposed to introduce a new Article 1(2) as follows:

Measures streamlining investments processes already in force in the Member States shall be considered as fulfilling the requirements of this Regulation.

Justification:

In the opinion of Poland, even if the idea of simplifying and speeding up the process of issuing construction permits and awarding public contracts in relation to projects of common interest on the TEN-T network is valid, institutional solutions included in the draft Regulation in the situation of Poland will not contribute to this objective.

Studies of barriers in infrastructure projects realisation carried out so far at the national level indicate precisely what kind of problems investors and contractors of infrastructural investment are facing. In

general, the most critical problems still occur in relations between ordering party and contractor, and not, in relations between investors and administration responsible for issuing the relevant decisions in the investment process.

Therefore, the Polish Government requests the optional application of the provisions of the drafted Regulation by the Member States.

Poland also proposes that the text of the Regulation make reference to the Member States existing legislation which contribute to improving investment funds spending and increasing the speed of the projects realisation, such as national special purpose acts.

- Table on the scope of responsibility of the one single authority

Decisions which, in the opinion of the Polish side, <u>cannot</u> be made by the one single authority
decision on environmental conditions
environmental impact assessment
approval required under the applicable water legislation
location and expropriation decision
construction permit