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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 Romania on the above proposal.

RO comments and proposals on
The Proposal for a Regulation on streamlining measures for advancing the
realisation of the Trans-European transport network

RO's comments and proposals below are meant to recommend the establishment of certain rules that are uniformly applicable in the European Union, with the aim to achieve the general objectives to rationalize and reduce the time required for the project promoter to obtain the necessary permits in order to start work on the TEN-T projects and, at the same time, to ensure predictability for project promoters with minimal impact on the national legislation of Member States, especially in those Member States where an effective / operational system already exists.

We consider that more important than the implementation of only one model in itself are the **objectives of the proposal**, which we support, and **the shortening of the necessary period for issuing the comprehensive decision, through better coordination/collaboration at national level.**

ARTICLE 2

Article 2 should be modified and the following definitions should apply:

1. **(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 building permit for transport infrastructure, **based on the individual decisions**, without prejudice to any decision taken in the context of an administrative appeal procedure".

2. After letter (a) a new subparagraph (a¹) shall be inserted:

"(a)¹ individual decisions means the agreements/permits, including the environmental permit, required by the urbanistic documentation issued by the competent authorities according to specific legislation, that the comprehensive decision is based on. "

COMMENT: Individual decisions must be taken at the appropriate level, meaning the level of the competent authorities, where data is available.

3. Taking the TEN-E Regulation as a model, we suggest that after the letter (e), a new letter (f) shall be inserted as follows:

"(f) project of common interest' means a project necessary to implement the transport infrastructure corridors referred to in Article 3 letter a) of Regulation 1315/2013, necessary for at least one of the transport infrastructure corridor and meeting any of the following criteria:

- (i) involves at least two Member States by directly crossing the border of two or more Member States;**

(ii) is located on the territory of one Member State and has a significant cross-border impact

(iii) crosses the border of at least one Member State and a European Economic Area country.

COMMENT

It is important to clarify the distinction between the term "comprehensive decision" and "building permit for the transport infrastructure" keeping in mind that, according to art. 5 point 3 of the present draft Regulation, "the comprehensive decision issued by the single competent authority shall be the sole legally binding decision resulting from the statutory permit granting procedure".

Practically, it can be understood that the building permit has no legal value, the decision to grant it not being specified as a separate document. According to the Romanian legislation but, to our knowledge, also to some other European countries', the building permit is the final legal administrative document issued according to the authorization procedure, entitling the execution of works.

In this regard, in Romania the comprehensive decision is the building permit.

It is important to take into consideration the fact that the competent authority has to also monitor the compliance of the works with the provisions of the building permit during the implementation phase. This process might imply justified changes of the authorized technical solutions. Therefore, this competence could be added to the role of the competent authority.

ARTICLE 4 has to be correlated with the Directive 2014/52 / EU amending Directive 2011/92 / EU.

ARTICLE 5 should be rephrased as follows:

1. By ... (*OP please insert the date one year of the entry into force of this Regulation*), each Member State shall designate one single competent authority which shall be responsible for **issuing the comprehensive decision and facilitating the process for issuing the individual decisions.**

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, **for every specific category of projects of common interest , under the following conditions:**

(a) only one authority is responsible for issuing the comprehensive decision for each specific category of projects of common interest;

(b) **the single competent authority monitors the way of submitting of all relevant documents and information and facilitates the process of issuing individual decisions.**

3. Without prejudice to the deadlines set in art. 6, the single competent authority speeds up the building permit granting procedure by facilitating the issuing of the individual decisions by the other authorities involved, according to the relevant/specific national legislation, as required in the detailed description of the application under Article 6 paragraph (4) .

COMMENT : As regards the coordination, the existing legislation does not allow the Romanian Ministry of Transport, which presently is the single competent authority for issuing the building permit for the transport infrastructure of national interest (which is equivalent to the *comprehensive decision* in the draft Regulation) to coordinate other relevant authorities' activity, when issuing individual decisions. At the level of the central public administration, every Ministry leads and coordinates activities in a certain field and at the local level, administrative authorities are autonomous.

4. The single competent authority shall issue the comprehensive decision based on the individual decisions within the time limits specified in Article 6. The comprehensive decision shall be the sole legally binding decision resulting from the statutory permit granting procedure for transport infrastructure works.

5. When taking the comprehensive decision, the single competent authority shall ensure that the relevant requirements under international and Union law are respected and shall duly justify its decision.

6. 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.

COMMENT In Romania's view the comprehensive decision provided under art. 5 should be issued **in the collaborative scheme** (as foreseen in article 8 from the Regulation 347/2013) based on the individual decisions, to be issued according to the national legislation by the competent authorities according to relevant national legislation.

The single competent authority facilitates the entire procedure of issuing the individual decisions by the other authorities involved.

We consider that the proposed text should be worded in such a way as to not impact too much the existing legal systems of Member States upon implementation. In this respect, the system foreseen in article 8 from the Regulation 347/2013 on guidelines for trans-European energy infrastructure could be a useful model.

Therefore, in addition to the above text proposal for article 5, acknowledging the national specificities of the authorization/building permit granting procedures, we

suggest that the proposed Regulation's provisions allow Member States to choose amongst the 3 systems provided in article 8 point 3 (a), (b), (c) of the Regulation 347/2013, in order to facilitate and better coordinate their procedures and to have the best possible system in place.

ARTICLE 6

Having in mind the existing national systems already in place in Member States and their respective constitutional systems, the principle of subsidiarity should apply on the method and the corresponding time limits to carry out the necessary activities for issuing the individual or the comprehensive decision.

Therefore, this article has to be rephrased by grouping the 3 stages of the permit granting procedure as follows:

- the pre-application phase,
- the phase of the assessment of the application and its joint documents, including the individual decisions (as well as the environment permit), according to a check list set by the competent authority;
- the comprehensive decision-making by the single competent authority (the issuance of the building permit)

Member States' current efforts to implement systems which aim to ensure efficiency and shorter deadlines must be supported.

Respective of the principle of subsidiarity and in order not to impose changes in those procedures carried out at national level within shorter time limits than provided in this proposal, we suggest that in drafting article 6 two options be taken into account:

Option 1 – to regulate only the maximum period for the overall comprehensive decision-making procedure in its entirety (including all three stages),

Option 2

1. to set in detail the time limit for each activity, within the three stages (the activities carried out by the project promoter during the 21-month period, as foreseen in paragraph (6), the single authority's activities in the first 2 months as well as in the 12 month time limit, as proposed in paragraph (8)).

2. to add at the end of article 6 a new paragraph as follows:

"In case the time limits for the authorization procedure stages provided by the national legislation are shorter than those in the present Regulation, the first will prevail. These time limits refer to checking the completeness of the application file and not to the validity period of the individual decisions and the comprehensive decision."

COMMENT: The Romanian national legislation in force stipulates that, for projects on the TEN-T network, urban planning certificates, permits and agreements (individual decisions) as well as building permits (comprehensive

decision) are valid until the completion of the works, respectively at the time of issuing the certificate of the final taking over of the works.

We propose to include in article 6 another paragraph providing as follows:

"The environment permit is one of the individual decisions to be granted before issuing the comprehensive decision."