



European Economic and Social Committee

TEN/669
Implementation of the TEN-T projects

OPINION

European Economic and Social Committee

**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**
[COM(2018) 277 final - 2018/0138 (COD)]

Rapporteur: **Dumitru FORNEA**

Referral	European Parliament, 11/06/2018 Council, 15/06/2018
Legal basis	Article 172(1) of the Treaty on the Functioning of the European Union
Plenary Assembly decision	22/05/2018
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	04/10/2018
Adopted at plenary	17/10/2018
Plenary session No	538
Outcome of vote (for/against/abstentions)	210/3/4

1. **Conclusions and recommendations**

- 1.1 The EESC believes that the initiatives grouped together in the third "Europe on the Move" package are necessary in order to provide an efficient legal framework at European level and to reaffirm the Member States' political and financial commitment to deliver the trans-European transport network (TEN-T) on time: the core network should be finalised by 2030 and the comprehensive network by 2050.
- 1.2 The EESC notes that the proposal for a regulation provides added value as on the basis of best practices identified across the EU, it regulates a number of key aspects for complying with deadlines for project delivery and for continuing to attract and interest public and private investors in submitting tenders for transport infrastructure.
- 1.3 The EESC endorses the Commission's approach, considering that it is appropriate and relevant given the key purpose of the proposal for a regulation which is to reduce delays encountered in the implementation of TEN-T infrastructure projects. In fact, these delays can be reduced significantly by recognising the priority status of projects of common interest, designating one single competent authority to be staffed with competent personnel and equipped with adequate resources. The authority should merge entities and bodies with competing roles so as to achieve real administrative simplification, integrating and coordinating procedures, and applying one single national legislation to purchases made by a joint entity.
- 1.4 The EESC welcomes the establishment by the Commission of a benchmark for the length of permit granting processes and considers that it is reasonable to limit the entire permit granting process to a maximum of three years, but would point out that it is important to take into account the views of the competent national authorities to ensure that the proposed deadlines are realistic in light of the specific situations in the Member States.
- 1.5 The EESC is of the view that in some Member States, compliance with the mandatory deadlines set by the proposal for a regulation will call for some legal and administrative reforms. These will enable the competent legal and administrative bodies to make their working methods quicker and more efficient so as to avoid legal action at national or European level for failing to comply with the deadlines.
- 1.6 The EESC endorses the technical assistance proposed under Article 9, but would point out to the Commission that further details are needed with regard to the eligibility criteria and the procedure to be followed in order to be accorded the technical assistance provided for in the proposal.
- 1.7 The EESC believes that the pace of infrastructure project implementation could be picked up if standardised terms and conditions and specific arrangements for public procurement were established at European level.
- 1.8 The EESC believes that national authorities can cut back on potential conflict in the implementation of TEN-T projects by involving the stakeholders/parties involved from the very

planning stage of transport infrastructure and by organising consultations with the public, civil society organisations and relevant local authorities in an efficient and timely manner.

- 1.9 The EESC points out that awareness raising activities and timely identification of attempts to denigrate TEN-T projects are key to a political and social climate conducive to the implementation of European transport infrastructure policies. The European authorities can neutralise the harmful effects of misinformation by staying in contact with the mass media and by further developing the institutional tools for providing accurate information and consulting the public.
- 1.10 The EESC takes note of an incoherence in the text of the proposal since in the definitions in Article 2(e) “Cross-border project of common interest” that notion is limited to projects implemented by a joint entity. However, in Article 7(2) and Article 8(1) the notion also seems to cover projects where no joint entity is in place.
- 1.11 The EESC believes that the cross-border coordination mechanisms provided for the TEN-T network can be strengthened by boosting the authority of and stepping up the tools available to European coordinators. In order to make optimal use of the experience and capacity of European coordinators, it might be necessary to revise the legislation laying down their remit, extending their responsibilities with a view to consolidating European leadership in implementing the cross-border transport infrastructure projects undertaken by the Member States.
- 1.12 The EESC notes that it is not clear which sanctions are laid down for the failure to comply with the legal provisions established by the proposal for a regulation. In view of the proposal's chief objective, specifically reducing delays, this aspect needs to be clarified so as to bolster the legally binding nature of the regulation and ensure that Europeans, civil society, public authorities and national and European-level courts and tribunals will have a transparent and predictable legal framework.

2. **General comments**

- 2.1 The proposal for a regulation considered in this opinion was issued by the Commission in May 2018. The Commission intended to supplement the initiatives grouped together in the third "Europe on the Move" package by focusing on the legislative and administrative measures which can speed up the implementation of investment programmes so as to deliver the trans-European transport network (TEN-T) on time: the core network should be finalised by 2030 and the comprehensive network by 2050.
- 2.2 The European Commission has estimated that the investments needed to deliver the core TEN-T network will amount to around EUR 500 billion for the period 2021 to 2030, while the finalisation of the comprehensive network will cost around EUR 1 500 billion. The funds invested in this European transport infrastructure will have a leverage effect, helping to create 13 million jobs a year up to 2030 and to generate additional revenue of up to EUR 4500 billion (1.8% of the EU GDP).

- 2.3 In June 2018, the Commission announced that it intended to allocate EUR 30.6 billion to the Connecting Europe Facility under the 2021-2027 Multiannual Financial Framework, a nominal increase of 47% over the 2014-2020 period. Nonetheless, the EU's strong commitment and contribution to the completion of the TEN-T network will not be enough unless the Member States really step up to the plate and identify alternative solutions for co-financing or fully financing transport infrastructure projects.
- 2.4 The implementation of the TEN-T investment programmes involves both identifying investors and making the necessary funds available, and laying the legal and administrative groundwork to ensure that the investments can be delivered on time and meet the standards set. Public consultations have shown that all stakeholders (public and private investors, businesses, civil society organisations and members of the public) want the administrative procedures involved in implementing infrastructure projects to be efficient, predictable, in line with the principles of sustainable development and with developments in digital technologies, and geared towards achieving the targets set by European and national policies on mobility in the EU.
- 2.5 Article 6 of the proposal for a regulation establishes phases and deadlines for the implementation of the permit granting process: a pre-application phase, which should not exceed two years, and a phase entailing the assessment of the application and decision making by the single competent authority, which should not exceed one year. The time limits set in the proposal are without direct prejudice to inter alia administrative appeals and judicial remedies before a court or tribunal.
- 2.6 The pre-application phase includes deadlines which the single competent authority must meet in order to finalise key stages of this phase. Therefore:
- no more than two months following receipt of the notification drawn up by a project promoter, the single competent authority must either acknowledge the launch of the permit granting process or reject the notification in writing if it considers that the project is not mature enough;
 - within three months of the start of the permit granting process, the single competent authority, in close cooperation with the project promoter and other authorities concerned, must establish and communicate a detailed application outline which must be submitted before the permits needed to go ahead with the project can be granted;
 - no more than two months from the date of submission of the complete application file, the competent authority must inform the project promoter in writing whether the file is complete.
- 2.7 Given the issues mentioned above, ***the Commission is working to achieve four main objectives with this legislative initiative:***
- I. Reducing delays encountered in the implementation of infrastructure projects to deliver the TEN-T network;

- II. Clearer procedures to be followed by those involved in promoting or implementing projects, particularly in connection with permit granting or public procurement procedures, but also regarding requests for state aid or other situations requiring public authority involvement;
- III. The systematic application of one single framework for cross-border projects implemented by a joint entity, unless the participating Member States decide otherwise;
- IV. More clarity for the public and civil society by strengthening the transparency framework and the arrangements for involving them in the planning and implementing of TEN-T projects;

3. Specific comments

- 3.1 The EESC feels that the completion of the TEN-T network will not be possible without firm political commitment from the Member States and strong leadership and cooperation at European level. On the basis of best practices identified across the EU, the proposal for a regulation provides added value as it regulates a number of key aspects for complying with deadlines for project delivery and for continuing to attract and interest public and private investors in submitting tenders for transport infrastructure.
- 3.2 The EESC endorses the Commission's approach, considering that it is appropriate and relevant given the key aspects regulated by the proposal. These are as follows: recognition of the priority status of TEN-T projects of common interest; the integration of permit granting processes; designation of one single authority competent for granting permits; establishment of a timeframe for granting and implementing permits; coordination of the procedure for granting cross-border permits; simpler public procurement in cross-border projects of common interest; EU technical assistance for the application of this regulation and the implementation of projects of common interest.
- 3.3 The Commission's policy option of *limited, decentralised mandatory actions implemented at national level* is understandable given the current political developments in some Member States and gives us an interesting picture of the way in which national governments position themselves with regard to EU legislative initiatives proposing European-level cooperation in areas subject to subsidiarity requirements.
- 3.4 The deadlines for permit granting processes regulated by the proposal are welcome but fairly optimistic in view of the constraints regarding compliance with national legislation in the field of investments and public procurement.
- 3.5 The EESC welcomes the establishment by the Commission of a benchmark for the length of permit granting processes, but would point out that it is important to consult the competent national authorities to ensure that the proposed deadlines are realistic in light of the specific situations in the Member States. On the basis of experience to date, it is possible that the time required to comply with each stage in the procedure – including approval of the technical documents, the technical and economic indicators and the public procurement procedures, and concluding and delivering on the relevant contracts by the deadlines set and in accordance with

national legislation – may exceed the deadlines proposed in this regulation by a considerable amount.

- 3.6 Some of the delays to date noted in the implementation of TEN-T projects are due to the unsuitable and in some cases overly politicised national institutional architecture, with public authorities unable to enact reforms and to adopt modern working methods, and which continue to use outdated administrative procedures which were dropped a long time ago by institutions which have taken up digital revolution applications on a broad scale.
- 3.7 Given this situation, the regulation will have a direct impact on the administrative structures of Member States performing below European standards. A reform of these institutions should be considered, and the technical assistance proposed under Article 9 is thus valuable for those Member States who request it with a view to the implementation of projects relevant to the delivery of the TEN-T core network. Nonetheless, further details are needed with regard to the eligibility criteria and the procedure to be followed in order to be accorded the technical assistance provided for in the proposal.
- 3.8 Many of the delays are due to legal disputes following conflicts between stakeholders or parties affected by the implementation of the projects. One facet of the delivery of justice is striking a balance between the rights of individuals and national law. The fact that the Member States have exclusive competence in the field of justice and the highly complex national and European legal framework for granting permits for infrastructure projects produce a mosaic of inevitable legal conditionalities which could substantially undercut the Commission's ambitious objectives.
- 3.9 The length of administrative appeals and court procedures and the effect of suspensive conditions, the technical challenges to the completion of infrastructure work, the lack of vital administrative documents needed to establish the legality of the procedure and the lack of the necessary funds all affect the length of the project permit granting processes. The European institutions are therefore required to take these factors into consideration when taking the final decision on the permit granting deadlines regulated at European level by the proposal for a regulation.
- 3.10 Similarly, better, more specialised training of magistrates, justice officials and lawyers in the area of public interest infrastructure projects could lead to shorter court proceedings and deliver a higher standard of justice, while complying fully with legal requirements.
- 3.11 Procurement procedures for transport infrastructure works are extremely time consuming, and a major factor in TEN-T project delays. The EESC believes that the pace of infrastructure project implementation could be picked up if standardised terms and conditions and specific arrangements for public procurement were established at European level.
- 3.12 The EESC believes that national authorities can cut back on potential conflict in the implementation of TEN-T projects by involving the stakeholders/parties involved from the very planning stage of transport infrastructure and by organising consultations with the public, civil society organisations and relevant local authorities in an efficient and timely manner. Social and

civic dialogue at national, regional and local level can make a key contribution to boosting public acceptance of transport infrastructure projects and to improving the administration's working methods by establishing and implementing integrated permit granting processes.

- 3.12.1 The EESC takes note of an incoherence in the text of the proposal since in the definitions in Article 2(e) "Cross-border project of common interest" that notion is limited to projects implemented by a joint entity. However, in Article 7(2) and Article 8(1) the notion also seems to cover projects where no joint entity is in place.
- 3.13 In some Member States, TEN-T and TEN-E infrastructure projects are subject to misinformation and denigration campaigns as they sometimes clash with the geopolitical interests of states or interest groups which want to make political capital from the progress or lack of progress made in infrastructure projects promoted by the EU. Awareness raising activities and timely identification of such threats are key to a political and social climate conducive to the implementation of European transport infrastructure policies. The European authorities can neutralise the harmful effects of misinformation by staying in contact with the mass media and by further developing the institutional tools for providing accurate information and consulting the public.
- 3.14 The EESC believes that the cross-border coordination mechanisms provided for the TEN-T network can be strengthened by boosting the authority of and stepping up the tools available to European coordinators. The proposal for a regulation considers this aspect and specifies the key role of these TEN-T coordinators who are tasked with closely monitoring the permit granting process for European projects of common interest and providing regular progress reports. In order to make optimal use of the experience and capacity of European coordinators, it might be necessary to revise the legislation laying down their remit, extending their responsibilities with a view to consolidating European leadership in implementing the cross-border transport infrastructure projects undertaken by the Member States.
- 3.15 The EESC notes that no sanctions are laid down for the failure to comply with the legal provisions established by the proposal for a regulation. Clarification regarding this point would bolster the legally binding nature of the regulation, and Europeans, civil society, public authorities and national and European-level courts and tribunals will have a transparent and predictable legal framework.

Brussels, 17 October 2018.

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The president of the European Economic and Social Committee