

**DG MOVE updated Guidelines on the application of Directive (EU)  
2021/1187**

**(the Streamlining Directive)**

This document had been originally prepared by DG MOVE as a follow-up to the workshop on the transposition of Directive (EU) 2021/1187 (the Streamlining Directive<sup>1</sup>) that took place on 22 June 2022. Following the second workshop on this topic on 26 October 2022, the document has now been updated with new questions (starting at question 19).

The questions addressed in this paper were either raised in the context of the two workshops or in response to the Commission's informal consultation with Member States in early 2022 on the transposition of the Streamlining Directive.

***1) When is the start of the permit granting procedure which sets off the four years time-limit in Article 5(1)?***

Article 6(1) of the Streamlining Directive stipulates that the notification of the project to the designated or, where appropriate, to the joint authority established in accordance with Article 7(2) by the project promoter, “*shall serve as the start of the permit-granting procedure*”. To avoid incomplete notifications which would be rejected within 4 months at the latest by the authority, Article 6(2) specifies that “*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.*” Article 6 (7) further stipulates that “*[w]hen the project promoter has submitted the complete project application file, the authorising decision shall be adopted within the time-limit referred to in Article 5(1)*” i.e. 4 years.

It is up to Member States to determine the level of detail required for the project notification. Moreover, upon the request of the project promoter, a detailed application outline that is customised to the individual project on what is needed for the notification to be complete may also be established in advance by the designated authority.

The project application file is complete when the application contains all the necessary elements - including those explicitly requested by the respective Member State - to take a decision. If the project application file is not complete, it would need to be completed and the deadline would only start counting once this is done. The notification can therefore be re-submitted with a new notification date.

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<sup>1</sup> DIRECTIVE (EU) 2021/1187 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 July 2021 on streamlining measures for advancing the realisation of the trans-European transport network (TEN-T), OJ L 258, 20.7.2021, p.1

**2) What does „maturity of the project“ mean in the context of Article 6(2)?**

Article 6(2) states that „[i]n order to facilitate the assessment of 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, the notification shall be rejected by a duly justified decision not later than four months after the receipt of the notification“.

Based on this article, the level of detail of the information needed for the notification and all documents required may be defined by Member States at the time of the implementation of the Directive in order to facilitate an assessment of the maturity of the project at the stage of notification. Maturity of the project is linked to the information provided in the notification, based on the parameters determined by the respective Member State, which should be comprehensive and detailed enough in accordance with these parameters to allow an assessment of whether the project has been thought through in such a way that it can be realised within the timeframe and as planned by the applicant.

**3) Should the designated authority be empowered to take the authorising decision (Article 4(4))?**

Point (6) of Article 2 of the Streamlining Directive defines the designated authority as „the authority which is the point of contact for the project promoter and which facilitates the efficient and structured processing of permit-granting procedures in accordance with this Directive.“ Article 4(4) then stipulates that Member States **may** „empower the designated authority to take the authorising decision. When empowered to take the authorising decision (...) the designated authority shall verify that all the permits, decisions and opinions necessary for the adoption of the authorising decision have been obtained and shall notify the authorising decision to the project promoter“. Point (1) of Article 2 defines the authorising decision as the “decision or a set of decisions [...]that determine whether or not a project promoter is entitled to implement the project on the geographical area concerned [...]”.

This means that Member States have the option to empower the designated authority to adopt the decision which “determine[s] whether or not a project promoter is entitled to implement the project on the geographical area concerned”. In that case, the designated authority must verify that all the permits, decisions and opinions necessary for the adoption of the authorising decision have been obtained and it must notify the authorising decision to the project manager. The Member State’s decision whether to empower their designated authorities to take the authorising decision bears no influence on the designated authority’s other tasks, such as those set out in Article 4(7).

**4) Is the Directive applicable to projects for which permit granting started before 10 August 2023?**

Pursuant to Article 9(1), the Streamlining Directive is not applicable to such projects. This provision refers to the date of transposition stipulated in Article 11.

**5) Is the environmental impact assessment (EIA) included in the four years time limit?**

In point (2) of Article 2 of the Streamlining Directive, ‘permit-granting procedure’ is defined as „any procedure that has to be followed related to an individual project falling within the scope of this Directive in order to obtain the authorising decision as required by the authority or authorities of a Member State, under Union or national law, with the exception of urban or land use planning, of procedures related to the award of public procurements, and of steps undertaken at strategic level that do not refer to a specific project, such as strategic environmental assessment, public budgetary planning, as well as national or regional transport plans”.

Individual EIAs, which do not constitute a strategic environmental assessment, do not fall within these exceptions, since they are usually an indispensable part of the permit needed in order to obtain authorisation. Therefore, EIAs are **included** in the four-year time-limit set out in Article 5(1).

This notion is further elaborated in the recitals. In recital 3, it is stated that the Streamlining Directive „should cover project-related procedures, including those related to the environmental impact assessment.“ Recital 7 then clarifies that „given the different environmental assessments provided for in relevant Union and national law, which are necessary for granting permits to projects in the core network, Member States should put in place, where feasible and appropriate, a simplified procedure which fulfils the requirements of that Union and national law in order to help achieve the objectives set out in this Directive aimed at increasing the streamlining of measures.“

**6) How shall the Directive be implemented where projects in the scope of the Directive require multiple permits or decisions and how should we calculate the four-year time-limit in these cases? The applications needed for different permits can be made at different times and at different stages of maturity of the project.**

Article 6(3) of the Streamlining Directive stipulates that „Member States shall take the necessary measures to ensure that project promoters receive general information as a guide to notification, adapted, where relevant, to the mode of transport concerned, containing information about the permits, decisions and opinions that may be required for the implementation of a project. That information shall, for each permit, decision or opinion, include the following:

- (a) general information about the material scope and the level of detail of the information to be submitted by the project promoter;
- (b) applicable time-limits or, if there are no such time-limits, indicative time-limits; and
- (c) details of the authorities and stakeholders normally involved in consultations linked to the different permits, decisions and opinions.

That information shall be easily accessible to all relevant project promoters, in particular through electronic or physical information portals.“

Article 6(4) also specifies that Member States may require the designated authority to establish, upon request by the project manager, a detailed application outline comprising, inter alia, *“the individual stages of the procedure and applicable time-limits, or, if there are no such time limits, indicative time-limits”*, as well as *“a list of permits, decisions and opinions to be obtained by the project promoter during the permit-granting procedure, in accordance with Union and national law”*.

Article 6(7) provides that the designated authority, if requested, must provide *“guidance to the project manager concerning the submission of relevant information, including all the permits, decisions and opinions which have to be obtained and provided for the authorising decision.”* Finally, under Article 6(8), nothing prevents the project manager from contacting the individual authorities for the specific permits, decisions or opinions which form part of the authorising decision.

These provisions are meant to ensure that all the permits, decisions, and opinions necessary for the adoption of the authorising decision can be issued within the four-year time frame set out in Article 5(1). A notification showing clearly that the required permits, decisions, or opinions could not be obtained within that period is an indication that the project is not mature. In case of delays, an extension of the four-year period may be granted pursuant to Article 5(4) of the Streamlining Directive.

Following from the above, regarding the the calculation of the four-year time limit, the same rules apply as in the reply to Question 1: based on Article 6(7) „when the project promoter has submitted the complete project application file, the authorising decision shall be adopted within the time-limit referred to in Article 5(1)“ i.e. 4 years.

***7) How can the Directive's demand of priority status for the projects in its scope be reconciled with the principle that an authority shall treat equally those to whom it is providing services?***

Article 3(1) of the Streamlining Directive stipulates that *„Member States shall endeavour to ensure that all authorities, including the designated authority, involved in the permit-granting procedure, excluding courts and tribunals, give priority to projects falling within the scope of this Directive.“* Recital 8 clarifies that such treatment may include shorter timelines, simultaneous procedures or limited timeframes for appeals, while ensuring that the objectives of other horizontal policies, such as environmental policies are also reached in accordance with international law, Union legislation and national law. In the legal frameworks of many Member States, priority treatment is already given to certain project categories based on their strategic importance. When such priority treatment exists within a national legal framework, it automatically applies to projects falling within the scope of the Streamlining Directive.

It is also worth mentioning that non-discrimination does not mean that every situation should be treated the same way, but rather that legal and natural persons should be treated equally in comparable situations. The practice of giving priority treatment to some pre-defined forms of procedures and situations, based on objective criteria, and pursuing legitimate objectives is commonplace in both the law of the Union and of the Member States.

The scope of the Streamlining Directive is defined to facilitate the efficient completion of projects of strategic importance with respect to the achievement of the EU strategy for Smart, Sustainable and Inclusive growth and to contribute to the achievement of the objectives of Regulation (EU) No 1315/2013<sup>2</sup> (the TEN-T Regulation). The scope refers to sections of the core TEN-T network, which is already an established Union priority in the field of transport infrastructure that needs to be completed by 2030. Therefore, priority status here refers to and is limited to the achievement of objectives stemming from the TEN-T Regulation. Please refer also to the answer of question 8.

**8) *How should the provision that all infrastructures on the core network corridors (provided that the threshold level of € 300,000,000 is exceeded) fall within the scope of the Directive be taken into account during the implementation? Is the scope referring to the transport modes (rail, inland waterways, road) mentioned in the Annex to the Directive or must the TEN-T infrastructures listed in Annex II to the TEN-T Regulation (EU) No 1315/2013 (inland ports, maritime ports, airports as well as RRT) be included as well?***

As stipulated in Article 1(1), the Streamlining Directive applies to projects that are part of pre-identified sections of the core network listed in the Annex thereof (which corresponds to the Annex of the CEF II Regulation<sup>3</sup>), and to other projects on the core network corridors with a total cost exceeding EUR 300 000 000. Projects exceeding that amount are frequently of strategic importance with respect to the achievement of the EU Strategy for Smart, Sustainable and Inclusive Growth and contribute to the achievement of the objectives of the TEN-T Regulation.

The scope is therefore **not limited** to the transport modes stipulated in the Annex to the Streamlining Directive, but it includes projects of value higher than € 300,000,000 in other modes of transport (e.g. maritime ports and airports) listed in Annex II of the TEN-T Regulation.

**9) *Which legislation shall apply to a cross-border project in case a joint authority is established?***

Article 7(2) of the Streamlining Directive states that „for cross-border projects, a joint authority may be established.“ Based on point (7) of Article 2, a ‘joint authority’ is defined as „an authority established by mutual agreement between two or more Member States to facilitate the permit-granting procedures related to cross-border projects, including joint authorities established by designated authorities where those designated authorities have been empowered by Member States to establish joint authorities.“

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<sup>2</sup> Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU, OJ L 348, 20.12.2013, p. 1

<sup>3</sup> Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014, OJ L 249, 14.7.2021, p. 38

Public procurement carried out by a joint entity should be subject to the national law of one Member State (see Article 8 and recital 18 of the Streamlining Directive) in order to ensure the efficient completion of the cross-border core network projects. The applicable national law should, in principle, be that of the Member State where the joint entity has its registered office. It should remain possible to determine the applicable national law by means of an agreement between the participating Member States. For a public procurement conducted by a subsidiary of a joint entity, that subsidiary shall apply the national law of one of the Member States concerned, which could be the national law applicable to the joint entity.

***10) How to interpret Article 3(3)?***

Article 3(3) states that Article 3, which concerns the priority status of the projects falling under the scope of the Streamlining Directive, „*shall be without prejudice to any budgetary decisions*“. This means that priority in this context only refers to permit granting procedures and does not refer to prioritisation of investments/ financing by Member States.

***11) How to apply the permitting procedure's time limit of four years in the case of large infrastructure projects that are divided into parts with separate timeframes?***

As long as the building of a project section requires separate permit-granting procedures, the four-year time limit should apply separately to each section of such a project.

***12) Should the Designated Authority be administratively related to the issuance of the national legislation on the permit granting procedure, thus having competence on the implementation of the whole procedure?***

The Streamlining Directive does not contain provisions on whether the Designated Authority should be administratively related to the issuance of the national legislation on the permit granting procedure.

***13) Is the authority administratively related to the issuance of the national legislation of the permit granting procedure entitled to consult the services involved about the delays encountered and how to overcome them?***

There is nothing in the Streamlining Directive, which would prohibit this. In fact, it would certainly be helpful to fulfill its objectives, if the designated authority could contact other services and monitor the progress of the permit granting procedure. Moreover, according to Article 4(6)(a) once the Streamlining Directive is transposed, the designated authority becomes „*the point of contact for information for (...) other relevant authorities involved in the procedure leading to the authorising decision (...)*“.

**14) Can the provisions of the Regulation (EU) No 347/2013<sup>4</sup> on guidelines for trans-European energy infrastructure and the national competent authority already designated for the scope of the implementation of this Regulation also be applied for the transposition of the Streamlining Directive?**

If the authority in question is also competent for transport and it fulfills the criteria and objectives stipulated in the Streamlining Directive, in particular of Article 4, that would be an option to be considered.

**15) Can the urban planning department be involved in the consultations on implementing the Streamlining Directive?**

The Streamlining Directive does not contain any provisions that would prohibit such a measure. Involving multiple relevant authorities in the consultation process on transposing can lead to a wider agreement and a more coordinated approach on streamlining.

**16) How to interpret the provision in Article 5 (2) which states that „the four-year period referred to in paragraph 1 shall be without prejudice to obligations arising from international and Union law (...)“? What international and Union law does the Article refer to?**

Article 5 (2) should be read in the light of Recital 12 of the Streamlining Directive, which states that „the procedure provided for in this Directive should be without prejudice to the fulfilment of the requirements of international and Union law, including requirements to protect the environment and human health. This Directive should not lead to the lowering of standards that are intended to avoid, prevent, reduce or offset adverse effects on the environment.“

Recital 13 further clarifies that „given the urgency of completing the core network, the simplification of permit-granting procedures should be accompanied by a time-limit for procedures leading to the adoption of an authorising decision to build the transport infrastructure. That time-limit should encourage a more efficient handling of procedures and should, under no circumstances, compromise the Union’s high standards for environmental protection and public participation (...)“

**17) Is it required to transpose and implement the Streamlining Directive if all TEN-T projects within a given geographical area have already been completed?**

As provided for in Article 288 of the TFEU „ [a] directive shall be binding (...) upon each Member State to which it is addressed“. As Article 12 of the Streamlining Directive is clear on the fact that it addresses all Member States, it must be transposed even if some or all projects falling under its scope have been completed in a given geographic area.

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<sup>4</sup> OJL 115, 25.4.2013, p. 39

Moreover, the provisions of the Streamlining Directive are not linked to any particular TEN-T project. Finally, as stipulated in Article 1(2) „*Member States may decide to apply this Directive to other projects on the core network and comprehensive network, including projects exclusively related to telematic applications, new technologies and innovation (...)*“. Therefore, even if all the TEN-T projects falling under the scope of the Streamlining Directive are completed within a Member State, the Member States can decide to expand its scope.

**18) What would be the effect of the Do No Significant Harm (DNSH) and climate proofing provisions of the revised TEN-T Regulation on the transposition of the Streamlining Directive?**

Most transport infrastructure has a long lifespan or service life. Infrastructure built over the next decade is likely remain in service well into the second half of the century and beyond. In parallel, the economy will undergo a transition to net zero GHG emissions by 2050 (climate neutrality) in line with the Paris Agreement and with the European Climate Law, including meeting the new GHG emission targets for 2030. Reflecting the importance of tackling climate change in the Union's commitments to implement the Paris Agreement and the United Nations Sustainable Development Goals, the 2020 July European Council concluded that Union expenditure should be consistent with the objectives of the Paris Agreement and the "do no significant harm" (DNSH) principle of the European Green Deal. These are the priorities that the proposal for a revision of the TEN-T Regulation<sup>5</sup> addresses by introducing requirements on DNSH and climate proofing for new infrastructure.

As already mentioned in the reply to question 14, any streamlining of procedure should not be to the detriment of environmental assessments. The DNSH and climate proofing requirements in the TEN-T revision proposal are introduced for new infrastructure projects, for which the EIA has not been completed – while not interfering with ongoing projects with a completed EIA.

Based on lessons learnt from climate proofing major projects over the period 2014-2020, the Commission has published technical guidance on the climate proofing of infrastructure in the period 2021-2027<sup>6</sup>. In accordance with the amended EIA Directive<sup>7</sup>, the impact of projects on climate and their vulnerability to climate change shall be considered at the screening stage and described when an EIA is necessary. Therefore, for projects falling under the scope of the 2014 EIA Directive, there is an overlap between the EIA process and the climate-proofing process. The two processes shall be planned together to take advantage of the overlap.

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<sup>5</sup> COM(2021) 812 final

<sup>6</sup> Commission Notice — Technical guidance on the climate proofing of infrastructure in the period 2021-2027 C/2021/5430, OJ C 373, 16.9.2021, p. 1–92

<sup>7</sup> Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L 124, 25.4.2014, p. 1–18



With regard to DNSH, the DNSH technical guidance<sup>8</sup> was elaborated in the context of the Recovery and Resilience Facility and proposes a specific approach limited to the RRF, based on two checklists, which structure the assessment of measures along six (taxonomy) environmental objectives. One of the examples included in this guidance focuses on a transport project (Example 4). The assessment relies to a considerable extent on the compliance with the Union's environmental legislation and assessments carried out under the EIA, Water Framework<sup>9</sup> and Habitats Directives<sup>10</sup>. Additionally, the project is associated with measures that make it greener.

The TEN-T revision proposal offers flexibility as to when and how to conduct DNSH assessments (e.g. within or outside the EIA). The proposal gives the possibility to conduct the analysis based on best available practice and as part of the EIA.

***19) Concerning Article 1(1)(b) of the Streamlining Directive, on what basis shall we evaluate if the EUR 300 000 000 threshold is met? Is it based on one single project or on the basis of a program (a grouping of several projects)?***

Article 1(1)(b) of the Streamlining Directive stipulates that the Directive shall apply to the permit-granting procedures required in order to authorise the implementation of “*projects on the core network corridors, as identified pursuant to Article 44(1) of Regulation (EU) No 1315/2013, with a total cost exceeding EUR 300 000 000, with the exception of projects exclusively related to telematic applications, new technologies and innovation within the meaning of Articles 31 and 33 of that Regulation*”.

Article 2(3) of the Streamlining Directive defines a project as “*a proposal for the construction, adaptation or modification of a defined section of the transport infrastructure which aims to improve the capacity, safety and efficiency of that infrastructure and of which the implementation has to be approved by means of an authorising decision*”.

Therefore, the EUR 300 000 000 threshold mentioned in Article 1(1)(b) applies to the definition of a project provided in Article 2(3), namely a proposal for the construction, adaptation or modification of a defined section of the transport infrastructure. In this context, a „grouping of several projects“ may be considered as a „project“ if all their elements belong to the same defined section of the transport infrastructure.

***20) Are administrative authorisations relating to town planning subject to the Directive (EU) 2021/1187?***

Recital 3 of the Streamlining Directive specifies that this Directive is without prejudice to urban or land-use planning. Article 2(2) of this Directive states that “*‘permit-granting procedure’ means any procedure that has to be followed related to an individual project falling within the scope of this Directive in order to obtain the authorising decision as required*

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<sup>8</sup> Commission Notice - Technical guidance on the application of ‘do no significant harm’ under the Recovery and Resilience Facility Regulation 2021/C 58/01, OJ C 58, 18.2.2021, p.1

<sup>9</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1

<sup>10</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7

*by the authority or authorities of a Member State, under Union or national law, with the exception of urban or land use planning, of procedures related to the award of public procurements, and of steps undertaken at strategic level that do not refer to a specific project, such as strategic environmental assessment, public budgetary planning, as well as national or regional transport plans”.*

Therefore, authorisations relating to urban planning are not subject to the Streamlining Directive, irrespective of whether they are linked to a specific project or not. At the same time, the Directive does not preclude the implementation of its provisions also to permit-granting procedures in the context of urban or land use planning.

**21) Article 1(2) states that “Member States may decide to apply this Directive to other projects on the core network and comprehensive network, including projects exclusively related to telematic applications, new technologies and innovation referred to in paragraph 1. Member States shall notify their decision to the Commission.” When should Member States notify this?**

Under Article 11 of the Streamlining Directive, by 10 August 2023, Member States must adopt the national measures transposing this Directive into their legislation and immediately inform the Commission thereof. In this context, they should inform the Commission whether they have decided to apply this Directive to the other projects referred to in Article 1(2).

If at a later stage following transposition, the scope of application of the Directive is extended by the Member States based on Article 1(2), the Commission should be notified as soon as the measures extending the scope of application are adopted.

**22) Regarding Article 6(1), what is the notification issuing date?**

Article 6(1) of the Streamlining Directive stipulates that the notification of the project to the designated or, where appropriate, to the joint authority established in accordance with Article 7(2) by the project promoter, “shall serve as the start of the permit-granting procedure”.

To avoid incomplete notifications which would be rejected within 4 months at the latest by the authority, Article 6(2) specifies that “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.” Article 6 (7) further stipulates that “[w]hen the project promoter has submitted the complete project application file, the authorising decision shall be adopted within the time-limit referred to in Article 5(1)” i.e. 4 years. The project application file is complete when the application contains all the necessary elements - including those explicitly requested by the respective Member State - to take a decision. If the project application file is not complete, it would need to be completed and the deadline would only start counting once this is done.

The notification can therefore be re-submitted with a new notification date.

**23) Regarding Article 2(1), what is the “authorisation decision”? Is it the building permit itself? Is it the decision to issue the environmental agreement or the environmental agreement itself?**

As stated in the definition provided in Article 2(1) of the Streamlining Directive an “authorising decision” means the decision or a set of decisions, which may be of an administrative nature, taken simultaneously or successively by an authority or by authorities of

*a Member State, not including administrative and judicial appeal authorities, under a national legal system and administrative law that determine whether or not a project promoter is entitled to implement the project on the geographical area concerned, without prejudice to any decision taken in the context of an administrative or judicial appeal procedure”.*

Therefore, the authorising decision can be a combination of different decisions and does not necessarily refer to one separate act. All of the permits/opinions/decisions required to the project to be implemented are part of the authorising decision to be adopted within four years. The authorising decision can be considered granted when the last act/permit/opinion/decision that is part of that set is adopted.

***24) Based on Article 2(6), is the designated authority the ministry responsible for transport and/or infrastructure or a unit within it?***

Based on Article 2(6) of the Streamlining Directive “‘designated authority’ means the authority which is the point of contact for the project promoter, and which facilitates the efficient and structured processing of permit-granting procedures in accordance with this Directive.”

Article 4(2) clarifies that “a Member State may, where relevant, designate different authorities as the designated authority depending on the project or category of projects, transport mode, or the geographical area. In such a case, the Member State shall ensure that there is only one designated authority for a given project and for a given permit-granting procedure.” Article 4(4) further states that “Member States may empower the designated authority to take the authorising decision”.

Therefore, there is no requirement as to the administrative nature or level of the designated authority as long as it fulfils the requirements of the Directive.

***25) Small-scale road projects – such as the construction of a new or additional access road – which are part of pre-identified sections of the core network as listed in the Annex fall, according to Article 1(1)(a) of the Directive, fall within the scope of the Streamlining Directive. Is it not the spirit of Directive to exclude such small-scale projects from the application of the Directive? Should the Directive not apply only projects which are part of pre-identified sections listed in the annex to the Directive when they are of strategic importance, e.g., projects that complete a missing link or cross-border connection?***

Article 2(3) of the Streamlining Directive defines a project as “a proposal for the construction, adaptation or modification of a defined section of the transport infrastructure which aims to improve the capacity, safety and efficiency of that infrastructure and of which the implementation has to be approved by means of an authorising decision”. Article 1(1)(a) states that the Directive shall apply to “projects that are part of pre-identified sections of the core network as listed in the Annex.”

Based on these provisions, small-scale projects described in the question fall under the scope of the Directive, since they refer to the modification of a defined section in the annex to the Directive. The Directive does not define de minimis criteria to exclude such projects. In operational terms, for small scale projects compliance with the 4-year permitting deadline will likely not be an issue so it is unlikely that the lack of a de minimis criterion would pose

implementation difficulties.

**26) Can national legislation specify that the public procurement rules of the Member State where the joint entity has its registered office or where the joint entity carries out its activities are to be applied to the procurement conducted by the joint entity?**

As already mentioned in the reply to question 9, in the case of public procurement (as elaborated in Article 8 and further underpinned by recital 18 of the Streamlining Directive), public procurements carried out by a joint entity should be subject to the national law of one Member State. The applicable national law should, in principle, be that of the Member State where the joint entity has its registered office. It should remain possible to determine the applicable national law by means of an agreement between the participating Member States.

The transposing national law should therefore leave the possibility to determine the national law applicable to a procurement by means of an agreement between the participating Member States.

**27) In accordance with the Directive 2021/1187, may the time when the first authorisation procedure is initiated to receive a construction permit be considered as the starting point of the authorisation procedure and may the construction permit be considered as the authorisation decision for the promoter to implement the project?**

In Article 2(2) of the Streamlining Directive, ‘permit-granting procedure’ is defined as „*any procedure that has to be followed related to an individual project falling within the scope of this Directive in order to obtain the authorising decision as required by the authority or authorities of a Member State, under Union or national law, with the exception of urban or land use planning, of procedures related to the award of public procurements, and of steps undertaken at strategic level that do not refer to a specific project, such as strategic environmental assessment, public budgetary planning, as well as national or regional transport plans*”.

If the initiation of the first authorisation procedure to receive the construction permit means that the EIA and other necessary steps not falling within the above-mentioned exceptions have already been conducted before the start of the permitting procedure, then this date cannot serve as the starting date of the permitting procedure.

Article 2(1) defines the authorising decision as the “*decision or a set of decisions [...] that determine whether or not a project promoter is entitled to implement the project on the geographical area concerned [...]*”. The construction permit may be considered as **the** authorising decision if the project promoter is entitled to implement the project on the geographical area concerned after its issuing and that no other decision is required under national law to determine whether a project promoter is entitled to implement the project. In the latter case, the authorisation decision consists of the set of the decisions required under national law.

**28) Does a project exclusively financed with private funding fall under the requirements of the Directive 2021/1187?**

The Streamlining Directive concerns permitting procedures, irrespective of the mode of funding of the projects within its scope.

**29) What is the responsibility of Member States if the four-year period or extended period is not complied with, where the delay incurred is not due to the project promoter?**

Article 5(5) of the Streamlining Directive states that Member States shall not be held responsible where the four-year period referred to in paragraph 1, as extended in accordance with paragraph 4, is not complied with where the delay incurred is due to the project promoter.

Where the delay incurred in the context of Article 5(5) is not due to the project promoter, and it does not fall under one of the situations described in Articles 5(2) and 5(3), the Member State should be considered in breach of the requirements of the Streamlining Directive.

**30) Does the Directive also cover upgrades/modernisation works on already existing parts of pre-identified sections of the core network as listed in the Annex, such as the construction of new motorway junctions, the construction of an additional lane or changes to already existing railway lines?**

As stipulated in Article 1(1), the Streamlining Directive applies to projects that are part of pre-identified sections of the core network listed in the Annex thereof and to other projects on the core network corridors with a total cost exceeding EUR 300 000 000.

See also the reply to question 25, where it is clarified that “all projects on the pre-identified sections listed in the Annex fall within the scope of the Directive” irrespective of their size.

Upgrades and modernisation works on already existing parts of pre-identified sections of the core network as listed in the Annex, such as the construction of new motorway junctions, the construction of an additional lane or changes to already existing railway lines, are therefore covered by the Directive.

**31) In July 2022, the Commission adopted a proposal for the revision to the TEN-T Regulation<sup>11</sup>, downgrading the last miles of all cross-border connections between the EU and Russia/Belarus from ‘core network’ to ‘comprehensive network’. Are these sections still covered by the Directive?**

The sections which are proposed to be downgraded from the core to the comprehensive network remain subject to the Directive until the entry into force of the revised TEN-T Regulation. If the co-legislator adopts the proposal of the Commission to downgrade the last miles of the cross-border connections between the EU and Russia/Belarus from ‘core network’ to ‘comprehensive network’, these sections will not be covered by the Streamlining Directive from the date of entry into force of the revised TEN-T Regulation.

**32) Can Member States decide to transpose some parts of the Directive with a law (e.g. for major issues such as indicating the designated authority) and other provisions of (such as the guidance documents to the promoters) with Ministerial decisions? Or would that be considered a partial transposition of the law?**

Article 288 of the Treaty on the functioning of the European Union provides that “a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.”

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<sup>11</sup> COM/2022/384 final

According to the case-law, the transposition of a directive into domestic law does not necessarily require that its provisions are incorporated formally and verbatim in specific legislation. A general legal context may, depending on the content, be adequate provided that it does indeed guarantee the full application of the directive in a sufficiently clear and precise manner. Therefore, the type of national legal act transposing the Directive, is left to the Member States, provided that it is legally binding.

However, Member States should keep in mind that, in accordance with Article 11.1, “*When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.*” This means that the flexibility that Member States enjoy in choosing the means of transposition into national law is coupled with a transparency obligation for them to identify clearly the national provisions that they are relying on.

***33) Shall the projects exceeding the threshold of EUR 300 000 000, falling under the scope of the Directive, be identified in the act transposing the directive?***

The Streamlining Directive creates the legal framework which is applicable in case there is a project which qualifies under Articles 1(1)(a) and 1(1)(b). Projects falling under the scope of the Directive do not have to be specifically identified in the transposition measures.