

21 September 2018**Resolution
of the Bundesrat**

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; Council doc. 9075/18**

At its 970th session on 21 September 2018, the Bundesrat adopted the following opinion pursuant to Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG):

1. In general, the Bundesrat welcomes the Commission's efforts to press ahead with the completion of the TEN-T networks (Trans-European Transport Networks — roads and railways).
2. It criticises the decision to use a Regulation, which is directly applicable in the Member States. The proposed level of regulation would result in competing planning and procedural requirements and responsibilities at national level. Germany's federal planning and approval legislation would require significant adjustment. The Bundesrat therefore opposes the proposed encroachment upon the specifics of administrative procedure in the Member States.
3. It also criticises the proposal for a Regulation in relation to the proportionality principle. Having a direct influence on the sovereign rights of the Member States is not necessary in order to speed up permit granting procedures. In this respect, a Directive would be sufficient, and would leave it to the Member States to determine the precise details of the procedures. The proposed Regulation is furthermore one-sided, focusing on speeding up procedures without taking into account the considerable material assessment obligations. In terms of proportionality, handling the significant rise in material assessment requirements within increasingly short procedures involves barely acceptable risks for the permit granting authorities and project promoters with regard to the legitimacy of the approval decisions.
4. The Bundesrat is currently discussing an amendment to the Basic Law in order to constitutionally enshrine the possibility — provided for by the creation of the *Infrastrukturgesellschaft Autobahn* [Motorway Infrastructure Company] and the establishment of the *Fernstraßen-Bundesamt* [Federal Trunk Roads Agency] — for the planning of federal motorways to remain with proficient regional authorities. Even if the proposal for a Regulation allows for delegation, this entails considerable legal risks, as it can lead to legal uncertainties with regard to the competent authority, thereby running counter to the goal of improving the TEN-T networks.

* First Resolution of the Bundesrat of 6 July 2018, Bundesrat document 252/18 (Resolution).

5. The Bundesrat asks the German Government to present these views in the remaining proceedings at EU level and to work to ensure the sovereign rights of the Länder.
6. It feels the need to clarify that, in the context of upstream strategic planning and project planning ('strategic level', 'project planning' and 'route options'), the territorial impact assessment carried out on eligible variants is classed as an administrative inquiry aimed at finding a path or corridor which is eligible for the permit granting procedure; it does not come under the permit granting procedure stage ('project permitting').
7. There are also concerns over the proposal for a Regulation insofar as it is not currently possible to identify to what extent the rules will simplify and speed up permit granting procedures and make them more efficient. The Bundesrat therefore asks the German Government — subject to further amendments and clarifications — to ensure that the Council's deliberations take account of the following aspects.
8. It is unclear what the material concentration or simplification of the permit granting process will involve. The mere act of a competent authority (Article 3(1) of the proposal for a Regulation) or the 'single competent permit granting authority' (Title of Article 5 of the proposal for a Regulation) formally combining individual procedures already in place does not satisfy the objective of the proposal for a Regulation on the matter, but rather threatens to impair well-established and reliable procedures and cause reductions in coordination. It may also have a negative and prolonging effect on any subsequent court proceedings.
9. The Bundesrat also takes the view that for cross-border TEN-T projects, the rules on the award of contracts to private investors do not tie in with national procurement law.
10. In principle, it welcomes the intention to harmonise the permit granting procedures for cross-border TEN-T projects in order to ensure that European environmental guidelines are interpreted and applied using similar criteria. At the same time, the Bundesrat is concerned that this will undermine stringent national environmental and investment standards.
11. The Bundesrat will send this opinion directly to the Commission.