

DG MOVE NON-PAPER

Challenges and best practices in the transposition of Directive (EU) 2021/1187 (the Streamlining Directive)

Introduction

This non-paper has been prepared by DG MOVE to assist Member States with the transposition of 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) - the Streamlining Directive¹.

Member States and project promoters had the opportunity to provide extensive feedback on the process of transposition of the Streamlining Directive into national law during two workshops held on 22 June and 26 October 2022. Building on the main outcomes of these workshops, this non-paper outlines a series of most encountered challenges in the transposition of the Streamlining Directive and highlights best practices to address internal administrative and procedural challenges at Member States' level, as well as for the realisation of cross-border projects.

1. Addressing internal administrative and procedural challenges

The transposition of the Streamlining Directive into national law may create challenges of procedural and administrative nature at an early stage of the permit granting process. In order to streamline the permit granting process, a wide range of steps can be taken prior to the project notification and during the whole permit granting timeline.

An overarching challenge reported by Member States is the compliance with the **timeframe for permit-granting procedures**. For example, several Member States reported that **the timely finalisation of the environmental impact assessment (EIA)** as part of the permit granting procedure may represent a challenge and jeopardise the compliance with the four-year deadline set by the Article 5 of the Streamlining Directive. Several tips and best practices were outlined in the first workshop to address this issue. Specifically, at planning level, the public should be informed, and its perspectives taken into account from the earliest stages of project development. Alternatives should be identified at an early stage, including spatial maps, data collection and sharing. At project level, Member States can establish binding maximum deadlines for all relevant stages of the EIA or cap the length of individual steps (e.g., no more than one month for the issuance of a scoping opinion by the competent authority or 3+3 months for the EIA conclusion and the issuance of the reasoned conclusion).

Regarding the **organisation of the permit-granting procedure**, Member States may **break down the available period into different steps**. This will allow project promoters to continue to submit applications for approval in their preferred order if more than one procedure is required. Competent

¹ Directive (EU) 2021/1187 of the European Parliament and of the Council of 7 July 2021 on streamlining measures for advancing the realization of the trans-European transport network (TEN-T), OJ L 258, 20.7.2021, p.1

authorities, assisted by the Designated Authority, can then ensure the compliance with the deadline set by the Directive and agree on the processing time of each phase.

Communication can be launched prior to the start of the permit granting process to promote the overall management of the required procedures, facilitate information exchange between project promoters and relevant authorities, improve the quality and usability of the reports and documents, and streamline the procedures.

The **establishment of an early public mandatory project-scoping phase** can accelerate the projects' timeline if supported by political decision-making. Often, incomplete applications or projects lacking maturity are delaying the scoping phase. It is therefore of utmost importance to process projects falling within the scope of the Streamlining Directive as a matter of priority, with a special emphasis on large-scale projects.

Establishing requirements for the quality and completeness of data, as well as project maturity, can help in ensuring efficient assessments. To further facilitate this process, **introducing procedures to treat the projects falling within the scope of the Directive as a matter of priority** could prove useful. For projects with priority status, to minimise delays, requests for additional information can be grouped, quality verification of the completed project application can be optimised by the designated authority, and promoters can prepare project forecasts (i.e., on a yearly basis) to facilitate programming.

2. Facilitating the realisation of cross-border projects

Workshop participants highlighted that administrative and procedural challenges may further increase when it comes to the realisation of large-scale cross-border projects. Authorising procedures can be hindered by a wide range of factors and reaching an agreement for all involved stakeholders and authorities can be challenging. Member States and project promoters identified the most common challenges and possible best practices to facilitate the realisation of cross-border projects.

National plan approval systems can differ between two Member States and authorising decisions can be taken either by the national parliament or by an independent administrative authority, which may constitute a challenge in aligning cross-border projects' approvals. **National laws and regulations, including technical norms and standards** may deviate substantially between Member States. A different building and procurement legislation may create uncertainty with regard to which national procurement legislation to apply, including different building permit definitions, different timelines in permit granting procedures, or differences on what the procedures should include (e.g., civil works, systems). **Different technical norms and standards** may apply in national legislation (e.g., specific national standards for tunnels). Henceforth, a cross-border project may have to **comply with different standards** on each part of the border (e.g., Fehmarn Belt project). Language differences between authorities, project promoters and partners may also represent a challenge.

When it comes to **cross-border projects' EIAs**, each Member State's requirements regarding EIAs may substantially vary (e.g., concerning baseline data, assessment methodologies, reporting), which may add more complexity to the coordination of EIAs. This results in fundamental differences between two Member States for the same project and a different need of detailed documentation for EIAs. Furthermore, the question of national languages for EIAs may increase coordination challenges.

To facilitate the realisation of cross-border projects, a series of good practices were identified by workshop participants. One of these was the **establishment of a special legislative environment for priority projects**, for example via intergovernmental agreements - either to establish a single framework

or to confirm the choice of applying one or the other framework. Another was the **facilitation of cooperation between the relevant institutions** at an early stage of the process to establish a joint view on how to achieve the objectives. Furthermore, defining the actions of each institution carrying responsibility for the project and providing them with resources for action at cross-border level was highlighted as a useful step.

The capacities of plan approval authorities should be addressed early in the process. To facilitate cooperation with relevant institutions at an early stage, it is important to establish a cooperation culture and agree on the decisions that will be considered as authorising. To ease the coordination between the involved Member States, a **bi-national coordination body**, established very early in the process, can streamline procedures and allow to focus on identifying the decisions to be taken, their timeline, and outlining which entity holds the decision-making power so that there can be a clear delegation of powers.

Creating a special purpose company can ease stretched capacity and resources on the administrative side. A Special Purpose Vehicle (SPV) can provide help to public authorities that may suffer from a lack of capacity or competences for large-scale projects of a high-level of complexity. The decision to form a special purpose entity may vastly simplify the project plan approval and facilitate the timeline of the project. Large-scale project promoters reported that the decision to form a special purpose company was defining for receiving the project approval.

Other best practices include **defining common language provisions** for the documentation to ease the permitting process. Moreover, addressing internal administrative and procedural challenges can apply to cross-border projects as well, such as dividing elements at an early stage while keeping in mind the objectives. Developing guidelines and manuals can also be useful, especially if done in consultations with project promoters.

Supervision at national and cross-border level remains key as well as taking into account the views of the **TEN-T corridors European Coordinators**. Finally, Member States reported that **European Economic Interest Groupings (EEIGs)** have proven very useful in the implementation of cross-border projects to reach compromises between all involved stakeholders and authorities.

Next steps

DG MOVE is available to answer individual requests that may arise in the finalisation of the transposition of the Streamlining Directive. An updated Q&A document based on questions asked at the workshops is included with this paper and will also be available online. As a reminder, the deadline for transposition of the Streamlining Directive is 10 August 2023.