

Delivering TEN-T core network projects

Guide of good practice



TRACTEBEL Engineering
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The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission.

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ABBREVIATIONS AND ACRONYMS

AA	Appropriate Assessment
CBA	Cost-benefit Analysis
CEF	Connecting Europe Facility
EIA	Environmental Impact Assessment
MSP	Maritime Spatial Planning
PPP	Public-private partnership
RBMP	River Basin Management Plan
SEA	Strategic Environmental Assessment
TEN-T	Trans-European Network for Transport
WFD	Water Framework Directive

1 INTRODUCTION

1.1 ABOUT THIS GUIDE

The purpose of this guide is to support Member States in identifying measures they can apply in their national context to streamline permitting and procurement procedures for TEN-T core network projects, to help ensure the timely delivery of these projects.

This guide was developed as part of a study on permitting and facilitating the preparation of TEN-T core network projects. The study was commissioned in 2015 by the European Commission DG MOVE to identify barriers in these regulatory and administrative processes that impact the effective and efficient planning and implementation of TEN-T core network projects, and deliver recommendations on how to address these barriers, including proposed policy options. The final report and other outputs from this study are available on the website of DG MOVE¹.

The study has, as a first step, evaluated existing procedures, and identified the barriers faced by transport projects during their planning and implementation in ten countries:

- Czech Republic
- Germany
- Hungary
- Italy
- Netherlands
- Poland
- Romania
- United Kingdom
- Austria
- Spain

The collection of information at national level also aimed at identifying good practices and opportunities to encourage the adoption of these good practices. In addition to country studies, ten case studies on large TEN-T waterborne or cross-border projects have been conducted:

- Railway connection Lyon-Turin
- Fehmarn Fixed Link
- Brenner Base Tunnel
- Rail Baltica (including the Warsaw-Bialystok link, as an illustrative example of the implementation of rail projects in Poland)
- Seine – Scheldt
- The Danube – Common section Bulgaria-Romania
- LNG-terminal in Ruse (Danube)
- Road Brno – Vienna
- Le Havre 2000
- Weser River, including Bremen and Bremerhaven port accesses, and Elbe River, including Hamburg port access

In addition to the in-depth case studies listed above, the study has also gathered illustrative examples of problems and good practices from the following projects:

- Cross-border section Trieste/Divača/Koper
- Rail Zevenaar-Emmerich-Oberhausen
- Trilogiport Liege

Most of the good practices presented in this guide were identified through case studies and country studies mentioned above. The examples presented have been selected based on the problem analysis

¹ Citation for study once published

carried out as part of the study and aim to address the most critical problems identified. Emphasis has been placed on complex projects, particularly in the waterborne transport sector and those with cross-border impacts.

1.2 HOW TO USE THIS GUIDE

This guide is a compendium of good practices identified in ten EU Member States and ten case studies. It aims at disseminating identified good practices in planning, permitting and procurement but does not provide an exhaustive guidance to planning and permitting TEN-T projects, or a comprehensive overview of good practices in TEN-T projects in Europe.

This guide is primarily intended at Member State authorities responsible for planning, permitting and procuring large transport projects. It could also be useful for a broader audience, including project promoters. The guide covers large TEN-T hard infrastructure projects.

1.3 GENERIC AUTHORISATION FRAMEWORK AND APPLICABLE LEGISLATION FOR PERMITTING AND PROCUREMENT OF TEN-T PROJECTS

The preparation, authorisation and commissioning of TEN-T projects is governed by both EU and national legislation and procedures. EU legislation applies in the main areas where the EU has competence: in particular environment, procurement and State aid. In some cases, specific rules and procedures apply linked to EU funding programmes. National laws transposing the EU Directives directly govern the procedures at Member State level, but these must be in conformity with the EU legislation, which applies equally in all Member States. The main areas for which Member State authorities have sole competence are spatial planning and land use and linked sectoral planning (e.g. transport plans); and other areas such as archaeological considerations, forestry etc.

An authorisation framework stems from the different obligations, and sets forth the process that projects must go through to apply for and receive development consent and procure the works and services necessary for implementation. This occurs at two levels: the strategic level – planning the development of the transport network at national and/or regional level; and the project level – including the planning phase and the permitting procedure, as shown in Figure 1 below. Three inter-linked and often overlapping phases can be distinguished:

- **Strategic planning:** The ministry or authority responsible for transport devises a national transport plan which provides for the long-term development and modernisation of the transport network. It defines strategic priorities for different transport modes. A Strategic Environmental Assessment (SEA) is generally carried out, along with Appropriate Assessment (AA) if required according to the relevant EU Directives.
- **Project planning:** This phase assesses the timeliness and feasibility of a proposed transport project, including alternatives to achieving the objectives of the project. Feasibility studies set out the infrastructure needs and define solutions can include traffic analyses, cost-benefit analyses (CBA) and environmental assessments. These may or may not be regulated by national standards, or by the requirements of EU funding programmes such as CEF or the Structural Funds. Various alternative options are assessed on the basis of economic, social and environmental criteria. The preferred option is then integrated into the spatial plan(s). In certain countries, the approval of the project will automatically result in amendments of the spatial plans, while in others, a specific land-use permit will be required in addition to the construction permit. In some cases, a major modification to a spatial or other plan to take into account a new project may require revision to the SEA.
- **Permitting procedure:** The permitting procedure generally covers the activities required to prepare an application for development consent, and follows on closely from project planning. This phase includes the EIA procedure, the spatial planning decision(s), and all the other permits

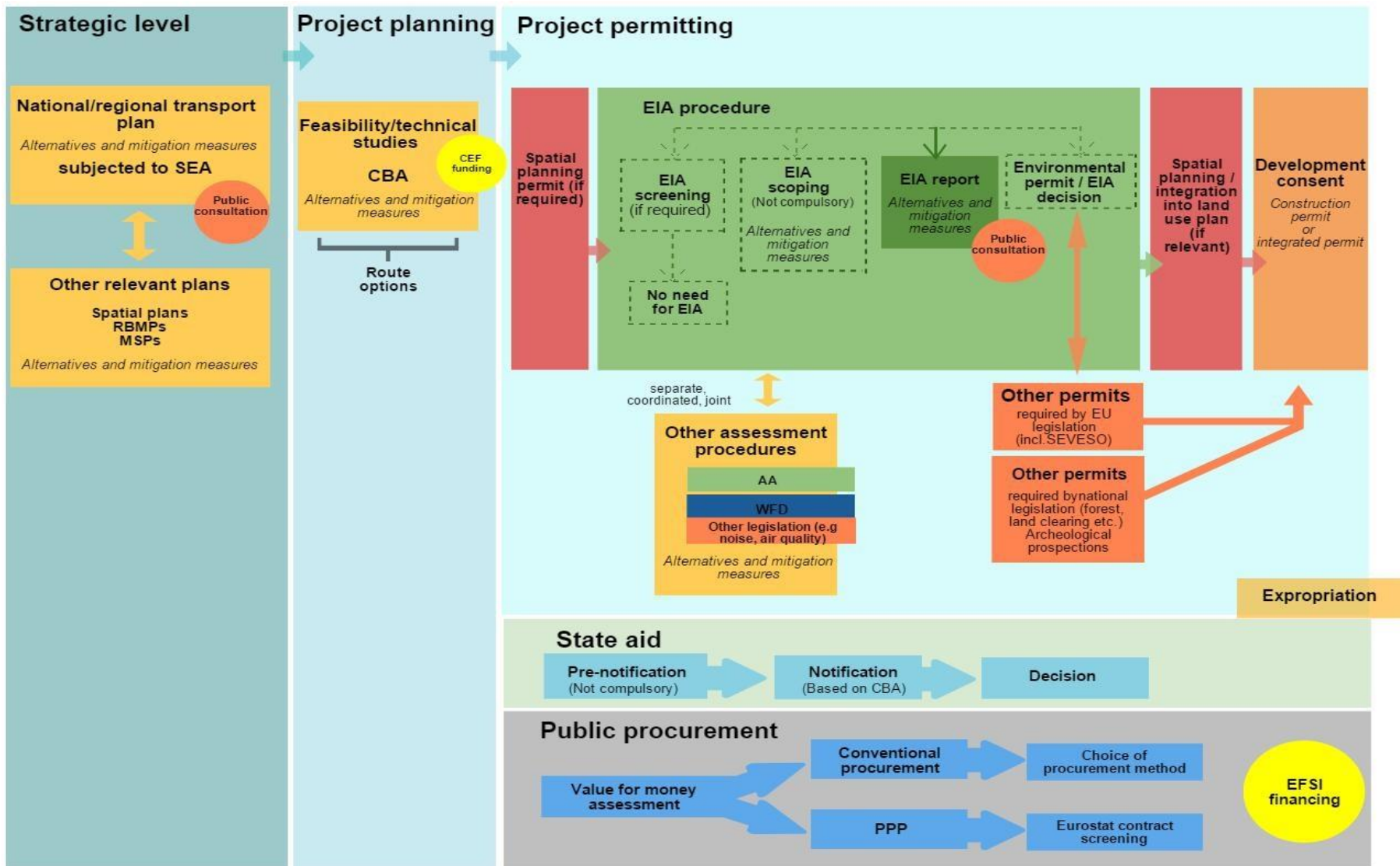
to be granted. This phase concludes with the acquisition and/or expropriation of the necessary land.

Outside the authorisation framework, but still part of the preparation of an infrastructure project are the public procurement procedure, the state aid notification, and the application for funding.

The following issues have emerged as key challenges for the efficient delivery of TEN-T core network projects:

- The **permitting of projects**, including long and complex procedures and inefficient public participation;
- The **procurement of projects**, including lack of capacity and long procedures;
- The timely notification and assessment of **State aid** issues.

Figure 1: Generic authorisation framework



The table below sets out the legislation that governs each stage of the procedure presented in the authorisation framework. Obligations deriving purely from national legislation – other than the transposition of relevant EU legislation – include spatial planning legislation, which sets out the rules governing land use. Permits can be required for occupying, and in certain cases clearing, certain categories of land, such as agricultural or forest land. The permitting of a TEN-T project might require changing the classification of pieces of land and updating the spatial plan(s). Obligations deriving from EU legislation cover the areas where the EU has competence – mainly protection of the environment, public procurement and State aid.

Table 1 sets out the relevant legislation applicable at key stages and steps in the procedure. An overview of each of the key EU legal instruments and how they apply to the permitting, procurement and state aid decision-making procedures is provided below.

Table 1: Relevant legislation (EU vs national) at each key step in the authorisation framework for transport infrastructure projects

Stage of procedure	Legislation
Strategic level	
National/regional transport plan	National
Spatial plan	National
River Basin Management Plans (RBMPs)	Water Framework Directive 2000/60/EC
Maritime Spatial Plans (MSPs)	Maritime Spatial Planning Directive 2014/89/EU
Strategic Environmental Assessment (SEA)	Strategic Environmental Assessment Directive 2001/42/EC
Project planning	
Feasibility studies, technical studies, CBA	National EU funding programmes (e.g. Structural Funds or CEF)
Project permitting	
Spatial planning permit	National
Environmental Impact Assessment (EIA) report report/environmental permit	Environmental Impact Assessment Directive 2011/92/EU amended by 2014/52/EU
Other environmental assessment procedures and possible permits	Water Framework Directive 2000/60/EC Habitats Directive 92/43/EEC Birds Directive 2009/147/EC Seveso Directive 2012/18/EU Others may be applicable
Other permits (e.g. forest, land clearing, archaeological etc.)	National
Public procurement	
Public procurement, including public-private partnerships (PPPs)	Concessions Directive 2014/23/EU Public Procurement Directive 2014/24/EU Utilities Directive 2014/25/EU Remedies Directive for the utilities sector 92/12/EEC amended by 2007/66/EC Remedies Directive for the public sector 89/665/EEC amended by 2007/66/EC
State aid	
State aid notification	EU Regulation laying down detailed rules for the application of Article 108 of the TFEU

2 FACILITATING THE PERMITTING OF TEN-T CORE NETWORK PROJECTS

2.1 INCREASING THE EFFICIENCY OF ADMINISTRATIVE PROCEDURES

The complexity of administrative procedures related to permitting can be a major source of delays. Good practices exist which aim to simplify the organisation of the different procedures, in order to make the process easier to understand and follow for both project promoters and authorities. Practice indicates that this can be achieved in a number of ways, both through legal measures such as the allocation of a certain status or process to selected projects, or through the consolidation of procedures themselves. Special rules can be applied for selected projects, thereby allocating priority effort where it is needed most to achieve objectives. Good practices from across the Member States in this area are presented below.

2.1.1 Special status and fast-track procedures

A special status or fast-track procedure aims at accelerating the permitting of certain projects of particular interest for the development of the national transport network. Project benefitting from fast-track procedures are generally major infrastructure projects, designated as such by law, or through the establishment of a list of important investments. The special status or fast-track procedure brings specific benefits to selected projects. Based on the examples from across the EU, these can include a reduction in the number of permits to be obtained, tighter time limits for the completion of the permitting procedure or for appeals, the possibility to conduct several assessments in parallel and other arrangements aimed at prioritizing the handling of procedures for priority projects.

Several Member States have reported proven success in the time taken to carry out permitting procedures for projects that are allocated a special status. Furthermore, this practice was taken up for energy infrastructure projects in the 2013 TEN-E Guidelines Regulation, which requires Member States to allocate such a status to TEN-E projects of common interest when it exists in national law. Table 1 shows examples of fast-track procedures applicable to certain transport infrastructure in selected Member States.

Table 1: Fast-track procedures, examples in some Member States

Member State	Legal Basis	Applies to	Main characteristics
Hungary	Priority Projects Act (2006), as amended in 2015	Projects designated by Government Decree No. 345/2012 as investments of national interest	Possibility to conduct several procedures in parallel (environmental permit and occupation and use of forest land and/or the use of rural land can be requested at the same time) The procedure to obtain the construction permit can be started even if the environmental permit has not yet been issued
Italy	Legge Obiettivo (2001)	Projects included on the 'National Strategic List' established by the CIPE	Development consent granted on preliminary project Tighter time limits for decision-taking
Netherlands	Crisis and Recovery Act (2010)	Projects designated by government	Limitations of legal standing of municipalities

Member State	Legal Basis	Applies to	Main characteristics
		Specific categories of projects (e.g. motorways) Projects in specific areas designated by order	Time limits for judgements in appeals
Poland	Act on railway transport (2003) Act on special rules related to preparation and implementation of investments in state roads (2008)	Roads and Railways	Number of permits needed reduced to 2 or 3 Land covered by permit becomes automatically property of State Treasury
Romania	Infrastructure Ordinance (2016)	Railway, road, air transport and inland waterways, as defined under the Regulation 1315/2013	Development consent granted with preliminary approvals regarding forest land and utilities Automatic change of agricultural land into constructible land once the ownership title is transferred to the state Extension of validity of permits until the end of the construction works

While such fast-track procedures can have important benefits in terms of simplification of the procedures for selected projects, they should be carefully implemented to avoid creating additional burden instead of streamlining the permitting procedure. For example, fast-track procedures typically require different authorities to work in parallel on different aspects of the project review procedure. If these authorities do not communicate effectively during the process, inconsistent decision making can result. For example, if at the end of the process, the construction permit contradicts the environmental permit, the construction permit has to be amended, which leads to repeating the procedure. One way to counter this risk is through the designation of a single competent authority tasked with overseeing and coordinating the entire process and ensuring that the different procedures are consistent. This is presented in the following section.

2.1.2 Centralised approach to permitting and the ‘one-stop shop’

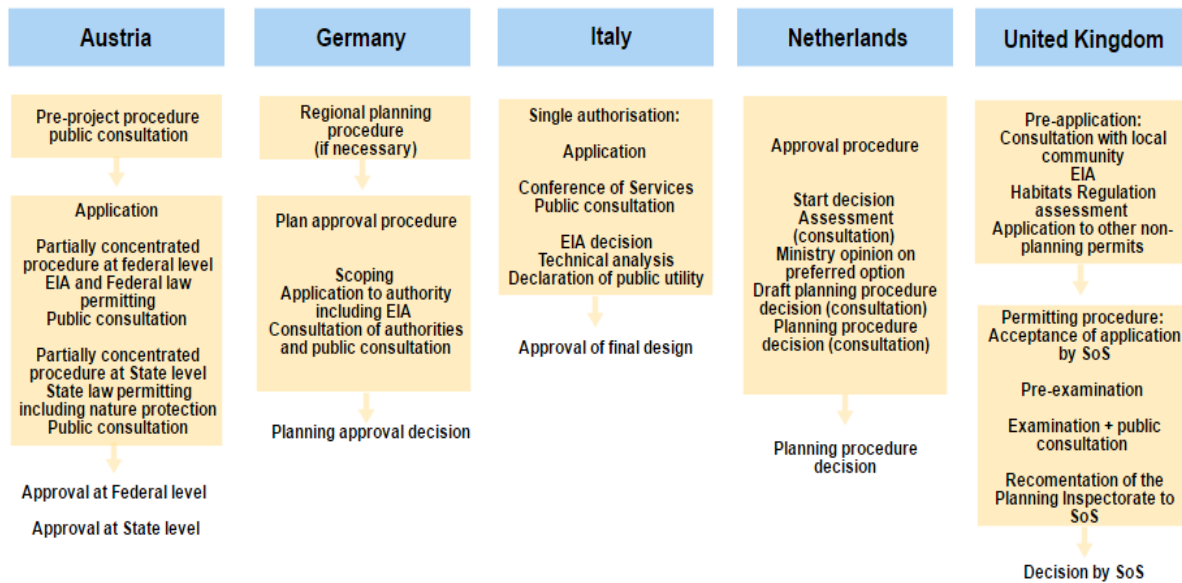
As shown in Section 1.3 above, the permitting procedure for large infrastructure projects has many aspects. Delays often occur because of overly complex procedures, involving multiple steps and multiple authorities. Good practice has shown that this can be addressed through simplification of the distribution of decision-making competences, the coordination between the different authorities involved, and the designation of an authority in charge of leading the permitting process.

A centralised approach to permitting, or ‘one-stop-shop’ approach has two main aspects. One involves the integration of permits and decisions into a single comprehensive decision. This decision is coordinated by either taken directly by a single authority or coordinated closely among different authorities with competence for specific parts of the procedure. A second aspect involves the designation of a leading authority, at national level, responsible for coordinating the permitting procedure. There is considerable experience with different approaches to consolidating the permitting procedure for transport infrastructure projects across the EU.

Five of the ten Member States studied have integrated various steps – environmental permit, spatial

planning and construction permit – into a single permitting procedure (Austria, Germany, Italy, the Netherlands, and the United Kingdom). In Austria, Italy, the Netherlands and the United Kingdom, environmental and spatial planning decisions are integrated into a single development consent procedure. In Germany, all decisions on environmental assessments and other permits are integrated in the plan approval procedure; however spatial planning remains separate (Regional planning procedure), and precedes the plan approval procedure. In the Netherlands, land use plans are automatically updated when the development consent is granted, avoiding the completion of a separate spatial planning decision.

Figure 1: Permitting procedures in Austria, Germany, Italy, the Netherlands and the United Kingdom



In these five Member States, a leading authority has been appointed for the permitting procedure. This authority can have varying degrees of competence and decision-making powers. This authority generally acts as a ‘one-stop-shop’ for the project promoter, who submits all application documents and goes to this authority for all enquiries. The ‘one-stop-shop’ is also responsible for granting the comprehensive administrative decision permitting the construction of the project. When opinions or decisions by other authorities are required, the ‘one-stop-shop’ is in charge of informing the authorities concerned and coordinating their involvement in the permitting process.

One-stop-shop – examples

In **Germany**, the plan approval authority is the only authority responsible for reviewing the application, organizing the consultation of affected authorities and public participation and issuing the comprehensive decision permitting the construction of the project. The plan approval authority is specific to each transport mode. However, if a regional planning procedure has to take place before the plan approval procedure, the regional planning decision will be taken by the affected regional government.

In the **Netherlands**, a coordinating body is appointed, depending on the transport mode.

In the **United Kingdom**, the permitting procedure is coordinated by the Planning Inspectorate acting on behalf of The Secretary of State of the Department for Transport. It should however be noted that protected species licences are granted after the development consent and have to be requested to Natural England, not to the one-stop-shop.

In Member States where regional authorities have a larger degree of competence and/or involvement in permitting procedures, coordination fora have proved useful to efficiently collect the opinions of all relevant authorities and foster consensus towards the development consent. It also ensures that the one-stop-shop can effectively exercise its coordinating powers.

Coordination mechanisms – examples

In **Italy**, the single authorisation process introduced by Law 241/1990, was accompanied by the creation of the Conference of Services (Conferenza di Servizi), which is a forum gathering all competent authorities (local, regional national and sectoral) involved in the permitting process of a specific project. Depending on the specificities of the project a number of ministries can be involved in the forum (Transport, Environment, Agriculture and Forestry, Interior, Defence) as well as regional and local authorities (Provinces, Municipalities, River Basin authorities, Land/Water Reclamation Authorities) or sectoral authorities (Natural Park Boards, Port Authorities etc.).

In **Austria**, the division of spatial planning competence between the federal government and the federal states is a primary cause of delays. To resolve possible conflicts, the Austrian Conference on Spatial Development (“ÖREK”) The Austrian Conference on Spatial Development (“ÖREK”) serves as a non-binding coordinator for bodies at the federal, federal state, and municipal level. It facilitates voluntary cooperative mechanisms between stakeholders/authorities. ÖREK’s Partnership “Keeping Areas Open for Linear Infrastructure Projects, regularly organises Infrastructure Days to identify problems and cooperative solutions between stakeholders.

Practice has shown that a centralised permitting procedure can avoid the duplication of procedures or assessment and review work that can occur when processes are carried out by or under the authority of different institutions. It can have considerably success in reducing the burden on project promoters, who have the ease of communicating with a single contact point regarding all procedures. It has also been found that the centralised approach allows competent authorities to build up their level of expertise and knowledge regarding the projects, as ensure more consistency in the treatment of projects. This of course requires that appropriate resources are allocated to the leading authority or one-stop-shop.

2.1.3 Time limits for procedures

Time limits can be an efficient tool to encourage a more efficient decision-making process and in particular to reduce delays in collecting opinions from all authorities involved in the permitting procedure. With the 2014 amendment to the EIA Directive entering into force in May 2017, Member States will have harmonised time periods for screening decisions (maximum 90 days from the date of submission by the project promoter²) and for the public consultation (a minimum of 30 days).

Many Member States have taken steps to establish time limits for the permitting procedures. Most of these cover only very specific parts of the procedure – usually those under the authority of a single institution. It is worth noting that none of the Member States covered by the study has established a global time limit for the entire permitting procedure. Different types of time limits established in the ten Member States studies are presented in Table 2.

Table 2: Legal time limits for permitting procedures in the ten Member States covered by the study

Member State	Legal time limits
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² The competent authority has the possibility, in exceptional cases related to the nature, complexity, location or size of the project, to extend this deadline (Article 4(6)).

Member State	Legal time limits
Austria	Time limits for EIA procedure: 12 months / 9 months if simplified procedures (from submission to decision)
Czech Republic	EIA: 45 days for screening and scoping; 30 for public consultation and 30 days for decision Land use permit: 60 days (possible extension to 90 days) Building permit: 60 days (possible extension to 90 days) Final operation approval: no time limits – granted to each part of the project individually
Germany	Plan approval procedure: no legal time limits for the whole procedure but some procedural steps are subject to time limits (public participation, consultation of authorities, disclosure of the project, objections)
Hungary	Regional land use permit: 30 days; Environmental permit: 42 days; permitting of prior excavation: 10 days; building permit: 30 to 42 days; forestry and rural land use: 42 days each
Italy	Scoping request (voluntary) to scoping opinion: 60 days EIA: from project promoter request for environmental decision to EIA decision: 150 days including 60 days for public participation
Netherlands	Infrastructure decision: 2 years from the transmission of the concept plan to the second chamber Environmental permit: under regular preparatory procedure the permit must be granted within 8 weeks; under extensive preparatory procedure, within six months after the receipt of the request.
Poland	Based on Polish code of administrative procedures, authorities have 1, extended to 2 months, in complicated cases to issue a decision (but time is suspended for obtaining agreements and opinions of other relevant competent authorities): applicable to environmental decision, water permit. Decision on implementation of a road/decision on location of a railway: 90 days;
Romania	EIA: 6 to 12 months; construction authorisation: 30 days, local administration endorsement: 5 days, utilities endorsements: 15 days, agriculture endorsement: 10 days, and/or forestry endorsement: not specified, water protection: 30 days, nature protection: not specified, spatial planning: minimum 165 days, and cultural heritage: 10 days.
Spain	SEA: 24 months EIA: 9 months (including sectoral assessments) from request to decision
UK	For Nationally Significant Infrastructure Projects: Plan approval (examination, recommendation and decision phases): 12 months (9 in Scotland) EIA: screening 21 days / Scoping request: 42 days

Time limits are only effective when properly enforced, and the study found that this is often not the case. In most of the cases listed above, there are no applicable sanctions in case of missed deadlines. In cases where consultation and agreement are required – as opposed to the issuing of a reasoned decision – there has been some success with considered silence or no action as acceptance after a deadline has passed. Below are two examples of how such measures are organized.

Enforcing time limits – examples

In **Poland**, according to the special legislation for roads and railways, where authorities do not issue a spatial planning opinion within 30 days, the lack of opinion is considered to be equivalent to acceptance.

Enforcing time limits – example s

In **Romania**, authorities responsible for issuing different certificates or notifications in the expropriation procedure can be fined if they do not respect the reduced timelines for issuing documents adopted in 2010.

2.1.4 Reducing the impact of appeals

As lengthy legal appeals against projects have been identified as a major challenge encountered by TEN-T projects, some Member States have adopted measures to limit their impact of appeals on projects.

Public participation – example

In the **Netherlands**, recent legislative changes are expected to lead to shorter appeal procedures for some projects. The Crisis and Recovery Act (CRA) entered into force in March 2010 and principally applies to priority major projects. As an exception to general administrative law the CRA introduces measures to limit the legal standing of municipalities, so that they cannot appeal national decisions. In addition, a six-month time limit applies to court decision-making.

While the Dutch appeal system with limited legal standing and timelines has some clear benefits, it should be borne in mind that sufficient access to justice as laid down in the Aarhus Convention³ and implemented by the Member States through their respective measures must be ensured at all stages of the permitting procedure. The legal rights of individuals with an interest e.g. through geographic vicinity or whose rights might be impaired cannot be taken away in the name of streamlining procedures only.

2.1.5 Facilitating timely land acquisition

Large transport infrastructure projects usually require obtaining the right to use privately owned land before construction can start. Landowner opposition has been identified as an important driver for additional costs and delays in land acquisition procedures. Although this is a problem that can only be resolved by early involvement of landowners, Member States can adopt measures to streamline the negotiation of compensation levels.

Determining compensation levels - examples

In the **Czech Republic**, to speed up negotiations, and avoid complaints about unequal levels of compensation offered to landowners, the Government has set the level of compensation in the legislation. A recent amendment to the Act No 416/2009 Coll. on accelerating the building of transport, water and energy infrastructure (in force from April 2016) fixed the price for land acquisition at eight times the value of the agricultural land.

In **Poland**, the value of the compensation for the real estate that is taken over by the authorities for the purpose of implementing the road investment, as estimated by a registered assessor, may be increased by 5% if the owner or perpetual user makes the real estate available for the investment activities within 30 days from the date of receiving the decision on implementation of the investment (or from the date when such a decision became final). This rule provides an additional incentive to streamline the process of implementation of the investment.

To reduce the time period between the moment the construction permit is granted and the land is available, Member States can more efficiently integrate land acquisition with the permitting process.

³ Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark, on 25 June 1998.

Poland merged, for roads and rail projects of national interest, the decisions on land acquisition and in one single step.

Integrating land acquisition into project permitting – examples

In **Poland**, the decision on implementation of state roads investment and the decision on the location of railways is equivalent to an expropriation decision concerning the land in the area of the planned investment. All the land situated in the area covered by the decision becomes automatically a possession of the State Treasury, which is then transferred to road and railway managers. The regional administration can give the decisions on implementation of state roads investment or the decision on location of railways a status of immediate execution, if it is justified with social or economic interest.

Examples have also been found in Member States of measures aiming at reducing the impact of appeals to expropriation decisions.

Reducing the impact of appeals - examples

In **Romania**, according to the law no. 255/2010, any landowner who is dissatisfied with the expropriation process can appeal the expropriation decision in court. However, the expropriation will not be suspended until the decision of the court. In spite of the large number of appeals, this has significantly accelerated the completion of the expropriation procedure according to stakeholders.

2.2 ENSURING EARLY AND EFFECTIVE CONSIDERATION OF ENVIRONMENTAL IMPACTS

Transport infrastructure projects typically involve interaction with and impact on the environment, including water resources and protected areas, given the reliance on land use and natural resources. As a result, all or parts of the wide body of EU environmental legislation will apply to most TEN-T projects, requiring detailed assessment procedures and in some cases multiple authorisations from different authorities. Delays in project preparation and permitting often stem from complexities in carrying out environmental assessment procedures. These procedures are based on the requirements of different EU Directives that were adopted at varying points in time over the past 30 years, resulting in their transposition into national legislation at different times, and, in some cases, a complex national legal framework applying to transport projects.

As shown in the generic authorisation framework and the applicable legislation (Section 1.3), many different environmental requirements can apply to TEN-T projects. These include requirements related to overall environmental assessment at the strategic level for plans and programmes (SEA Directive) and at the project level (EIA Directive); as well as those applicable to projects impact specific areas of the environment, such as water resources (the Water Framework Directive), nature conservation (The Habitats Directive), the marine environment (the Maritime Spatial Planning Directive) and the prevention of accidents (Seveso Directive). Other requirements stemming from EU legislation may apply to certain TEN-T projects, such as noise standards, regulations relating to air pollution or waste management. These then have to be considered in the EIA, and influence the granting of the development consent.

Both good and bad experience with past and ongoing projects has resulted in some key lessons with regard to carrying out environmental assessment procedures for large transport infrastructure projects, particularly those faced with complexities such as cross-border impacts or impacts on water bodies or Natura 2000 protected areas. Good practices include ensuring that environmental assessment is carried out effectively and at the right moment in the process, and that particularly sensitive legal issues are given the necessary guidance and attention they require to ensure that any legal uncertainties do not result in unnecessary delays.

2.2.1 Early consideration of environmental impacts

Experience from case studies has shown that early scoping of environmental impacts and early discussion with the competent authority about the content of the environmental assessments reduced delays during the permitting stage and generally improved the quality of assessments. A high-quality application reduces the chances of requests for further information or clarification at a later stage, which often lead to delays in permitting procedures. It also reduces the risk of environmental assessments being challenged in court.

Early consideration of environmental impacts – examples

A key feature of the permitting procedure in the **United Kingdom**, is the ‘frontloading’ of applications, whereby the majority of duties faced by the promoter must be completed ahead of application for planning permission. These obligations include in particular the EIA and the Appropriate Assessment (AA) under the Habitats Directive if relevant. This way, the applicant discusses as early as possible the information that should be included in the environmental assessments and avoids delays later at the permitting stage.

2.2.2 Specialised support

Some projects are particularly complex and require specialised support. For example, the waterborne transport sector - which includes maritime ports, inland ports and inland waterways – faces unique challenges due to its dependence on water resources. Projects such as construction of waterways; upgrade, widening and extension of waterways; construction of new locks and embankments; and ongoing dredging frequently impact water bodies and must be assessed within the requirements of the Water Framework Directive. Rivers that serve as priority axes for inland waterway transportation are often linked to valuable natural areas, meaning that projects are likely to require Appropriate Assessment (AA) of the impacts on conservation objectives per the requirements of the Birds and Habitats Directives. The complexity of the impacts, as well as general nature of the EU legislation and potentially differing approaches to its implementation due to transposition in different Member States, can result in situations of legal uncertainty with regard to environmental assessment. If assessments are not carried out in compliance with all applicable legislation, there is a risk of legal challenge at national and EU levels, which can cause considerable delays for projects. Good practices to mitigate this include guidance, support and clarification, both generally and specific to individual projects.

Guidance and support from permitting authorities can support project promoters in efficiently preparing high quality permit applications and environmental assessments.

Guidance and support – examples

In **Germany**, to encourage consistent quality in permit application documents, rail authorities have issued guidelines for uniform application documents for rail infrastructure projects. These guidelines include recommendations for a standard structure aiming at facilitating and accelerating the approval process.

In the **United Kingdom**, a dedicated unit in the planning authority (Consents Service Unit) that provides free advice on the pre-application procedure for spatial planning, including application process and public consultation.

In **Flanders**, a specific unit in the Department for Environment, Nature and Energy advises on the content and quality of environmental impact assessments. **The Netherlands** have a similar advisory board (“*Commissie m.e.r.*”), which is an independent organisation with experts from scientific institutes and the private sector. For each project, a working committee with specific expertise is set up.

In other cases, the nature of impacts or their complexity requires specific agreements with authorities in order to establish the necessary legal clarity for a project to proceed efficiently. This is based on specialised cooperation between legal experts, technical or scientific experts and the relevant authorities at national and EU levels.

Specialised clarification - example

French authorities developed an integral ecological management plan for the estuary, taking a more holistic approach to managing the impact of the surrounding area. This integrated approach was developed for the estuary and resulted in the development of compensatory measures, in accordance with Article 6(4) of the Habitats Directive. An agreement was concluded with the European Commission on the ideal site for the birds, its preservation and protection through legal measures. Furthermore, the restoration measures for the estuary are now placed under the supervision of a Scientific Committee.

2.2.3 Managing cross-border environmental assessments

The EIA Directive establishes that, when a Member State is aware that a project is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected requests it, the Member States planning the project must provide affected Member States a description of the project, together with any available information on its possible transboundary impact and information on the nature of the decision which may be taken (Article 7(1)). The affected Member State(s) can then decide to participate in the EIA, and if so, make available the documentation to the authorities and the public likely to be concerned by the project. Member States involved in projects likely to have transboundary effects will be expected to consult with each other on these effects and measures to reduce or eliminate these effects, and agree on a reasonable timeframe for consultations. The 2014 amendments to the Directive take this a step further, and provide the Member States with the option of conducting transboundary consultations through an appropriate joint body (Article 7(4)).

Case studies showed that close cross-border cooperation on EIAs, including carrying out joint procedures where possible enabled coordinated cross-border consultations, which in turn increased public acceptance and reduced the likeliness of decisions being challenged during the permitting procedure.

Zevenaar-Emmerich-Oberhausen railway

Solid contacts between the involved parties in Germany and the Netherlands were established, which resulted in strong cooperation in complying with the obligations in a cross-border context. In initial meetings it was determined that the planning approval of one section required a cross-border EIA and that planning approval shall include disclosure in each country. Thus, environmental assessments for the cross-border section considered transboundary impacts and were consulted on in each country. This project particularly highlights the advantage of carrying joint EIAs applying the most stringent rules of both national legal frameworks.

2.3 ENSURING GREATER LEGITIMACY OF TEN-T PROJECTS

Public opposition is a frequent cause of delay in project permitting and implementation processes. One of the drivers of public opposition to TEN-T projects relates to stakeholders' concerns that projects of 'European interest' would not have local benefit, or at least enough local benefit to justify the disruption and environmental impacts in their communities. Ensuring good communication and establishing effective public participation procedures is therefore important to win public support.

2.3.1 Early and broad public consultation procedures

Projects where stakeholders and the public was involved early, at a stage of the project where changes can still be made to the design or route, have increased public acceptance, gained credibility and reduced conflicts in the later stages of the project. A broad consultation with all affected groups of stakeholders has also ensured that all interests could be taken into account in the preparation of the project.

Early public participation – examples

Brenner Base Tunnel

The promoters emphasised public involvement and communication from the earliest phases of preliminary planning. This consultation included extensive communication with local municipalities and communities through information meetings (organisation of information-oriented and topic-specific evenings and meetings, set-up of information points, close contact with the media, weekly tours of the construction sites, regular visits from the Corridor Coordinator and all stakeholders, including the local mayors along the Brenner Corridor, etc.). Since consultation had taken place early, there was still flexibility in project planning to take community concerns into account.

Seine-Scheldt

In the specific case of the Project Seine-Nord Europe, project promoters established a thorough process of stakeholder involvement to gain their support. A Consultation Committee was established in October 2004. Originally, 215 institutions were involved, of which a large proportion were farmers. By the end of the consultation process, several years later, more than 1100 institutions had participated. The promoters paid special attention to the nature and complexity of the information provided, ensuring that it was adapted to the knowledge and interests of the relevant stakeholders. Specific complaints were responded to with information on the mitigation measures. The consultation process was held early enough so that concerns raised by affected stakeholders could be addressed.

2.3.2 Strategies to enhance and demonstrate local benefits

Transport infrastructure projects offer opportunities for exchanges between, cities, regions or countries. Ensuring that the project effectively contributes to regional and local development improves the perception of the project and increase ownership at local level. In the examples below, project promoters, governments and/or regional and local authorities have implemented strategies to maximise the benefits of the infrastructure project on the local economy, such as job creation and the facilitation of economic exchanges and communicate about opportunities created by the project.

Strategies to maximise local benefits – examples

Lyon – Turin rail connection

Following a governmental decision in 2003, the rail connection between Lyon (France) and Turin (Italy) benefits from a package of support measures grouped under the label *Démarche Grand Chantier*, applied, on exceptional occasions, to major construction projects, having a large impact on a region. The initiative aims at increasing the contribution of the project to the local economy and job market and developing the ownership of the project at local level. The State and the regional and local authorities signed a partnership in 2014, to which the project promoter is associated, to formally launch the initiative. Among the measures promoted through this partnership are the recruitment of local labour, the support to local companies, to ensure their access to public procurement, the development of vocational training, and the development of economic activities that are likely to be fostered by the construction of the railway connection.

Fehmarn Belt Fixed Link

In the wake of the state treaty signed by Germany and Denmark for the establishment of the fixed link and with the aim of supporting the development of exchanges inside the Fehmarnbelt region, several regional cooperation bodies or networks, pre-existing or created purposefully (the Fehmarnbelt Committee, Fehmarnbelt Business Council, Femern Belt Development, the STRING

Strategies to maximise local benefits – examples

network and the Baltic Development Forum), have set up cross-border projects relating to tourism, employment, exchange programmes for students or research. In addition, Danish and German regions and the project promoter encourage local employment, information to local companies about procurement opportunities, and vocational training.

To communicate on the opportunities offered by the project and discuss potential obstacles, the project promoters, along with the Fehmarnbelt Committee, the Fehmarnbelt Business Council, the STRING network and the city of Hamburg, organised in September 2016 the Fehmarnbelt Days. The conference gathered stakeholders from Denmark and Germany and touched upon a wide range of topics, such as tourism, employment, transport, and opportunities in education or research.

Brenner Base Tunnel

The Brenner Corridor Platform (BCP) was set up by the European Coordinator (Karel van Miert). BCP Members are the infrastructure ministries of Austria, Germany and Italy, and the five regions Bavaria, Tirol, Alto Adige, Trento, Verona, railway and highway companies and the European Commission. The Platform was created to ensure a consistent development of the Brenner Corridor between Munich and Verona, going beyond the construction of the base tunnel, and to strengthen the partnership between stakeholders affected by the project. The Brenner Action Plan 2009-2022 contains 50 measures promoting the transfer from road to rail along the corridor, therefore bringing environmental benefits for the whole region, especially regarding air pollution and noise.

2.3.3 Ensuring political consensus

Cross-border projects can be very vulnerable to change of governments and diverging political priorities across Member States involved in the project. In some cases, cross-border agreements have proven successful in maintaining a political consensus on the objectives, the design and the route of the project, and ensuring continuity in the management of the project.

Making cross-border project less vulnerable to political changes - example

Seine-Scheldt Link

In the Seine-Scheldt Link project Ghent-Terneuzen, the Dutch and Flemish parliaments signed a 'Treaty for the Establishment of the New Lock', covering the political, legal and financial agreements made between the Netherlands and Flanders. The Treaty entered into force on 1 March 2016 and makes the project less vulnerable to future political change and thus ensures continuity in the further development of the project.

3 IMPROVING THE PROCUREMENT OF TEN-T CORE NETWORK PROJECTS

3.1 INCREASING CAPACITY ON PUBLIC PROCUREMENT AND PUBLIC-PRIVATE PARTNERSHIPS

The study identified that barriers to the use of PPPs, resulting in their under-utilisation in the procurement of infrastructure, were mainly related to the lack of public sector capabilities and experience to achieve an appropriate allocation of risk. To support the development of PPPs in the transport sector, Member States can invest in developing capacity in the national administration to assess the suitability of project finance schemes and design PPPs.

Capacity building on procurement and PPPs – examples

In the **Netherlands**, the government has invested significantly in developing the capacity of public administration regarding public procurement and PPPs.

The Dutch Public Procurement Expertise Centre (PIANOo), which is part of the Dutch Ministry of

Capacity building on procurement and PPPs – examples

Economic Affairs, was created to improve the efficiency and compliance with the legislation of procurement and tendering procedures in government departments. The centre provides expertise and advice to government departments and supports the dialogue between contracting authorities and private companies.

The PPP Unit in the Rijkswaterstaat (the implementing body of the Ministry of Transport, Public Works and Water Management) disseminates knowledge and expertise related to PPP, and offers standard contracts and documentation. In addition, the suitability of PPPs for transport projects is systematically assessed, with a view to develop their use in suitable projects.

In the **United Kingdom**, guidance on best practice in public procurement (Procurement Policy Notes) has been published online. Support is provided to assist authorities in considering and designing PPPs, where appropriate.

3.2 INVOLVING CONTRACTORS EARLY

Early contractor involvement is a concept used in the Netherlands and the United Kingdom to bring construction and maintenance contractors into the process at the start of the preparation stage, before major decisions have been made concerning the route and the design of the project, and use the knowledge of the contractors in assessing and selecting the best options. Early contractor involvement can help promoters choosing the most cost-efficient solutions.

Early contractor involvement - examples

Early contractor involvement was introduced in **the Netherlands** in 2004, when the Dutch Ministry of Transport's operational division Rijkswaterstaat issued a new procurement strategy aiming at involving contractors in the design of projects by requiring them to elaborate on design aspects in their proposals. In **the United Kingdom**, the concept of early contractor involvement was introduced in the early 2000s, and its development is an objective of the Government Construction Strategy 2016-20.

3.3 CROSS-BORDER PROCUREMENT

The research carried out for this study showed that cross-border procurement was perceived as one of the most complex issues of public procurement as it faces particular legal barriers, language barriers and is affected by the lack of experience of tendering bodies and contractors in doing business in other countries.

One of the novelties introduced with the reform of EU public procurement legislation were the rules on 'procurement involving contracting authorities from different Member States' (see Article 39 of Directive 2014/24/EU and Article 57 of Directive 2014/25/EU). These rules address the joint contracting by authorities from different Member States and bring clarity on the applicable national law (paragraph 5 of both provisions). According to the new rules, the participating contracting entities can agree to apply the national procurement rules of the Member State where the joint entity has its registered office or the national provisions of the Member State where the joint entity is carrying out its activities. In addition, they can choose to apply this agreement for an undetermined period, when fixed in the constitutive act of the joint entity, or limit its application to a certain period of time, certain types of contracts or to one or more individual contract awards.

Case studies have shown that clarifying applicable law facilitated the procurement process.

Cross-border procurement - example

Brenner Base Tunnel

Austria and Italy signed a Shareholder Agreement in 2011 defining the procurement rules governing the project, i.e. tendering according to the law applicable to the company's headquarters i.e. in Italy. Following the adoption of the new EU Procurement Directives, the agreement was amended in 2015 and now states that the law applicable is the one of the country where the works are to be carried out and that for works to be carried out in both countries as part of the same contract the law applicable is the one applicable to the company's headquarters. In addition, the option to formulate the contract documentation in English was included in the agreement.

4 STATE AID

The main problems that appear to drive particular delays and uncertainty in State aid notifications are late notification; and poor quality of notification, including information gaps. Cases of late notification generally come from a lack of awareness from authorities or project promoters of the need to notify potential State aid cases to the Commission. In addition, the lack of experience with State notifications may lead to notifications that are of a lower quality. To ensure that state aid notifications are of high quality and sent sufficiently early, some Member States can establish support schemes for transport authorities (and other sectoral authorities) in the development of state aid notification. These measures can involve the establishment of a dedicated agency or unit that plays an active role in disseminating information about State aid procedures and supporting authorities in the pre-notification and notification processes. These bodies also centralise the process and ensure a consistent quality of notifications. In addition, Member State can provide guidance to assist transport ministries and authorities in the notification of State aid measures to the Commission. Among the countries assessed as part of this study, Austria, Czech Republic, Hungary, Italy, Romania, Spain and the United Kingdom provide such guidance.

State aid – examples

In **Romania**, the Competition Council provides guidance to other authorities on State aid and coordinates notifications.

In the **United Kingdom**, dedicated business unit supports authorities during notification and publishes detailed guidance.