

**Permitting procedures for energy
infrastructure projects in the EU:
evaluation and legal recommendations**

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**– SELECTION OF GOOD PRACTICES
IN MEMBER STATES –**

**European Commission
Directorate-General for Energy**

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This document is a supplement to the study "Permitting procedures for energy infrastructure projects in the EU: evaluation and legal recommendations" and should be read and understood only in connection with the results of that study – as available from the EU Commission's website

Introduction

This document presents a selection of good practices in the handling of permitting procedures for critical energy infrastructure in Europe. Good practices have been identified in the course of the study "Permitting procedures for energy infrastructure projects in the EU: evaluation and legal recommendations" by Roland Berger Strategy Consultants. This study was mandated by the European Commission, Directorate-General Energy and performed between February and May 2011.

Roland Berger Strategy Consultants has analysed the permitting procedures, processes and practices for energy transmission infrastructure in thirteen EU Member States. The aim of this exercise was to identify underlying reasons for frequent and sometimes long delays in the authorization procedures of such projects, and to develop solutions to accelerate them. For this purpose, interviews with legal experts, project developers and representatives from responsible authorities in Member States were conducted.

It turned out that designs of permitting procedures and related practice vary significantly in Member States. In some cases, we found that good approaches to improve and to accelerate permitting procedures were already in place, which could be used to inspire others. Such good practice examples are presented in this document, with the aim to give other Member States and stakeholders the possibility to learn from them.

This document aims to present selected good practices that we consider relevant for other Member States. Good practice examples were selected for this presentation if they are apt to serve as an example to trigger ideas on how to adapt conditions and practices in other member states, and if they were designed in a way so that they could be adopted in other Member States as well. The goal of this document is not to be exhaustive, but to present good practice most useful to others.

We have identified good practice in four fields of action:

- A. Improve Transparency And Manageability:**
Create an up to date overview of the permitting status of critical energy infrastructure projects enabling intervention in case of delay or risk of delay
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- B. Empower Authorities:**
Ensure that authorities have the power as well as the required resources and expertise to effectively handle permitting procedures
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- C. Optimise Permitting Procedures:**
Reduce complexity of permitting procedures by introducing procedures with a low number of responsible authorities and a low number of processes and process steps
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- D. Improve Project Developers' Planning and Involvement in Permitting Procedures:** Incentivize project developers to establish a timely and serious dialogue with stakeholders regarding the optimization of the project

In the following, good practices are presented in these four areas. For each good practice example, we point out its purpose, we give a short description of the example and we highlight by which levers the example unfolds its effect on the permitting procedure.

A. Improve transparency and manageability

Enhancing transparency and manageability of permitting procedures both on national and on European level can make permitting of critical energy infrastructure considerably more effective. This concerns transparency about the status of the realization of critical energy infrastructure projects, manageability of permitting processes including opportunities to intervene in case of delay or risk of delay, and clearly assigned responsibility for meeting quality and time targets of the permitting procedure.

Good practices in Member States can be found in two areas:

- 1 Identification of projects of public interest** – a list of priority projects needs to be established to clearly identify the projects to be monitored
- 2 Definition and enforcement of target durations of permitting procedures** – clearly defined target durations for processes and process steps of permitting procedures are necessary to benchmark the progress of the realization of a project and to be able to identify delays. To increase compliance with target durations, responsibility for the delivery of the permitting procedure needs to be assigned clearly (to one rather than to many institutions), and enforcement should be in place

1 Identification of projects of public interest

Critical energy infrastructure projects should be clearly identified. A list of clearly identified projects serves as a basis for the monitoring of the progress of realization of prioritized projects, and helps to identify the need for intervention in case of delay or risk of delay. Moreover, the attribution of public interest status to selected projects has a positive impact on public acceptance of these projects.

EXAMPLE 1: Energy transmission line extension law in Germany

In Germany, assigning the status of public interest to selected projects of high-voltage transmission lines by the legislator helps to **keep track of the progress of these projects, and also facilitates discussions with stakeholders, as project is approved by the legislator and not any more eligible for general discussion, so that acceptance of the projects is increased.**

Description

The energy transmission line extension law in Germany ("Energieleitungsausbaugesetz" – EnLAG), adopted by the legislator on 21 August 2009 identifies projects of public interest. 24 high-voltage electricity transmission projects, which are required with "urgent necessity" are listed in the law. The law indicates the start and the end location for each project as well as its voltage level.

Success factors

- The law provides the basis for an effective monitoring: Projects of public interest are clearly identified in a list, giving start and end location of the project.
- Public interest status increases acceptance of the projects: Attribution of the public interest status to selected projects by the legislator shows to stakeholders that these projects are not in the private interest of the project developer only, but that they serve a public interest. Moreover, the exact routing is not yet identified in this law, and therefore public participation can still influence the decision on the exact routing and small scale routing alternatives
- The permitting procedure of prioritized projects is facilitated: Projects included in the energy transmission line extension law do no longer need to be justified in the framework of the permitting procedure. Comments submitted in the public consultation phase concerning the purpose of the project do not need to be considered, and the purpose of the project is not an eligible cause for an appeal. As a consequence, the work load for both the responsible authority and the project developer is reduced.

Relevance for other Member States

The example of the law providing status of public interest to selected projects in Germany can be transferred to most EU Member States. However, in some countries, where other procedures providing public interest status to projects are foreseen, other ways can be chosen to establish a list of prioritized projects on national level. For example, a national Ministry could prepare such a list. However, while the law on the development of energy transmission lines in Germany covers transmission lines only, such a list should ideally also cover other types of critical energy infrastructure such as gas pipelines, gas storage facilities, Liquefied Natural Gas Terminals as well as other types of critical energy infrastructure. It should cover all projects that have the status of European interest.

2 Definition and enforcement of target durations of permitting procedures

The definition of target durations for the overall permitting procedure, processes and process steps is a condition for manageability of the procedure. A definition of target durations is necessary to benchmark the progress of a project and to identify delays. Moreover, to make sure that target durations are respected, they should be enforceable. Two different levels of enforcement should be distinguished: (1) The establishment of an "authority of last resort" on national level, which may take the decision instead if regional, district or local authorities fail to deliver on time. (2) Incentives for responsible authorities in case of late delivery.

EXAMPLE 2: Target durations of permitting procedure in the Netherlands



In the Netherlands, the definition of a target duration of the overall permitting procedure and for process steps allows to **keep track of the progress of the procedure**. Based on this clear definition of deadlines, an authority of last resort can become active if input is delayed and **ensure timely completion of process steps**. This mechanism has a **considerable effect on the duration of the procedure**. The actual duration of the procedure in the Netherlands is very short in comparison to other Member States (see also example 5).

Description

In the Netherlands, target durations are identified for the overall procedure as well as for process steps, and timely delivery of input from municipalities to the responsible authority at national level is effectively enforced. The Ministry of Economic Affairs, Agriculture and Innovation (ELI) is responsible for the overall permitting procedure of high voltage lines > 220 kV, gas pipelines > 48 inch and electricity and gas interconnections. A national law ("Rijkscoördinatierегeling") stipulates a **maximum overall duration of six months for the administrative procedure**. The law also stipulates a target duration of three months for the input provided from local authorities to the Ministry. This target duration can be effectively enforced by the Ministry. The latter is entitled to act as an **"authority of last resort"** and to take a decision in place of local authorities if they do not deliver their input within the given timeframe or fail to meet quality requirements. As the Ministry is responsible for the overall procedure and follows its contents and discussions, it is able to provide an informed decision in case it needs to step in. Moreover, it may also draw on additional external expertise to support its decision taking with regard to the local permit.

Success factors

- Clear target durations are defined and serve as basis for an effective intervention mechanism in case of delays: Target durations for the delivery of input from local authorities enable the responsible authority to clearly identify the need to intervene and also serve as basis for its right for intervention. Target durations for the overall procedure set a clear target for the responsible authority and thereby urge it to intervene in case of delayed input from local authority.
- An effective authority of last resort is in place: The authority of last resort can only intervene effectively if it does not need to learn the procedure from scratch before being able to take a decision. In the example from the Netherlands this is guaranteed as the responsible authority is familiar with the topics and discussions of the permitting procedure. For additional expert input it may draw on external experts..

Relevance for other Member States

This good practice example from the Netherlands shows that enforcement mechanisms between authorities can be effective if target durations are clearly defined. In case of a failure to provide a timely decision, an authority exists that is enabled (with regards to power, insight and access to required expertise) to act as "authority of last resort". Other Member States should consider to use this example for adoption or orientation when establishing similar mechanisms.

EXAMPLE 3: Reporting obligation in case of delay of the permitting procedure in England and Wales



In England and Wales, the permitting authority is incentivized by a reporting obligation in case of delayed conclusion of the permitting procedure. This ensures **timely completion of the procedure** and therefore has a considerable positive **impact on the overall duration of permitting procedures**. The actual duration of the procedure in England and Wales is very short in comparison to other Member States (see also example 4).

Description

In England and Wales, the Infrastructure Planning Commission (IPC) is responsible for the permitting procedures for nationally significant infrastructure projects (NSIPs). At the outset of the permitting procedure, the IPC consults on a schedule for the administrative procedure with concerned stakeholders, defining the overall duration and the timing of process steps. Usually, the overall duration of the administrative procedure does not exceed 18 months. Once an application has been accepted for examination, the IPC is then in charge of ensuring that the permitting procedure meets time and quality requirements. In case of a delay of a permitting procedure for NSIPs, the Chair of the IPC has to report to parliament. This enforcement mechanism creates a significant personalized incentive on the Chair of the IPC and therefore helps to ensure delivery of the permitting procedures within time and quality requirements.

Success factors

- Agreement on target durations between stakeholders increases the commitments to comply with target durations of all participants: In England and Wales, the IPC has to clearly define the target durations of the overall process and the most important process steps of the permitting procedure at the outset. The agreement with stakeholders on the target durations increases the level of attention of stakeholders with regard to compliance with the duration and thereby incentivizes participants – including the IPC – to reach target durations
- An effective enforcement mechanism for the overall duration is in place: The obligation of the chair of the IPC to report to parliament in case of delay is an effective enforcement mechanism for the IPC to ensure that target durations are met.

Relevance for other Member States

A personalized incentive mechanism as implemented in England and Wales is effective if the responsibility for keeping time and quality requirements of a permitting procedure of prioritized energy infrastructure is clearly assigned and target durations are set. Member States should consider adopting this example, including the clear definition of responsibility for the procedure or for different processes of the procedure and reporting obligations in case of delay. Member States could also combine both types of enforcement mechanisms, i.e. establishing an "authority of last resort" and reporting obligations of a responsible authority in case of delay.

B. Empower authorities

To ensure effective permitting procedures, the authority responsible for the handling of the procedure needs to be appropriately equipped: It needs to have decision taking power as well as sufficient resources and expertise to handle the procedure within the given time and quality requirements. Therefore, concentration of competencies and resources in one authority responsible for the handling of the entire permitting procedure is recommended. As permitting procedures have peak phases in which considerably more resources and more or other expertise is required from the responsible authority than in other phases, authorities should have flexible access to (external) resources.

Good practices in Member States can be found in two areas:

1 Establishing a single authority responsible for permitting procedures of prioritized energy infrastructure – a "one stop shop" should be instituted. A one stop shop can have full responsibility for the handling of the procedure and for the permit for construction and operation of the project. Alternatively, the one stop shop may be only in charge of coordinating the procedure without full decision taking power.

2 Responsible authorities have flexible access to resources and expertise – authorities responsible for the handling of permitting procedures have the possibility to draw on internal or external experts for the handling of peak phases of the permitting procedure.

1 Establishing a single authority responsible for permitting procedures of prioritized energy infrastructure

Establishing one single authority responsible for the handling of the permitting procedure and concentration of resources and competencies at this authority allows for an effective handling of the permitting procedure. To achieve the full impact of such an authority, it should have full decision taking power on the main aspects of the permit for construction and operation of the project.

EXAMPLE 4: The full one stop shop in England and Wales



In England and Wales, the creation of a single authority fully equipped with resources and expertise to effectively handle permitting procedures helps to **achieve a very short duration of the permitting procedure**. While the average duration of permitting procedures in Europe has been identified to be about four years¹⁾, the administrative procedure in England and Wales takes only 9 to 12 months once an application has been accepted for examination.

1) This value refers to the procedure from the submission of the application until the issue of the permit. It has been calculated by taking the average of the duration of the permitting procedure in the Member States analysed. For more information, please see the full study (Chapter D, Measure 6)

Description

In England and Wales, the Infrastructure Planning Commission (IPC) is a "one stop shop" at national level responsible for handling the complete permitting procedures for nationally significant infrastructure projects (NSIPs). This includes large energy infrastructure projects, such as power transmission lines and gas pipelines, and "large projects that support the economy and vital public services, including railways, large wind farms, power stations, reservoirs, ports, airports and sewage treatment works"¹⁾. For NSIPs, the IPC holds the decision taking power on most aspects of the procedure. There is only one single permitting procedure, resulting in one single permit issued by the IPC. For some specific issues, such as for example nuclear safety or emission standards, the decision remains with other authorities. The IPC has the manpower to professionally handle the permitting procedures. The IPC's staff currently amounts to 58 personnel capacities, including 37 commissioners. All commissioners are recruited through the process of public appointment, and during the recruitment process special care was taken to cover a wide range of expertise required during permitting procedures of critical infrastructure projects. They are given job-related training, including special training on inquisitorial method.

Success factors

- Establishing a single authority responsible for a wide array of permitting procedures allows to concentrate operational expertise: Knowing how to handle permitting procedures operationally is the core competency of an authority in charge of permitting procedures. Technical know-how can be contributed from technical experts as needed. Therefore, the creation of a one stop shop responsible for a large array of permitting procedures allows creating an authority capable to handle complex procedures while using experts' capacities optimally.
- Ensuring that staff member cover a broad array of topics relevant for permitting procedures enables the authority to stay in control of complex procedures: While the core competency of a one stop shop is the operational handling of a permitting procedure, the effective handling of procedures requires that the institution steering the procedure has in-house expertise available for the most important areas of concern. This has been achieved by the IPC by taking special care to cover a wide array of expertise with its permanent staff.

Relevance for other Member States

The transfer of the good practice example from England and Wales to other EU Member States is recommended with regard to the establishment of one single authority responsible for permitting procedures of a large array of critical infrastructure types. This has the advantage that competencies required for the handling of permitting procedures is concentrated and the authority can learn and improve from experience with a larger number of cases – compared to a situation where many technical authorities are in charge for which the handling of a permitting procedure is an exceptional process.

1) <http://Infrastructure.independent.gov.uk/>

EXAMPLE 5: The coordinating one stop shop in the Netherlands



In the Netherlands, the creation of a single authority responsible for coordinating the permitting procedure, without having full responsibility for all process steps and for decision taking on all or even the main aspects of the project helps to **achieve comparatively short duration of the permitting procedure**. The "one stop shop" has been introduced only recently and there is little experience with the actual duration of procedures – however, a duration of no more than 12 months is expected.

Description

In the Netherlands, the Ministry of Economic Affairs, Agriculture and Innovation (ELI) is a one stop shop at national level responsible for coordinating the permitting procedures of large energy infrastructure projects. As a coordinating one stop shop, ELI involves other authorities such as local authorities, which are responsible for taking a decision on different permits required for the project (e.g. construction permits issued by municipalities). The project developer has to submit a separate application to each authority responsible for a decision. However, ELI is in charge of streamlining the outline and the contents of the different sets of application documents to be submitted to different authorities. For the purpose of streamlining the application documents, discussions take place with local authorities, accompanied by ELI. Moreover, ELI accompanies the project developer throughout the procedure, also when to the project is presented and discussed with stakeholders on local level. After a pre-defined time limit, local authorities issue draft permits to ELI, as the latter is in charge of preparing the final permit integrating all draft permits into one. The system of draft permits to be issued by local authorities helps to increase the acceptance of local and regional stakeholders of the project. However, in case a local authority refuses to issue its permit, the procedure is not brought to a general stop. In such a case, or in the case of relevant discrepancies between permits, ELI is entitled to overrule and/or supersede the competency of the local authority. Finally, ELI is in charge of issuing one single, consistent final permit valid for the construction and the operation of the entire permit.

Success factors

- Establishing a single authority responsible for a wide array of permitting procedures allows to concentrate operational expertise: As for the IPC in England and Wales (see Example 5), concentration of permitting expertise at one authority allows to empower the authority in charge for an effective handling of the procedure.
- The coordinating one stop shop ensures consistency of requirements of application documents and procedures: The establishment of ELI as a coordinating one stop shop helps to facilitate the work load for the preparation of application documents from the point of view of the project developer, if requirements for different sets of applications are aligned. Moreover, ensuring consistency of requirements at the outset of the procedure supports consistency of the different draft permits to be provided by local authorities at a later stage of the procedure.
- Giving the coordinating one stop shop the power to take decisions in place of other authorities in case they do not deliver their decision on time helps prevent delays: If there are numerous authorities whose consent is required in order to authorize a project, there is a high risk that the refusal of consent of one authority leads to an interruption of the procedure. This risk is especially relevant if municipalities have decision taking power, as their decisions are more likely to be politically motivated than the decision of technical authorities. Giving the coordinating one stop shop the power to take decisions in place of local authorities is key to ensure timely conclusion of the procedure. Alternatively, a third "authority of last resort" could be involved in such a case.

Relevance for other Member States

In Member States with a federal political system as well as in Member States with a high number of responsible authorities and separate processes, it may be very challenging to introduce a full one stop shop like in England and Wales. In such cases, a coordinating one stop shop should be considered.

2 Responsible authorities have flexible access to resources and expertise

Bundling of resources and expertise at a single authority responsible for permitting procedures of critical energy infrastructure is an excellent means to ensure that the responsible authority is enabled to meet time and quality targets of the permitting procedures. The bundling of the handling of permitting procedures in the hands of one authority also levels peaks of permitting procedures and therefore smoothens the fluctuation of resource and expertise requirements. Nevertheless, as certain peaks may still be a challenge for the authority, flexible access to resources and expertise is an additional crucial success factor.

EXAMPLE 6: The IPC's flexible access to experts



In England and Wales, the responsible authority's flexible access to resources and expertise for the handling of the permitting procedure is a **crucial precondition to ensure compliance with a very short target duration of the overall procedure: permitting procedures** in England and Wales usually take only up to 12 months, while the average identified in this study is approximately four years.

Description

Out of the 37 commissioners of the IPC in England and Wales (Infrastructure Planning Commission, authority responsible for the entire permitting procedure), 28 are registered commissioners having the status of independent contractors. Their services are not retained constantly; they are rather involved on a case by case basis. Moreover, the IPC is able to appoint "independent assessors" to support the handling of the permitting procedure. These external experts who do not have the status of civil servants mostly support assessments in the framework of the permitting procedure, as the name implies. The IPC follows a rigorous conflict of interest policy. Every time a core commissioner, a registered commissioner or an independent assessor is considered for appointment to a case (as well as for all staff involved in examinations), their recent activities are verified with regard to potential conflicts of interest.

Success factors

- Establishing a large network of registered experts: By keeping a large network of registered commissioners and independent assessors, the IPC is able to draw very quickly on additional expertise. Experts do not need to be identified from scratch each time.
- Implementing a rigorous conflict of interest policy: Impartiality of experts from the point of view of all stakeholders (project developer, NGOs, etc.) is crucial. Doubts of an involved expert's impartiality could cause delays if a stakeholder requires the verification of an expert's impartiality and possibly her or his replacement in the course of the procedure. Therefore, an upfront conflict of interest screening of any expert involved is necessary. This screening should be standardized to ensure that it can be handled quickly.

Relevance for other Member States

As insufficient resources of responsible authorities, especially during peak phases of permitting procedures, is one of the most critical challenges of effective permitting procedures, it is strongly recommended to Member States to consider adopting a good practice as outlined above. This good practice example can be adopted in the EU Member States independently of the establishment of a one stop shop.

C. Optimize permitting procedures

In some analyzed Member States, permitting procedures are considerably more complex than in others. High complexity is created through a high number of responsible authorities and a high number of processes and process steps, requiring the project developer to submit different applications to different authorities, and different authorities to issue permits on different aspects of the same project. Moreover, in many procedures, requirements from the project developer are not sufficiently clarified at the outset of the procedure, leading to insufficient deliverables, e.g. application documents and surveys with low quality, by the project developer. Some procedures are much more complex than others and some countries have found good solutions to improve processes and make them more effective without cutting back on quality.

Good practices in Member States can be found in four areas:

- 1 Introducing a mandatory scoping to clarify requirements at the outset of the permitting procedure** – The mandatory scoping allows to fix requirements of the procedure, especially with regard to scope and contents of the application documents.
- 2 Keeping the design of permitting procedures simple** – Low complexity is a key success factor for effective permitting procedures. Low complexity means a low number of separate procedures and a low number of responsible authorities.
- 3 Granting access to land together with permit** – If right of way is covered by the permit, construction may start immediately when the permit is enforceable. This allows saving time in the realization of critical energy infrastructure.
- 4 Limiting legal recourse to a single level of jurisdiction** – If only one instance is in charge of deciding on an appeal and the appeal has no suspensive effect, construction may start right after issue of the permit.

1 Introducing a mandatory scoping to clarify requirements at the outset of the permitting procedure

A precondition for an effective permitting procedure is that the requirements for the procedure, especially expectations with regard to the input provided by the project developer, are clarified from the start. A scoping process at the beginning of the procedure, i.e. before the start of the preparation of the application documents, is an ideal means to clarify expectations of relevant stakeholder groups with regard to topics covered during the permitting procedure. It serves as a guideline for the project developer in the preparation phase, and prevents that crucial issues become apparent only at a more advanced stage of the permitting procedure.

EXAMPLE 7: The mandatory scoping in Sweden



In Sweden, the mandatory scoping involves relevant stakeholder groups at the start of the permitting procedure, i.e. before the preparation of the application documents, in the definition of requirements for the permitting procedure. This allows for an **early articulation of concerns of stakeholders and for the fixing of an agreed-upon outline of the application documents**. Done properly, this good practice example can **prevent conflicts and extra loops during the permitting procedure**.

Description

In Sweden, a mandatory scoping is in place with regard to the Environmental Impact Assessment. The County Administrative Board is responsible for handling this process step. During the scoping, stakeholders potentially affected by the project are consulted regarding the contents of the Environmental Impact Assessment (EIA). For this purpose, the project developer provides a consultation paper outlining the main aspects and potential impacts of the project. This paper also provides a suggestion for the contents of the EIA. The consultation paper is distributed to affected parties. For minor projects, this includes municipalities, county administrative boards and land owners. For larger projects, this includes additionally national authorities such as the Environmental Protection Agency and Swedish Board of Fishery. The County Administrative Board may decide to extend the circle of involved stakeholders. Stakeholders may provide questions and comments with regard to the outline provided by the project developer. Raised issues will be taken into account in the EIA.

Success factors

- Mitigation of public opposition through taking into account of stakeholders' concerns in the application documents and the planning of the project: This mandatory, relatively extensive scoping procedure ensures that the project developer knows upfront and with a high level of detail what he should include in the application documents. Especially, this scoping procedure ensures an early communication of stakeholders' concerns to the project developer. The latter has the possibility to account for such concerns in the planning of the project and in the application documents, thereby preventing or mitigating stakeholders' concerns right from the start, and avoiding conflicts and a longer duration of the procedure.
- Involvement of relevant stakeholder groups in an organized procedure allows for a constructive stakeholder dialogue: In Sweden, the selection of relevant stakeholder groups to be involved in the scoping ensures that all relevant concerns of stakeholders can be identified. Stakeholders submit written comments and questions with regard to the scoping document. This allows for an organized involvement of stakeholders and for the identification of relevant comments from stakeholders relevant for an adaptation of the project.

Relevance for other Member States

Other Member States should consider adopting the mandatory scoping involving previously identified relevant stakeholder groups. While the mandatory scoping in Sweden focuses on the outline of the EIA only, Member States should consider extending the scoping to other aspects of the permitting procedure, including environmental and non-environmental aspects. As for the practical handling of the scoping, Member States could choose to have a scoping conference in order to collect all comments from stakeholders based on the consultation paper distributed to participants before the scoping conference.

2 Keeping the design of permitting procedures simple

Permitting procedures with low complexity can be handled in a considerably shorter time frame than procedures with a high number of responsibilities, processes and process steps. While a simple design is a main success factor for short and effective handling of permitting procedures, it is not the only precondition to be met.

EXAMPLE 8: The lean design of the permitting procedure in Italy



In Italy, the **lean design of the permitting procedure allows for a short overall duration of permitting procedures**. Procedures in Italy usually take four years, which corresponds to the average of analyzed countries. Considering other less favorable factors in Italy, this duration can be achieved because of a very lean design of the procedure.

Description

In Italy, the Ministry for Economic Development is in charge of the permitting procedure of large projects, i.e. electricity transmission lines with a nominal voltage larger than 150 kV and national gas pipelines. The permitting procedure consists of one single process, combining two process steps: Environmental Impact Assessment and Technical Analysis. During the first process step, i.e. the Environmental Assessment phase, a public consultation takes place, during which the general public has the chance to submit comments to the responsible authority. Moreover, a committee of authorities is called together under the auspices of the Ministry of Economic Development for the purpose of a joint analysis. Each involved authority sends a representative to this meeting. At the end of the committee, all involved authorities submit their consent authorization or their comments or conditions regarding the project. At the end of this 90 day period, the Ministry of Economic Development is expected to issue the Environmental Impact Assessment (EIA) decision. In practice, most decisions regarding the EIA are taken at unanimity, i.e. with the consent of all involved authorities. In case of lack of consent, the leading authority has the option to overrule and take a decision. This process step is concluded with a decision on the EIA (not yet with the issue of the actual permit). Based on a positive EIA decision, the second process – the Technical Analysis – may start. The Technical Analysis is prepared by the technical department of the Ministry of Economic Development. Other authorities may be involved in the decision taking process. At the conclusion of the Technical Analysis, the Ministry for Economic Development issues the single permit, i.e. the Authorization Permit including the Environmental Permit, the Building Permit and the Operation Permit.

Success factors

- Low number of separate processes provides for low complexity: The permitting procedure consists of only one process, which encompasses two main process steps only. Both process steps are handled under the auspices of the same responsible authority. As a consequence, there is only one interface between process steps, and the requirement to transfer knowledge is low, mostly only concerning persons within the same institution.
- Separate processes for decisions on technical or local aspects are avoided because technical and local authorities are involved in a smart way in the decision taking process: Relevant authorities need to provide their consent or conditions to the permit and therefore need to be involved in the permitting procedure. Technical and local authorities provide a consistent opinion by aligning their statement in the committee of authorities.

Relevance for other Member States

Other EU Member States may use this good practice example from Italy when thinking about how they can simplify the permitting procedures in their country. While an adoption of the Italian design of the permitting procedure may not be possible in all cases, it may help to find solutions that fit the respective local context and selected elements of this example may be relevant for other Member States.

3 Granting access to land together with the permit

If right of way is covered by the permit, construction may start immediately when the permit is enforceable. However, in most EU Member States, project developers need to obtain access to land for construction of the project in a separate procedure, i.e. right of way is not covered by the permit. This often delays the realization of projects. In some Member States, access to land is facilitated as right of way is provided together with the permit.

EXAMPLE 9: The Compulsory Purchase Order in England and Wales

In England and Wales, the **realization of critical energy infrastructure projects is sped up by allowing the project developer to start construction as soon as an enforceable permit is available.** Compensations of land owners may be fixed later.

Description

In England and Wales, the project developer starts negotiations with land owners before the start of an expropriation process, aiming at amicable agreements under private law. However, for cases in which no contract under private law can be concluded, a compulsory purchase order is provided as part of the consent from the Infrastructure Planning Commission (IPC), i.e. together with the permit. The compulsory purchase order entitles the applicant to obtain the land. The amount for compensation is negotiated and may be subject for litigation in front of a specialized tribunal.

Success factor

- Acceptance of the project by land owners is ensured by leaving negotiations on compensation levels untouched: Land owners negotiate their compensation level independently of the Compulsory Purchase Order.

Relevance for other Member States

This example should be considered by EU Member States. For some Member States, this good practice example from England and Wales may be difficult to implement due to general legal restrictions in property law; it may though be highly relevant for some others.

4 Limiting legal recourse to a single level of jurisdiction

After the issue of the permit and the conclusion of the permitting procedure as such, the appeals and litigation phase follows. While in some Member States litigation is highly complex because several instances of the judicial system may be appealed to, other Member States have decided to limit legal recourse to one instance only, thereby simplifying and shortening the procedure considerably, as well as increasing planning security for the project developer.

EXAMPLE 10: The Council of State as single level of jurisdiction for projects in the Netherlands



In the Netherlands, the **realization of critical energy infrastructure is considerably shortened by reducing the duration of appeal processes**. Developers often wait with the start of construction until they have obtained the permit if an appeal is ongoing. Even if an appeal has no suspensive effect, an ongoing appeal creates financial risks. Therefore, shortening the often lengthy appeal procedures ensures an earlier start of construction and thereby shortens the overall duration of the realization of projects.

Description

In the Netherlands, there is only one instance for appeals with regard to permits for projects that fall under the "Rijkscoördinatierегeling". For such courts, the Council of State, which is the highest national administrative court, is responsible. Only the final environmental permit which is incorporating all the other draft permits may be legally challenged in front of this court. Short time limits govern appeal processes under this regime. An application for judicial review is admissible if it is filed by every person providing particular interest within 6 weeks after the publication of the permit, and the court has to take its decision within 6 months. Moreover, the pertinent specialization of a particular chamber of the administrative court yields a number of technically and environmentally experienced judges. This specialization ensures availability of required expertise and helps to ensure keeping time and quality requirements of the decisions of the court.

Success factors

- Reducing appeal to one instance only: Having only one single court and instance responsible for the decision on an appeal shortens the duration of an appeal process significantly. Besides time saved through the reduction of the number of successive decisions, time is also saved because the acquisition of the insights needs to be only once, i.e. by one court only.
- Having a specialized chamber on permits for infrastructure projects within the responsible court: The existence of specialized expertise within the court allows speeding up the court's decision taking process.

Relevance for other Member States

This good practice example should be considered by other Member States. It has clear advantages with regard to speeding up the realization of critical energy infrastructure. Moreover, the specialization of one chamber of the responsible court helps ensuring a high quality, informed decision in spite of tight time limits. While in some Member States it may be considered not an option to modify the legislation governing the judicial system and reducing legal recourse for specific cases to one instance only, this may be highly relevant in other Member States.

D. Increase project developers' engagement in permitting procedures

Project developers play a crucial role in permitting procedures. They plan the project, prepare the permitting documents and communicate with stakeholders. In public debate it is often stated that delays are due to the authorities; however, project developers can do a great deal to avoid delays before starting the permitting procedure, as well as during the procedure itself. Aligning the planning procedure in a way that not only optimizes technical and economic viability but also public acceptance and environmental concerns is one area where improvement is possible. Another is developers assuming responsibility for the early involvement of stakeholders and taking their feedback into account. We have found various examples of project developers who developed an effective way of taking this responsibility, and many who have not acknowledged the importance of an effective dialogue with stakeholders yet. Moreover, we have found that most legal frameworks governing permitting procedures leave it fully up to the project developer whether the company engages in a dialogue with stakeholders or not. There are few examples where the legal framework requires the project developer to take action in this area.

Good practices in Member States can be found in the following area:

- 1 Introduction of early stakeholder dialogue as a formal requirement of the permitting procedure** – developer learns about stakeholders' concerns early on in the procedure and has a better chance to acknowledge issues and to prevent conflicts.

1 Introduction of early stakeholder dialogue as a formal requirement of the permitting procedure

In England and Wales, the project developer is obliged to establish an effective dialogue with stakeholders before the submission of the application documents. Thereby, the developer learns about stakeholders' concerns early on and can take relevant concerns into account in the application and in the planning of the project. **Significant delays due to lack of consideration of stakeholders' concerns during the procedure can be prevented.**

EXAMPLE 11: Mandatory public dialogue before submission of the application in England and Wales



In England and Wales, the project developer is obliged to establish an effective dialogue with stakeholders before submission of the application documents. Thereby, the developer learns about stakeholders' concerns early on and is required to take relevant concerns into account in the application and in the planning of the project. **Significant delays due to lack of consideration of stakeholders' concerns during the procedure can be prevented.**

Description

In England and Wales, a full public consultation carried out by the project developer before submission of the application documents as a mandatory element of the permitting procedure. For this purpose, the developer submits to the Infrastructure Planning Commission (IPC) a proposal for the design of this public consultation. While the developer is fully in charge of the operational handling of this process step, the IPC monitors the proper handling of the public consultation by the developer. The project developers must show how they have taken consultation responses into account in the application documents, and the local authority for the area must confirm that developers have complied with the consultation plan.

Success factors

- The mandatory stakeholder dialogue includes elements of information and elements of dialogue: It is important that the developer provides target-group specific information to stakeholders at the start of the procedure, especially information that is not too technical and that also allows to mitigate concerns. Besides this, the developer should seek the dialogue with stakeholders to learn about their concerns and to be able to address them effectively.
- The project developer receives guidance and support from the responsible authority during the mandatory stakeholder dialogue: Support from the responsible authority is important with regard to the design of an effective stakeholder dialogue, and also to create structured discussions with stakeholders.
- The formal requirement of an early stakeholder dialogue by the developer should not result in extensive additional formal requirements for the developer: Formal requirements should be sufficient to trigger a serious dialogue between project developer and stakeholders, but not create extensive additional formalities to be fulfilled by project developers.

Relevance for other Member States

The advantage of the example in England and Wales is that an early dialogue between project developer and stakeholders is ensured by formal requirement. Other Member States may consider adopting such an element and requiring project developers to submit a concept for a dialogue process prior to submission of the application documents to the responsible authority. In the case of such a formal requirement, special care should be taken to ensure that the responsible authority has sufficient resources to overview and support this dialogue, and that formal requirements for the project developer do not create more effort than needed for the purpose of triggering an effective discussion.

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