Study on permitting and facilitating the preparation of TEN-T core network projects

Annex 1: Problem definition

N*MOVE/B3/2014-751
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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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Study on permitting and facilitating the preparation of TEN-T core network projects

TABLE OF CONTENTS

ABBREVIATIONS USED ............................................................................................................. 6

PART ONE: CHALLENGES IN THE AUTHORISATION FRAMEWORK FOR TEN-T CORE NETWORK PROJECTS ............................................................ 7

1 CHALLENGES IN PERMITTING PROCEDURES ........................................................................ 7
   1.1 Inefficiencies in permitting procedures ..................................................................... 7
   1.1.1 Multiple stages and authorities involved in permitting procedures ................. 7
   1.1.2 Lack of resources and technical capacity of permitting authorities .......... 11
   1.1.3 Absent or unenforced time limits ...................................................................... 11
   1.1.4 Streamlining measures ..................................................................................... 13
   1.2 Public opposition .................................................................................................... 17
   1.2.1 Late or poorly timed consultation of stakeholders ........................................... 18
   1.2.2 Ineffective stakeholder consultation ................................................................. 19
   1.2.3 Inefficient consultation of stakeholders ............................................................ 20
   1.2.4 Streamlining measures ..................................................................................... 20
   1.3 Deficiencies in planning the early stages of the project ........................................... 21
   1.3.1 Poor quality of environmental assessments ...................................................... 22
   1.3.2 Lack of consultation and coordination between permitting authorities .......... 23
   1.3.3 Absence of strategic planning .......................................................................... 24
   1.3.4 Changes in the legal framework in the course of the project ......................... 25
   1.4 Land acquisition ..................................................................................................... 26
   1.4.1 Landowner opposition ...................................................................................... 26
   1.4.2 Lack of time limits in expropriation procedure ................................................... 26
   1.4.3 Limited collection and/or availability of data ..................................................... 26
   1.4.4 Streamlining measures ..................................................................................... 27
   1.5 Conclusions ............................................................................................................. 28

2 CHALLENGES IN THE PROCUREMENT OF TEN-T CORE NETWORK PROJECTS .......... 29
   2.1.1 Complexity of legal framework ...................................................................... 30
   2.1.2 Absence of time limits for the award procedure ............................................ 31
   2.1.3 Characteristics of review procedures ................................................................. 32
   2.1.4 Limitations in capacity of contracting authority ............................................... 34
   2.1.5 Deficiencies in the design of the tender .............................................................. 35
   2.2 Public-private partnerships ....................................................................................... 36
   2.2.1 Organisational barriers to PPPs ....................................................................... 38
   2.2.2 Statistical treatment of PPPs ............................................................................ 39
   2.3 Conclusions on the procurement of TEN-T projects ............................................. 40

3 CHALLENGES IN STATE AID PROCEDURES ..................................................................... 41
   3.1.1 Lateness and/or poor quality of State aid notifications .................................... 41
   3.2 Conclusions on State aid ....................................................................................... 43

PART TWO: SPECIFIC CHALLENGES IN PERMITTING OF TEN-T WATERBORNE PROJECTS ........................................................................ 45

4 CHALLENGES IN THE PERMITTING OF WATERBORNE PROJECTS ................................ 45
   4.1 Challenges related to the legal framework for waterborne projects ..................... 45
LIST OF TABLES

Table 1: Drivers for institutional inefficiencies ................................................................. 7  
Table 2: Number of permitting procedure in the ten selected Member States ............... 8  
Table 3: Permitting authorities in the ten selected Member States ................................. 10  
Table 4: Legal time limits for permitting procedures in the ten selected Member States ................................................................................................................................. 12  
Table 5: Fast-track procedures in selected Member States ............................................. 14  
Table 6: Central coordinating bodies in the ten selected Member States ..................... 16  
Table 7: Drivers for public opposition ................................................................................ 17  
Table 8: Drivers for poor strategic and project planning .................................................. 22  
Table 9: Drivers for problems in land acquisition ............................................................. 26  
Table 10: Drivers for delays in the completion of the procurement phase ..................... 30  
Table 11: Time limits to take award decisions ................................................................. 31  
Table 12: Time limits for review ....................................................................................... 33  
Table 13: Drivers for under-exploitation of PPPs .............................................................. 38  
Table 14: Drivers for uncertainty concerning state aid decisions ................................. 41  
Table 15: Drivers for specific challenges in the permitting of waterborne projects ....... 45  
Table 16: Drivers for specific challenges in the permitting of cross-border projects ....... 52

LIST OF FIGURES

Figure 1: Permitting procedures in Austria, Germany, Italy, the Netherlands and the United Kingdom .................................................................................................................. 14
### ABBREVIATIONS USED

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA</td>
<td>Appropriate Assessment</td>
</tr>
<tr>
<td>CBA</td>
<td>Cost-benefit Analysis</td>
</tr>
<tr>
<td>CEF</td>
<td>Connecting Europe Facility</td>
</tr>
<tr>
<td>CJEU</td>
<td>Court of Justice of the European Union</td>
</tr>
<tr>
<td>CRA</td>
<td>Crisis and Recovery Act (NL)</td>
</tr>
<tr>
<td>EEIG</td>
<td>European Economic Interest Grouping</td>
</tr>
<tr>
<td>EFSI</td>
<td>European Fund for Strategic Investment</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>ERA</td>
<td>European Railway Agency</td>
</tr>
<tr>
<td>ESIF</td>
<td>European Structural and Investment Funds</td>
</tr>
<tr>
<td>JASPERS</td>
<td>Joint Assistance to Support Projects in European Regions</td>
</tr>
<tr>
<td>LNG</td>
<td>Liquefied natural gas</td>
</tr>
<tr>
<td>MSP</td>
<td>Maritime Spatial Planning</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
</tr>
<tr>
<td>PIANC</td>
<td>Worldwide Association for Waterborne Transport Infrastructure</td>
</tr>
<tr>
<td>PPP</td>
<td>Public-private partnership</td>
</tr>
<tr>
<td>RBMP</td>
<td>River Basin Management Plan</td>
</tr>
<tr>
<td>SEA</td>
<td>Strategic Environmental Assessment</td>
</tr>
<tr>
<td>SPA</td>
<td>Special Protected Area</td>
</tr>
<tr>
<td>TEN-E</td>
<td>Trans-European Network for Energy</td>
</tr>
<tr>
<td>TEN-T</td>
<td>Trans-European Network for Transport</td>
</tr>
<tr>
<td>WFD</td>
<td>Water Framework Directive</td>
</tr>
</tbody>
</table>
PART ONE: CHALLENGES IN THE AUTHORISATION FRAMEWORK FOR TEN-T CORE NETWORK PROJECTS

1 CHALLENGES IN PERMITTING PROCEDURES

1.1 INEFFICIENCIES IN PERMITTING PROCEDURES

Factors of delays, costs and uncertainty in permitting procedures are often rooted in procedural aspects. As shown in the previous section, TEN-T core network projects\(^1\) have multiple impacts on land-use and the environment, often require conducting multiple environmental assessments, and, given their size, can fall under several jurisdictions if the procedure is handled at regional or local level. Consequently, in some Member States, permitting procedures are complex, involving many steps and permitting authorities, leading to duplication of permits and applications to be submitted by project promoters, duplication of or overlaps in assessment procedures, and significant administrative burden and costs for both the project promoters and permitting authorities. The higher number of different authorities involved in the permitting procedure, the more complex it becomes to gather all of the intermediate decisions required to grant the final permit. Table 1 summarises the drivers and resulting problems that typically occur related to procedural aspects of permitting procedures.

Table 1: Drivers for institutional inefficiencies

<table>
<thead>
<tr>
<th>Drivers</th>
<th>Problems: delays, costs and uncertainty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multiple stages and distribution of competences over several authorities</td>
<td>Duplication of work – applications and assessment procedures</td>
</tr>
<tr>
<td>Lack of resources and technical capacity of permitting authorities</td>
<td>Duplication of permits when obtained at regional or local level</td>
</tr>
<tr>
<td>Absent or unenforced time limits</td>
<td>Necessity to gather decisions/opinions from a large number of authorities</td>
</tr>
</tbody>
</table>

The following sections will describe and analyse these drivers in more detail, along with possible streamlining measures, which Member States may adopt as necessary, in line with the national administrative and political context.

1.1.1 Multiple stages and authorities involved in permitting procedures

Permitting procedures in the ten selected Member States differ greatly in the number of necessary permits and decisions to be obtained. The number of authorities and levels of governance that may be involved in permitting procedures, as well as their competence and power in the procedure also vary significantly across Member States. Among the ten selected Member States, four have a single-stage permitting procedure (Germany, Italy, the Netherlands, and the United Kingdom), where all permitting decisions (environment, spatial planning etc.) are handled through a single development consent procedure. While only one permitting authority grants the final decision, consultation of other authorities generally remains a prerequisite, as the different assessments may relate to policy areas that are within the domain of other authorities. The other six countries have multi-stage permitting procedures (Austria, Czech Republic, Hungary, Poland, Romania, and Spain).

Table 2 indicates the number of permits applied in each Member State and the number of authorities

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\(^1\) For the purpose of this chapter, TEN-T projects are hard infrastructure projects (construction, extension or upgrading) located on the TEN-T core network. It does not include projects related to traffic management.
involved. The number of permits reported in the table generally includes the minimum number of permits that always need to be granted, and only considers final and not intermediate binding decisions. The highest numbers of permits to be obtained can be found in Romania (6-7 minimum), Hungary (8-10), and Czech Republic (4).

In addition to the permits and decisions listed in Table 2, binding opinions or decisions of a number of authorities can be necessary before the permitting authority can issue a permit. For example, in the Czech Republic, the three main permits can only be granted once around 15 binding decisions of national, regional or local authorities have been issued. In Poland, the decision on the implementation of state roads investment and the decision on location of railways must be accompanied by the opinions of a least eight categories of authorities (Provincial and municipal governments; the Minister dealing with health issues; the voivodship responsible for restoration of monuments; the relevant maritime administration; the relevant regional directorate of State Forests; and the relevant manager of rail/road infrastructure).

Table 2: Number of permitting procedure in the ten selected Member States

<table>
<thead>
<tr>
<th>Member State</th>
<th>Number of permitting procedures</th>
<th>Permits/decisions required</th>
</tr>
</thead>
</table>
| Austria       | 1-2                             | **Federal roads and railways:**  
- BA decision and decisions on other federal substantive areas of law such as water, cultural heritage, forestry, worker protection, noise etc. (federal level)  
- Decision as per state law, especially nature protection law (state level)  
*Other transport infrastructure: All decisions bundled into one at State level*  |
| Czech Republic| 4 (including EIA)                | - BA statement\(^2\)  
- Zoning decision (land use)  
- Construction permit  
- Final operation approval |
| Germany       | 1                               | - Plan approval procedure  
- A project may require a spatial planning decision prior to the plan approval procedure. |
| Hungary       | 8                               | - Regional land use permit  
- Environmental permit  
- Water permit  
- Permit on prior archaeological excavation  
- Rural land permit (if not integrated in environment permit)  
- Permit on use of forest land (if not integrated in environment permit)  
- Construction permit  
- Expropriation decision. |
| Italy         | 1                               | Single authorisation procedure |
| Netherlands   | 1                               | Single authorisation procedure: depending on the type of |

\(^2\) Although the EIA decision is not part of the permitting procedure in Czech Republic, it is a prerequisite to start the permitting procedure and apply for the zoning decision, when the EIA is mandatory. Therefore, it has been counted as a decision required in the permitting procedure.
The large number of permitting authorities involved is in part due to the wide scope of impacts considered in environmental assessments, which leads to the involvement of several sectoral authorities, either for granting permits or delivering an opinion or a decision. Competent Ministries or authorities for environment, water, nature protection, cultural heritage, agriculture and forest are typically requested for an opinion or a decision in the permitting procedure. The level of decentralisation of the procedure is another factor explaining the number of authorities involved in the procedure. As shown in Table 3, although most permits or decisions are delivered by national/federal authorities, in some Member States, certain permits, mainly related to land-use, are delivered by regional authorities or governments (Austria, Germany, Hungary, Poland, Romania), sub-regional authorities (Hungary) and municipalities (Czech Republic, Romania). In a number of cases, this leads to repeating the permitting procedure, and where relevant, the public consultation involved, in all regional or local jurisdiction crossed by the project. For example, in Austria, procedures at State level for federal roads and rail projects will be repeated in all States affected by the project. In Czech Republic, Hungary and Romania, land-use decisions must be obtained in all counties or municipalities affected by the project.

A more decentralised procedure can also lead to additional administrative burden for project promoters, especially when the regional or local authorities handle procedural aspects differently. Interviewed stakeholders mentioned that where regional or local administrations have a permitting role, the interpretation of what documentation needs to be provided by the project promoter as part of an application can differ greatly from one authority to another.

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3 The main legal act in the Netherlands regulating major infrastructure projects is the Infrastructure Act establishing the planning procedure. If a project does not fall into the scope of this act, the permitting procedure is regulated by the Law on general provisions on the environment establishing the procedure for granting the ‘environmental permit’ . In both cases, only one permit is required.
### Table 3: Permitting authorities in the ten selected Member States

<table>
<thead>
<tr>
<th>Member States</th>
<th>Number of permitting authorities</th>
<th>Permitting authorities</th>
</tr>
</thead>
</table>
| Austria       | 1-2 (+)5                         | - Ministry responsible for transport (Federal level)  
                  - State government (State level) |
| Czech Republic| 2                               | - Building office of the Municipality (land use decision)  
                  - Rail authority (construction permit for rail)  
                  - Ministry responsible for transport (construction permit for road)  
                  - Competent water authority (construction permit for waterborne transport) |
| Germany       | 1                               | - Federal Railway Agency (rail)  
                  - Federal Waterways and Navigation Authority (waterborne transport)  
                  - Regional or district government (road) |
| Hungary       | 4-6                             | - County government office (regional land use permit, expropriation decision)  
                  - Department for environment and nature protection of County government office (Environment permit)  
                  - Roads, Railways and Shipping Authority within the National Transport Authority (construction permit)  
                  - Disaster Prevention Directorates (water permit)  
                  - District office of architecture and cultural heritage (archeological excavation)  
                  - Forest Directorate, County government office (permit on use of forest land)  
                  - Competent local land registry office (rural land permit) |
| Italy         | 2                               | - Ministry responsible for transport (final decision)  
                  - Ministry responsible for environment (EIA decision) |
| Netherlands   | 1                               | Ministry of infrastructure and environment |
| Poland        | 2-3                             | - Regional Directorates of Environmental Protection (environmental decision)  
                  - Regional authority (Voivode) (decision on the implementation of state roads, decision on location of railway project, construction permit for rail)  
                  - Head of the Regional Authority or head of provincial administration (water permit) |
| Romania       | 6-7                             | - Environmental Protection Agency (environmental agreement)  
                  - Ministry responsible for transport (expropriation decision, construction permit for roads)  
                  - County Council (construction permit, expropriation)  
                  - Municipality (spatial planning, local administration endorsement, expropriation)  
                  - Ministry responsible for agriculture (occupation of agricultural land)  
                  - Government (occupation/clearing of forest land)  
                  - Utilities suppliers (endorsement of utilities suppliers) |

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4 Authorities have been considered permitting authorities when they grant a permit (excluding authorities consulted or requested for a binding opinion)  
3 If the project is located in the territory of more than one state, the state government of each state involved is a permitting authority  
5 The final operation approval is granted by the same authority which issued the building permit. In addition, other authorities are providing binding opinions/approvals necessary for granting the three main permits. Among them, the Ministry of Environment is responsible for delivering the EIA statement.  
6 In Czech Republic, there are two types of highways, highways (dalnice) and expressways (silnice). The construction permit for “dalnice” is issued by the Ministry of Transport and the construction permit for ‘silnice’ by the Special building authority in the responsible municipality.
### 1.1.2 Lack of resources and technical capacity of permitting authorities

The large number of authorities involved in permitting procedures in some countries makes the process highly vulnerable to the administrative capacity of authorities to issue decisions within reasonable timeframes. Stakeholders in six Member States acknowledged that all authorities do not have the same level of resources to invest in permitting and that some lack human resources to carry out their duty (Czech Republic, Germany, Hungary, Italy, Poland and Romania). Lack of capacity has been identified in particular in sectoral authorities (for example, water, cultural heritage), and in regional/local authorities, in which permitting is generally dealt with along with their regular workload, without dedicated extra staff. When understaffed authorities have to deliver a binding decision or opinion, it can delay the entire procedure. It should be noted that the 2014 amendment to the EIA Directive introduced the requirement that competent authorities ensure that they have or have access to sufficient expertise to examine the environmental impact assessment report (Article 5(3)); this will come into force in May 2017 and it is not yet clear what steps Member States will take to ensure this.

Technical capacity has generally been less emphasised by national stakeholders. In procedures where competences are distributed over a large number of permitting authorities, the experience of permitting large transport infrastructure projects remains more fragmented and this can create challenges for authorities to build up a sustainable body of expertise. Authorities with limited technical capacity may call upon external experts to complement the technical expertise of the authorities. However, this approach does not completely resolve the problem of lack of expertise to manage the procedures in the authorities tasked with issuing permitting consent. In addition, smaller authorities might encounter difficulties in hiring external experts because of financial constraints.

While technical capacity was not identified as a key problem for traditional transport projects, problems have been indeed identified in the permitting of new types of projects. One permitting authority in the United Kingdom stated that when decisions must be taken about innovative projects, there can be a lack of understanding about risks linked to the project. In particular, for LNG terminals, where the legal framework is not yet well established and permitting authorities lack experience, permitting is more complex.

#### Ruse LNG Terminal, Bulgaria

The LNG terminal pilot deployment in the port of Ruse in Bulgaria is one of the outputs of the TEN-T sponsored ‘LNG Masterplan for Rhine-Main-Danube’ (2013-2015). The Ruse LNG terminal is to be the first LNG terminal in the Danube region.

There is no national Bulgarian legislation regulating LNG terminals. EU standards for LNG terminals were not in place in Bulgaria when the project commenced in 2012, but should become applicable in 2016. In this context it became very difficult for local authorities, which deal with part of the permitting procedure, to carry out their duties. Given the absence of the clear legal framework, the permitting was therefore led essentially at national level.

#### 1.1.3 Absent or unenforced time limits

In most of the selected Member States, time limits are set out in the legislation for the main permits
(EIA, spatial planning) and public consultations. However, global time limits for the entire permitting procedure have not been fixed in any Member State, even where an integrated permitting procedure exits (e.g. Germany). Time limits for environmental assessments generally exist, at least for certain procedures, in particular for screening and scoping, and public consultation. The 2014 amendment to the EIA Directive introduced time limits for screening decisions (limited to 90 days from the dated of submission by the project promoter). 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)). Regarding the EIA decision, the amended Directive now specifies that Member States shall ensure that the competent authority takes any of the decisions within a reasonable period of time. These procedures will need to be in place in all Member States by the May 2017 deadline for transposition of the amended EIA Directive.

Table 4 summarises the existing legal time limits for various aspects of the permitting procedures in the ten selected Member States.

**Table 4: Legal time limits for permitting procedures in the ten selected Member States**

<table>
<thead>
<tr>
<th>Member State</th>
<th>Legal time limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Time limits for EIA procedure: 12 months / 9 months if simplified procedures (from submission to decision)</td>
</tr>
</tbody>
</table>
| 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 |
Stakeholders interviewed have generally commented that, although established, time limits are rarely enforced. Stakeholders often mentioned that missing documentation or documentation of poor quality was an important factor of delays, and often the reason why the permit cannot be issued within the time limit, as additional data has to be requested to the applicant, which often stops the procedure.

In most of the selected Member States, sanctions are not applied in case of missed deadlines. Only one example of administrative sanction was found. In 2010, Romania changed the expropriation procedure to shorten time limits and reduce delays. Authorities responsible for issuing different certificates or notifications can be fined if they do not respect the reduced timelines for issuing documents, as required by the law.

1.1.4 Streamlining measures

Member States have addressed the problems outlined above through a number of measures, including: integrating the spatial planning, environmental permits and development consents to varying extents; establishing fast-track procedures; and nominating a coordinating authority for the permitting procedure.

1.1.4.1 Reducing the number of steps in the permitting

Out of the ten selected Member States, five have integrated to a certain extent the different steps – environmental permit, spatial planning and construction permit – into one 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 Austria, the approval of the environmental assessment is also the development consent. However, not all environmental decisions are bundled together, since regional authorities are competent in a number of areas of law including nature protection. Finally it should be noted that in the United Kingdom, protected species licenses are dealt with after the development consent has been granted, and so, outside of the permitting procedure.

1.1.4.2 Fast track procedures

Five Member States have introduced fast-track procedures applying to major infrastructure projects, generally designated as such by law, or though the establishment of a list of important investments.

Table 5: Fast-track procedures in selected Member States

<table>
<thead>
<tr>
<th>Member State</th>
<th>Legal Basis</th>
<th>Applies to</th>
<th>Main characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hungary</td>
<td>Priority Projects Act (2006)</td>
<td>Projects designated by Government Decree No. 345/2012</td>
<td>Possibility to conduct several procedures in parallel</td>
</tr>
<tr>
<td>Italy</td>
<td>Legge Obbietivo (2001)</td>
<td>Projects included on the ‘National Strategic List’ established by the CIPE</td>
<td>Development consent granted on preliminary project, tighter time limits for decision-taking</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Crisis and Recovery Act (2010)</td>
<td>Projects designated by government, Specific categories of projects (e.g.)</td>
<td>Limitations of legal standing of municipalities, time limits for</td>
</tr>
</tbody>
</table>
Fast-track procedures aim at accelerating the permitting procedure, either by reducing the number of permits required and/or the time necessary to obtain them. In Poland, the number of permits for roads and railways has been reduced to two or three depending on the type of infrastructure. Other Member States have modified the permitting procedure to enable more permits to be handled in parallel (Hungary) or granted on the basis of preliminary approvals (Romania). In Romania, if the construction permit can be granted with preliminary approvals concerning the use of forest land and/or land where public utilities are located, the project promoters has to obtain final approval before the infrastructure is operational.

Fast-track procedures should be carefully implemented to avoid creating additional burden instead of streamlining the permitting procedure. Greater parallelisation of procedures, as in Hungary, can have its downsides. Although it does allow promoters to make progress in obtaining required permits in parallel with each other, without being delayed by one single permit approval, it increases the risk of inconsistent assessments and decisions. 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.
Fast-track procedures should also ensure compliance with applicable EU law. The Italian Legge Obbiettivo, which provides for the development consent to be granted on the basis of a preliminary project design, has led to the opening of an infringement procedure, as there were questions on whether all environmental impacts to be assessed according to the EIA Directive could be known and taken into account at the preliminary project stage. The infringement was closed after Italy provided guarantees that the EIA procedures were compliant with EU requirements.

1.1.4.3 Concentrating competencies and/or coordination of processes in one authority

Member States that have introduced a single-stage permitting procedure have also generally established a leading authority endowed with coordination powers and in certain cases with greater decision-making power. This role is often referred to as a ‘one-stop-shop’, although the term is not necessarily used in the selected Member State to designate the authority.

Table 6: Central coordinating bodies in the ten selected Member States

<table>
<thead>
<tr>
<th>Member State</th>
<th>Coordinating body</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>The regional government(^8) (except for federal roads and railways)</td>
</tr>
<tr>
<td>Germany</td>
<td>The plan approval authority</td>
</tr>
<tr>
<td>Italy</td>
<td>The ministry responsible for transport</td>
</tr>
<tr>
<td>Netherlands</td>
<td>The ministry responsible for transport</td>
</tr>
<tr>
<td>UK</td>
<td>The Secretary of State of the Department for Transport (SoS). The procedure is coordinated by the Planning Inspectorate acting on behalf of the SoS</td>
</tr>
</tbody>
</table>

The one-stop-shop generally constitutes a single window for project promoters, who can submit all documentation to the same authority. It should be noted however that in Germany, if a regional planning procedure takes place before the plan approval procedure, both procedures will be dealt with separately by different authorities. In the UK, protected species licences are granted after the development consent and have to be requested to Natural England, not to the one-stop-shop.

The one-stop-shop has the competence to take the final decision, and coordinate with authorities requested for opinion or asked to issue a decision. However, they often do not have sufficient decision-making powers to bypass other administrations’ authority, or to speed up the procedure. In Italy, for example, the ministry responsible for transport (one-stop-shop) is on an equal footing with the environment ministry, which reviews the EIA.

To ensure that the one-stop-shop can effectively exercise its coordinating powers, Italy established a formal body to facilitate dialogue between all levels of governance (see below). Spain has established a similar structure to collect the input from regional governments. Romanian stakeholders have suggested the creation of a coordination committee for transport projects that would include all relevant authorities and would allow improved communication between all interested stakeholders.

**Italy**

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.

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\(^8\) The State government is de facto a one-stop-shop for projects falling under the sole competence of a State government.
1.2 PUBLIC OPPOSITION

Public opposition is a generally known problem and a frequently reported barrier in the preparation of large infrastructure projects. A previous study, on energy infrastructure projects, noted that this is particularly true for older Member States, where citizens seem to be more sensitive to perceived environmental and visual impacts, but it is increasingly the case also in new Member States. The ten country and thirteen case studies conducted for the purposes of this study recognised this problem to be present in nearly all TEN-T projects.

Both study types indicated that opposition can occur throughout a project timeline—from preparation and permitting through to commissioning. Motives were also wide-ranging. While in Railway Connection Lyon Turin (Val De Susa), the Italian population under the ‘No TAV’ movement invoked alleged negative environmental and social impacts alongside a claim of the current line providing sufficient rail capacity, the opposition in Rail Zevenaar-Emmerich-Oberhausen focused more on purported dust and noise pollution effects.

In Brno-Vienna—a 110 kilometre motorway project between Czech Republic and Austria—stakeholders based their arguments on procedural errors relating to incorrect application of EIA (under the EIA Directive 2011/92) due to splitting or “salami-slicing” of the process, insufficient assessment of routing alternatives, lack of trans-boundary assessment as well as conflicts with the Birds and Habitats Directives. The Brno-Vienna is also considered as an example of a case where stakeholders were frustrated by their impression that the routing options were pre-determined before the EIA procedure and any public involvement, due to the fact that the project route was included in the regional land use plan. Although alternatives were formally examined (e.g. through EIA procedures), the impression remained that a thorough examination of such alternatives was neglected.

As public opposition is known to significantly delay project implementation, its drivers merit a deeper analysis in order to find potential solutions. Both case and country studies point to late, ineffective and inefficient public consultations—if not being the root causes—nevertheless significantly feeding into an intensified opposition and delays.

Table 7: Drivers for public opposition

<table>
<thead>
<tr>
<th>Drivers</th>
<th>Problems: delays, costs and uncertainty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Late or poorly timed consultation of stakeholders</td>
<td>Public opposition during permitting and preparation phase.</td>
</tr>
<tr>
<td>Ineffective consultation of stakeholders</td>
<td>Frequent and lengthy appeals</td>
</tr>
<tr>
<td>Inefficient consultation of stakeholders</td>
<td></td>
</tr>
</tbody>
</table>

Each of these drivers are discussed in further detail below.

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1.2.1 Late or poorly timed consultation of stakeholders

The majority of the case studies indicate that late or poorly timed consultation with the public can lead to missed opportunities to take public concerns into account in project planning and increased public opposition. Studies and project experiences discussed below show that the correct timing of the public consultation is can have a significant impact on the length and smooth functioning of project permitting procedures and later implementation.

Late consultation generally refers consultations that are poorly timed with regard to the timing of the overall project development and permitting process. More specifically, a 2013 study commissioned by the German transportation industry indicated that ‘early’ would further mean initiating consultations at a point in time when it is still easy to make changes to the project that could then be realised at reasonable extra cost. Generally, problems related to the timing of consultations (i.e. when in the process they take place) were reported more frequently than those related to the length or timing allowed for the consultation procedures. In fact, although in some Member State stakeholders acknowledged that currently applicable timeframes may restrict broader participation, most considered existing time frames to be adequate.

The relevant EU legislation mandating public consultation for plans, programmes and projects in the transport sector relates to environmental assessment (i.e. the SEA and EIA Directives). These directives do not specify when in the process consultations should take place however, only that the public should be given ‘early and effective opportunity’ to participate in the environmental decision-making procedures (SEA Directive, Article 6(2)); EIA Directive, Article 6(4)). This is logical given that the directives apply to a very wide range of types of plans, programmes and projects, so specification of timing would be counter-productive. In many cases therefore, authorities and project promoters are tempted to delay consultations by the fact that their timing is not prescribed by law. Nevertheless, the SEA Directive, which came into force in 2004, did introduce a public consultation requirement at the plan or programme stage, which typically occurs early in the infrastructure development process. However, several country studies recognised that SEA and its early consultation requirements, are not always carried out for many transportation projects. This was noted in Austria and also in the Czech Republic, where it was mentioned that project promoters would prefer routing laid down in old land use plans (dating from before the SEA Directive entry into force and therefore not subject to consultation at the strategic planning stage).

A number of case studies and examples attest to the importance of holding consultations at an appropriately early point in the project process, including at the strategic planning stage. These, as well as evidence from the Member State studies, are discussed below.

In Railway Connection Lyon Turin (Val De Susa)—a cross-border railway project launched in 1990—on the Italian side an effort to involve the local citizens was made only in 2006 after significant opposition through the ‘No TAV’ movement had already raged across the region for over a decade.

In the course of Brno-Vienna, on the Czech side consultations were conducted only once the routing had already been included in a binding land use plan which had not been subject to an SEA, which would have provided a sufficient time for informing the public and enabled an effective participation in the decision-making. This was because the plan containing the routing became legally binding before the SEA Directive entered into force in the Czech Republic. As a result, consultation occurred too late as it was done on a ‘decided-policy option’. On the Austrian side, although leaving out the SEA and an assessment of economic needs and alternatives can still be considered to be in line with the Austrian Federal Road Act, which mandates SEA only for roads that constitute part of a

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11 Roland Berger, Planning and financing transportation infrastructures in the EU – A best practice study, 2013, p.15.
12 TAV stands for treno ad alta velocità (High-speed train).
‘widening’ of an existing road network, the poorly timed consultations certainly contributed to the problems at a later stage.

The Lyon-Turin rail project is an example of a project that would have benefitted from an earlier and broader public consultation. Local concerns were handled less effectively at the first stages, leading to significant delays. Since setting up of ‘Observatory for the Lyon-Turin rail link’ to foster dialogue with stakeholders in the Susa Valley region in 2005, around one hundred meetings with stakeholders have taken place resulting into a new routing through the valley area in 2008 and amending certain technical solutions—including postponing the construction of a second tunnel and connecting the new line with the old historic line at Susa. Making the consultations more inclusive and holding them at critical points in the project process have finally, by 2013, resulted in the clear majority of the local population supporting the project.

In all Member States considered in this study, stakeholders reported that early consultations were encouraged by authorities and in a number of countries, stakeholders reported that early consultation had benefits for the projects. In the Netherlands, a number of consultations of the public and other stakeholders take place prior to the start of the permitting procedure. Through early contact with stakeholders, the project promoter has the opportunity to demonstrate the benefits of the project. As a result, early stakeholder consultation is considered to increase overall acceptance of a project by both the public and local authorities. In Austria, stakeholders reported that early consultation increases public acceptance but also results in speedier permitting at subsequent phases, the avoidance of lawsuits (a major cause for delay), and better quality projects overall. Finally, it may be appropriate that targeted information campaigns could be sufficient to engage stakeholders during the earliest planning phases of the project, rather than a full public consultation. This could keep the overall process within reasonable time-limits and would not unduly burden the aggregate procedure while satisfying the public’s information needs. This could be followed by formal and informal consultation processes.

1.2.2 Ineffective stakeholder consultation

While early consultation can assist in securing public support for a project, it may not be enough to overcome all public opposition. The Zevenaar-Emmerich-Oberhausen rail project puts the assumed benefits of ‘just early’ consultation into perspective. Despite extensive efforts made to provide public information and allow for participation (information events, brochures), public opposition remained a key challenge for the project. Legal appeals against the permitting decisions caused significant uncertainty, disrupting financing and planning. The case study suggests that appropriate communication and public participation strategies should involve continuous attention and effort; simply starting in the early planning stages, or carrying out information events, may not be enough secure sufficient public acceptance to enable smooth project implementation.

While effective consultation was generally recognised as a challenge, stakeholders in approximately half of the country studies reported that their respective procedures are effective. In considering whether procedures were efficient, the study considered whether different public consultation processes were coordinated in the countries.

Despite the above stakeholder statistics, studies also pointed to several issues hampering effectiveness. In Zevenaar-Emmerich-Oberhausen there were many: a failure to convince the local and political community of the national economic importance (important especially for the Netherlands) and to convey a balanced message with regard to the cross-border dimensions of the project, including poor communication concerning trans-boundary sections; neglected adaptation of materials to local languages; and a failure to communicate differing Dutch and German fire safety standards resulting the public on the German side to lodge unfounded claims for increased safety.
1.2.3 Inefficient consultation of stakeholders

The way in which consultations are carried out, in terms of their time and cost, can also lead to public opposition to projects, and thus become a source of significant uncertainty and delay for transport projects. While ineffectiveness is concerned with the content and other credibility aspects, inefficiency refers to the time and cost of carrying out procedures, including those stemming from multiple legal requirements. Again, around half of the country studies found that stakeholders consider procedures in their country to be reasonably well coordinated and efficient.

Nevertheless, several case studies pointed to issues hampering efficiency in stakeholder consultations. The Zevenaar-Emmerich-Oberhausen case shows a situation where the fact that the German approval process has no binding overall timelines for finalising the project planning approval enhances opportunities to issue comments and to appeal at frequent stages. This is reflected by the large number of comments (over 1,000) and appeals which have to be addressed by promoters.

The Fehmarn Belt Fixed Link is a prime demonstration of how national requirements for multiple consultation rounds can be a source of significant delays. Because of numerous public consultations and public hearings, the permitting procedure has taken significantly longer on the German side compared to the Danish side. The EIA of the Fehmarn Belt link was approved by the Danish parliament in a special procedure, in the form of a Construction Act in April 2015; approval on the German side, where the project does not enjoy this special legislative status, has not yet been achieved.

The country studies also identified a number of problems related to inefficiency in carrying out public consultations. Requirements for multiple public consultations at regional level (in cases where projects crossed multiple regions) were observed to impact the efficiency of public consultation in Austria. Extensive stakeholder interventions leading to delays in permitting procedures have occurred, mainly because authorities have been reluctant to curtail comments and interventions of parties, which can occur at any time during the permitting process. In Hungary the structure of the permitting scheme for TEN-T projects—involves seven to nine permitting procedures with their respective consultations. This leads to multiple and in some cases repetitive comments from the public and municipalities during public consultations, prolonging the overall duration of the project preparation.

1.2.4 Streamlining measures

1.2.4.1 Good consultation practices

There is already a wide-ranging body of case studies, examples, guidance documents and other material on good practices in public consultation for large infrastructure projects, including through implementation of the SEA and EIA Directives. For example, the benefits of early public consultation have been illustrated in in the Brenner Base Tunnel project, where 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). While public opposition did occur, it was not regarded as significant and, because consultation had taken place early, there was still flexibility in project planning to take community concerns into account. This was particularly seen in the municipality of Prati di Vizze (Italy), where project promoters were able to change the site of the deposit of excavated material to address community concerns.

The key problems found through the research conducted for this study seem to be related to legal

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13 Roland Berger, 2011.
requirements, political will, and practical acceptance of the concept that true early and effective procedures can result gains in later stages of the process. It is worth noting in this sense the measures proposed for the energy sector in the EU’s TEN-E Guidelines Regulation with regard to transparency and public participation. In essence, the Regulation sets out a series of rules that complement the consultation requirements of EU legislation, including: a concept for public participation that must be drawn up by the project promoter and submitted to the competent authority (in this case a ‘one stop shop’); and the requirement that at least one public consultations event take place at an early stage in the process. The legislation also provides guidelines on effective methods of consultation and a set of principles to be respected during the process. Many of these approaches are based on established good practice.

1.2.4.2 Limiting the impact of appeals

Some Member States have adopted measures to limit the impacts of appeals on projects. For 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 Convention 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. Rather, a balanced solution must be found.

1.3 DEFICIENCIES IN PLANNING THE EARLY STAGES OF THE PROJECT

Problems in permitting procedures often originate from poor planning, both at the strategic and project-specific levels. The purpose of this study is not to evaluate how strategic and project planning are conducted in Member States or specific case studies, but to assess the impacts of poor strategic and project planning on the permitting procedure, in terms of delays, costs and uncertainty for project promoters. Based on the country studies and case studies conducted as part of this work, errors committed at the planning stages expose projects to the following major factors of delays:

- Requests for further information, evidence or documentation requested by the permitting authority, during the review of the application, to complement or rectify the information provided by the project promoter. The permitting procedure can be stopped until the application is of sufficient quality according to the authority.
- Conflicts between permitting decisions, caused by disagreements on the route or design of the project not resolved at the planning stage.
- Amendments to project design, and therefore to assessments of the project’s impacts once potential alternatives have already been studied and environmental assessments conducted.
- Lawsuits launched at national level by environmental NGOs, citizens’ groups etc., generally founded on the poor assessment of impacts and alternatives, or of the feasibility and viability of the project. Lawsuits might suspend the procedure or the construction (depending on national legal provisions for appeal).
- Potential infringement procedures opened by the European Commission in case of incorrect

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15 Regulation (EU) No 347/2013 of 17 April 2013 on guidelines for trans-European energy infrastructure

application of EU law (in particular SEA, EIA, Birds and Habitats Directives, and WFD). Table 8 summarises problems and drivers related to poor strategic and project planning.

Table 8: Drivers for poor strategic and project planning

<table>
<thead>
<tr>
<th>Drivers</th>
<th>Problems: delays, costs and uncertainty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poor assessment of environmental impacts</td>
<td>Request for further information by authority and suspension of the procedure until the documentation provided by the promoter is satisfactory</td>
</tr>
<tr>
<td>Lack of scoping</td>
<td>Permitting decisions might be challenged in Court</td>
</tr>
<tr>
<td></td>
<td>Opening of infringement procedures</td>
</tr>
<tr>
<td>Absence of strategic planning</td>
<td>Amendments to project design leading to duplication of studies and environmental assessments</td>
</tr>
<tr>
<td>Low project maturity when alternatives are assessed</td>
<td>Increased risk of conflict between permitting decisions</td>
</tr>
<tr>
<td>Failure to consider all possible scenarios at an early stage</td>
<td>Necessary amendments to environmental assessments and applications</td>
</tr>
<tr>
<td>Lack of prior consultation and coordination between permitting authorities</td>
<td></td>
</tr>
<tr>
<td>Changes in the legal framework in the course of the project</td>
<td></td>
</tr>
<tr>
<td>Changes in traffic demand in the course of the project</td>
<td></td>
</tr>
</tbody>
</table>

Some of these drivers are examined in more detail in the sections below.

1.3.1 Poor quality of environmental assessments

Poor quality environmental assessments (as per the SEA, EIA, Birds and Habitats, and Water Framework Directives), or the biased assessment of environmental impact supporting the most favoured option, increase the risk of the project being rejected by the permitting authority or challenged in court during the permitting procedure.

Inadequate or incomplete information in EIA submitted by project promoters is likely to trigger requests for further information. In five Member States (Czech Republic, Hungary, Poland, Romania, and the United Kingdom), the authorities can suspend the permitting procedure until the additional documentation or information requested are provided by the applicant, which depending on the extent of new information required, can take a long time. Other cases of non-compliance can trigger the suspension of the permitting procedure such as deficiencies in public participation. In Spain, for example, the EIA Act contains a number of ‘stop-the-clock’ provisions, in particular when the public information and public consultation procedures have not been carried out in accordance with the law.

Such problems occur more frequently if the project has not benefited from a scoping phase, where the scope of the EIA and the impacts to be assessed are determined by the permitting authority. Stakeholders in Austria reported that requests for further information are not frequent since deficiencies in the application are generally fixed during the preparation of the EIA through cooperation between the applicant and the Transport Ministry. Deficiencies in the application can also come from limitations in available data, which does not allow for a strong and credible assessment. Improvements in databases or maps providing environmental data at national and regional level could therefore also be a way to improve submitted applications.

When in spite of flaws in the evaluation of impacts or alternatives, the EIA or AA receives a positive
assessment, there remains the possibility that it is challenged in Court later in the process. Although a lawsuit against an administrative decision will often not suspend the effect of the decision, the Court can decide on an interim injunction, which would suspend the project until the Court takes a decision on the case. Case studies, in particular the highway Brno-Vienna have showed, however, that lawsuits, although creating complications, have little impact on the project lifecycle, when injunctions are not pronounced. Environmental NGOs have mentioned, in relation to that case, that construction often starts in Austria before the Court takes the decision on the lawsuit.

In case studies conducted, the main grounds for legal actions were the failure to assess the environmental impacts of the whole project, often referred to as ‘salami slicing’, poor assessment of alternatives and failure to assess the transboundary effects of the project in the EIA.

### Highway A5/R52 Brno-Vienna

The Motorway Brno-Vienna faced legal complaints in both the Czech Republic and in Austria. In Austria, the complaint to the administrative Court was in particular founded on the fact that the works for highway A5 had been divided into three sections, leading to drafting an EIA for each section rather than for the entire project. Complainants argued that assessments related to air pollutants or emissions were limited in scope and could not reflect the environmental impact of the whole highway. The administrative Court did not grant suspensive effect upon request of the complainants and the lawsuit was not successful.

Multiple reasons can be given to explain these cases, including the lack of capacity of permitting authorities, their lack of resources or the politicization of large infrastructure projects. In a few cases the interpretation of the EU legal requirements by a Member State was shown to be the cause of the lawsuit.

### CJEU Case C-461/13 Bund v. Federal Republic of Germany (deepening of the Weser river)

Three projects of deepening the Weser river (Germany) to facilitate the navigation of large container on the river towards the cities of Bremerhaven, Brake and Bremen, were authorised by the Waterways and Navigation Directorate for the North-West Region, which estimated that the projects would not lead to ‘deterioration’ of the water bodies within the meaning of the Water Framework Directive (Directive 2000/60/EC), as the status of certain bodies of water of the Weser would tend to be adversely modified as a result of the projects, but without leading to a change in the status class of the water body in accordance with Annex V to Directive 2000/60. The German environmental NGO BUND (Friends of the Earth Germany) challenged the planning approval arguing that it was not compliant with the WFD. The German Federal Administrative Court referred the case to the European Court of Justice, which considered that ‘deterioration’ of the status of a body of water occurs ‘as soon as the status of at least one of the quality elements, within the meaning of Annex V to the directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole’, against the interpretation of the Waterways and Navigation Directorate for the North-West Region.

1.3.2 Lack of consultation and coordination between permitting authorities

The failure to create a common understanding between all authorities involved in the permitting process is likely to lead to conflicts between permitting decisions. This is especially important in Member States where permits are granted either at different levels of governance and/or by different sectoral authorities. The Semmering Base Tunnel in Austria is an emblematic example of how disagreements on the option selected can obstruct the procedure.

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17 Judgement in Bund für Umwelt und Naturschutz Deutschland e.V. v Bundesrepublik Deutschland, C-461/13, EU:C:2015:433, paragraph 24.
18 Judgement in Bund für Umwelt und Naturschutz Deutschland e.V. v Bundesrepublik Deutschland, C-461/13, EU:C:2015:433, paragraph 70.
The Semmering base tunnel will connect Gloggnitz in Lower Austria to Mürzzuschlag in Styria (Austria) and aims to alleviate traffic on the ‘Semmering-Bahn’ (Unesco World Heritage site) and create a faster connection between Vienna and Graz. The project faced multiple problems in its permitting phase, until the ruling of the Austrian federal administrative court in May 2015, which granted all the necessary permits for the construction of the tunnel.

In Austria, regional governments have sole competence on nature protection and issue a binding decision according to the state nature protection law. The EIA decision – which is the equivalent of the development consent at federal level – is taken at federal level by the Ministry of Transport. Project promoters can apply for the nature protection permit (to the State government(s)) at the time they apply for the EIA (to the Federal government), but the procedure in practice is carried out after the EIA decision, and all decisions are, in reality, blocked until the EIA decision is issued. In case of non-approval of the nature protection permit, if it is determined that there is a better alternative to the project, this can lead to substantial amendments to the EIA, which can require repeating the EIA procedure.

The approval procedure for the Semmering Base Tunnel was launched in the 1990s. The State of Lower Austria refused to grant the nature protection permit, although the federal government had found the project, including nature protection issues, 'environmentally acceptable'. The conflict lasted until an alternative to the initial project was proposed in 2008. The new route the approval of Lower Austria.

The conflict between the federal government and the State of Lower Austria could have been avoided with a better planning process, including an SEA, to facilitate the discussion between authorities at an earlier stage, greater integration of environmental assessments, to ensure the consideration of various aspects of environmental impacts together and prevent contradictory decisions, and greater consultation with permitting authorities, ensuring that all authorities approved of the project design and the selected route. The Austrian Court of Auditors supports a greater coordination of procedures and proposes to carry out the nature protection procedure before the EIA procedure. The Court of auditors is also in favour of a greater use of SEA in infrastructure projects.

1.3.3 Absence of strategic planning

Strategic planning ensures an effective prioritisation of investments, and the development and comparison of options at strategic level. The case studies conducted for this report have shown that the absence of or poor strategic planning resulted in starting the preparation of the application for development consent for projects at an immature stage, based on weak traffic forecasts and assessments of alternatives. The case study presented below is an example of a project where the preparation of the application occurred before the project had been properly defined, leading to important delays and duplication of efforts.

Bulgarian-Romanian section of the Danube

Bulgaria and Romania started in 2007 a feasibility study to assess possibilities of improving navigation conditions on the Bulgarian - Romanian section of the Danube. The feasibility study, finalized in 2011, defined and analysed six options to improve navigation, but did not take into account the conclusions of the draft EIA and AA, conducted in parallel and issued in 2011. Based on the feasibility

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19 SEA is rarely conducted in Austria for transport projects. The Austrian Strategic Transport Assessment Act (SP-V-G), transposing the SEA Directive for the transport sector, only requires an SEA for plans and programmes required by legislative, regulatory or administrative provisions (Federal Roads Law, Federal Law on High-Performance Railway Lines), which greatly limits its use.

20 The 2014 amendment of Article 2(3) of the EIA Directive requires that, by May 2017, Member States establish coordinated or joint procedures when the obligation to carry out assessments of the effects on the environment arises simultaneously from the EIA Directive and from the Birds and Habitats Directives.

study, the preferred option, the ‘Optimised Alternative’, was selected in 2011. Environmental authorities in both countries considered the report on impacts on the Natura 2000 sites incomplete, and therefore declined the application for consent. JASPERS subsequently conducted a gap analysis in 2013, to identify flaws in the AA, EIA, feasibility study and CBA. On this basis, all documents were revised and the selection of the preferred alternative was reconfirmed in 2014.

According to interviewed stakeholders for this case, delays in the selection of the option came from the lack of maturity of the project, which, at the stage of the feasibility study and the EIA, was not developed enough in terms of technical design and evaluation of alternatives. Environmental impacts were assessed in parallel to the feasibility study, on weak options, which could only lead to an incomplete assessment. The project had not been included in a plan subjected to an SEA, which has clearly been pointed out by interviewed stakeholders as a flaw in the preparation process.

The Trieste-Divača rail link has encountered significant delays due to the absence of a dedicated cost-benefit analysis in the project plan. Uncertainties on the economic viability of the project have been a major bottleneck in the cooperation between Slovenia and Italy, since no measurement of economic benefits or European added value had been part of the early project phase or the application for EU co-financing. This initial flaw in the project preparation also prevented promoters to consider at an early stage the option of upgrading the existing link instead of building a new one.

Cross-border section Trieste-Divača

Uncertainty in traffic demand has been a major issue in the planning of the new rail link between Trieste (Italy) and Divača (Slovenia). In 2008, a Strategic Study for the Development of Pan-European Corridor 5 (Priority Project No 6) assessed the economic, social and environmental impacts of PP6, paying specific attention to the link Trieste-Divača, and concluded that the overall benefits of constructing a new link would significantly exceed the risks. Following the study, two alternative solutions were retained (Coastal and Upper Corridor). It took several years of studies and discussions before both government agreed on the project. After delays due to the difficulties in setting up the EEIG and revisions in the EU co-funding, a new traffic study, carried out by the Italian Infrastructure Manager, clearly demonstrated that forecasted transport volumes were insufficient to ensure the viability of the railway. Following the study, the EEIG launched a study to evaluate different scenarios for upgrading the existing line. The study was completed at the end of 2015. However, no decision has been taken on the selection of the best option for the time being.

1.3.4 Changes in the legal framework in the course of the project

Frequent change of laws applicable to the permitting procedure constitutes a major challenge for project developers. These changes can require late adaptations and adjustments to project preparation, which can lead to additional costs and delays in the preparation phase, particularly as project documents and sub-procedures may need to be carried out again. In Poland, for example, project promoters reported frequent changes in technical requirements and standards, including standards set in EU legislation. Project promoters consider long-term sectoral strategies being useful for setting some stability in the conditions of lack of legal certainty.

The case studies also provide examples of when changing legal frameworks in the Member States leads to delays in project preparation. The Zevenaar-Emmerich-Oberhausen rail project was delayed by legislative changes taking place during the course of the project. The completion of required environmental studies was greatly delayed because of specific changes in the Bundesnaturschutzgesetz (Federal Environmental Law in Germany), which required adjustments to the planning application documents. Differences in technical regulations between Germany and the Netherlands have among other things translated into increased public demand for safety measures on the German side.
It has been proposed that a potential response to this risk would be freezing the legal framework for the duration of the permitting procedure\textsuperscript{22}, at least for projects of a certain priority. This would aim to avoid the problem of having to restart certain parts of an ongoing permitting procedure due to changes in the legal framework.

### 1.4 LAND ACQUISITION

Large transport infrastructure projects usually require obtaining the right to use privately owned land before construction can start. Negotiations with landowners often start during the permitting procedure, but not until the final route of the project is decided. Land acquisition generally occurs in two phases. First, the project promoter must negotiate with landowners the right to the land and the level of the compensation. If no agreement is reached, the project promoter can then resort to expropriation under the conditions set by law. Expropriation is typically limited to cases of overriding public interest.

Additional costs and delay in land acquisition are driven by two main factors – landowner opposition and limitations in available data relating to land ownership in some countries.

#### Table 9: Drivers for problems in land acquisition

<table>
<thead>
<tr>
<th>Drivers</th>
<th>Problems: delays, costs and uncertainty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landowner opposition</td>
<td>Unnecessary cost and delay in land acquisition</td>
</tr>
<tr>
<td>Lack of time limits in expropriation procedures</td>
<td></td>
</tr>
<tr>
<td>Limitations in data on land ownership</td>
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</tr>
</tbody>
</table>

These three drivers are discussed in further detail below.

#### 1.4.1 Landowner opposition

In six Member States, promoters stated that negotiations with land owners and/or land acquisition procedures delayed the implementation of projects (Czech Republic, Germany, Hungary, Italy, Poland, and the United Kingdom). Causes of delays in negotiations are mainly related to negotiating compensation, and, when the project promoter has to resort to the expropriation procedure, to appeal procedures.

#### 1.4.2 Lack of time limits in expropriation procedure

Time limits in expropriation procedures generally guarantee enough time for landowners to react to the expropriation notice but time limits setting the maximum length for completing the procedure are rare. In Hungary, although the administrative time limit for reaching an agreement with landowners is 45 days, if the promoter has to resort to expropriation, the process takes around 220 days. In addition, Romania, Spain and the Netherlands have time limits for issuing expropriation decisions. Two Member States also have emergency procedures that can significantly shorten the time limits to issue the expropriation decision (Spain and Poland). Further study would be needed to determine the extent to which these procedures are used in the case of transport infrastructure projects.

#### 1.4.3 Limited collection and/or availability of data

Data collection can be an important source of delays in land acquisition. The lack of reliable data on

land ownership has proven to be a major issue in two countries (Czech Republic and Romania). In both countries, project promoters face difficulties in identifying landowners, which can delay the permitting procedures by several years.

<table>
<thead>
<tr>
<th>Romania</th>
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<tbody>
<tr>
<td>In Romania, the list of land owners is kept in the records of the National Agency for Cadastre and Real Estate Publicity or of the county / local authorities. These records are often not updated with the latest list of owners. Project promoters usually have to subcontract law firms to assist in the identification of land owners. Besides the time spent with actual identification, carrying out the public procurement procedure to engage legal assistance is also time consuming and costly. When an updated list of land owners is available, it must be first approved by Government Decision before the expropriation decision can be taken, further delaying the procedure.</td>
</tr>
</tbody>
</table>

1.4.4 Streamlining measures

Streamlining measures adopted by Member States mainly relate to compensation levels, time limits for expropriation, reduced number of decisions and appeals.

- **Compensation**

In two Member States (Czech Republic and Spain), the compensation level of expropriated land is set by law.

<table>
<thead>
<tr>
<th>Czech Republic</th>
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</thead>
<tbody>
<tr>
<td>To speed up negotiations, and avoid complaints about unequal levels of compensation offered to landowners, the Czech 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.</td>
</tr>
</tbody>
</table>

- **Reduction of delays in decision making and appeals**

Czech Republic has adopted in 2009 streamlining measures to reduce the time spent in identifying landowners. The 2009 Act on accelerating the building of transport, water and energy infrastructure exempts the investor from making an offer to a landowner who does not reside at his/her official registered address. However, this does not fully address all the challenges in identifying landowners.

To reduce the time period between the moment the construction permit is granted and the land is available, Poland merged, for roads and rail projects of national interest, the two decisions in one single step.
Finally, some Member States took measures to reduce the impact of appeals to expropriation decisions.

**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.

1.5 CONCLUSIONS

Delays occur at two main stages of projects’ lifecycle – the project planning stage and the permitting procedure. During project planning, errors committed in assessing alternatives, impacts, costs or traffic demand can delay significantly the preparation of the application, and lead to duplicating assessments and studies, and increasing related costs. During the permitting procedure, delays can occur as a result of overly complex procedures, involving multiple steps, and where the distribution of decision-making responsibilities is inefficient. In particular, the decentralisation of administrative responsibilities, with permits granted at sub-regional or municipal level, increases the number of permits to obtain and leads to delays. As previously mentioned, delays in permitting procedures also occur as a result of weak project planning, poor consultation procedures and poor quality applications, which leave the project more vulnerable to being challenged by the permitting authorities and opponents to the projects.

Case studies have demonstrated that earlier planning is necessary. Projects which encountered major delays were often projects where the three stages of the project lifecycle – strategic planning, project planning and permitting – had not been respected, and where strategic planning had been skipped, or too weak. Weak strategic planning at national level has led public promoters to start the project planning and permitting phases with projects not mature enough, poorly developed assessments of alternatives and uncertain agreement from authorities and the public on the option retained, conditions which are all likely to result in a conflictual permitting procedure. Public acceptance has proved to be a major challenge in most projects. A strong strategic planning phase, with a full SEA, is one of the ways to anticipate public opposition early on and take measures to reduce it during project planning and permitting.

Delays in planning and permitting should be addressed by different solutions. Regarding purely procedural issues, in Member States where the procedure involves multiple steps and authorities, the distribution of responsibilities is the main aspect that needs attention. Concentrating decision-making responsibilities in a one-stop-shop, while creating consultation mechanisms for authorities which have lost power is an option that will be discussed in section 9 of this report. Reducing delays in permitting can also be achieved by assisting project promoters in developing good quality applications, and better communicating on the benefits of projects and the compensatory measures taken to reduce negative impacts. Such options will be developed in section 9 and in the guides of good practices that will be submitted with the final report.

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23 Both fast-track procedures (*specustawas*) (relating to the road and railway sectors) contain such provisions.
The legal framework for public procurement within the EU is set out in the EU Public Procurement Directives. Until recently, these were Directive 2004/17/EC, coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector; and Directive 2004/18/EC on contracts for public works, public supply and public service. In 2014, these directives were replaced by three new directives - Directive 2014/23/EU, on the award of concession contracts; Directive 2014/24/EU, on public procurement; and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. The ‘new’ directives had to be transposed into the Member States national legal orders by 18 April 2016. By end of August of 2016, almost all the ten Member States covered had notified national legislative measures transposing the new EU Public Procurement Directives into their national legal order; exceptions included Poland, which had not yet notified any transposing measure for Directive 2014/23/EU, and the Netherlands, which had not notified transposing measures for any of the directives.

The EU Public Procurement Directives (both ‘old’ and ‘new’) set the main principles of public procurement and the applicable definitions, list the types of procedures available for the contracting authorities, and define rules for the preparation and publication of tenders as well as on the choice of participants and award of contracts.

Separate directives – the Remedies Directives – govern the mechanisms for the revision of award decisions: Directive 92/13/EEC, coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors; and Directive 89/665/EEC, on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts. The Remedies Directives were amended in 2007 by Directive 2007/66/EC, amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (see section 5.1.3 – Characteristics of review procedures).

One of the main purposes of EU public procurement is ‘to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds’\(^{25}\). Hence, in line with the EU fundamental principles and freedoms, EU public procurement should ‘increase competition and cross-border trading, resulting in better value for money for public authorities, while increasing productivity in the supply industries and improving participation in and access to such markets by SMEs’\(^{26}\).

However, public procurement procedures can be a challenge for the smooth implementation of large infrastructure transport projects. This has been recognised in DG MOVE’s 2015 Action Plan *Making the best use of new financial schemes for European transport infrastructure projects* which included a series of recommendations to ‘streamline and simplify procurement procedures’.

Our study shows that public procurement can bring two main challenges for projects: delay and increased costs. The implementation of the project can be delayed due to a longer procurement phase driven by a complex legal framework, the absence of limits for the award procedure or the characteristics of the procedures available for the revision of the award decision. The very frequent appeals launched by the losing parties appear to be one of the main sources of delays in the completion of the procurement phase. Increased costs can be the result of the delays caused, but also the consequence of the problems caused by the selection of a project with poor quality. While the objective of procurement is to select the best project for the best price, this is not always the case,

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\(^{24}\) This refers to notified transposing measures as published on [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu) on 29 August 2016.

\(^{25}\) See e.g. Recital 4 of Directive 2014/25/EU

especially due to limitations in the capacity of the contracting authority and deficiencies in the design of the tender (which can also be related to lack of capacity).

This section aims to analyse how public procurement rules and procedures in the Member States, mainly resulting from the transposition and application of the ‘old’ EU Public Procurement Directives and the Remedies Directive, affect the project preparation of TEN-T projects in terms of its duration and the costs associated, by analysing in more detail each of the drivers identified and listed in the table below.

Table 10: Drivers for delays in the completion of the procurement phase

<table>
<thead>
<tr>
<th>Drivers</th>
<th>Problems: delays, costs and uncertainty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complexity of legal framework</td>
<td>Delay in completion of procurement phase</td>
</tr>
<tr>
<td>Absence of time limits for the award procedure</td>
<td>Delay in completion of procurement phase</td>
</tr>
<tr>
<td>Characteristics of review procedures</td>
<td>Delay in completion of procurement phase</td>
</tr>
<tr>
<td>Limitations in capacity of contracting authority</td>
<td>Delay in completion of procurement phase</td>
</tr>
<tr>
<td>Deficiencies in the design of the tender</td>
<td>Project selected is of low quality or high costs</td>
</tr>
</tbody>
</table>

2.1.1 Complexity of legal framework

Even though there are very detailed rules set at EU level, there are certain types of public procurement and procurement-related matters which are not regulated by EU law. On one hand, the EU Public Procurement Directives (both old and new) apply to public contracts above certain thresholds. Below those thresholds, and subject to compliance with the general principles of the Treaty, Member States retain discretion to regulate public procurement, even though they often use the same legal instrument and apply the same principles to both contracts below and above the thresholds (it should be noted, however, that most TEN-T core network projects are above these thresholds). On the other hand, these directives, like all EU directives, only set minimum rules and the possibility to set stricter rules is at the discretion of the Member States.

In 2015, the EU Court of Auditors published the Special Report Efforts to address problems with public procurement in EU cohesion expenditure should be intensified. In this report, the EU Court of Auditors found that the legal complexity of the existing framework (still governed by the old EU Procurement Directives) was perceived as a major cause for public procurement errors by the vast majority of the national audit authorities. The specific issues identified included the ‘high volume of legislation and/or guidelines, the difficulty of applying them in practice and a lack of expertise in carrying out the public procurement procedure’, as well as the incorrect transposition of the directives and the fact that in certain occasions Member States went beyond the rules stemming from the directives (also called ‘gold-plating’).

Our study found that, within the transport sector, and more specifically within the context of TEN-T projects, especially due to limitations in the capacity of the contracting authority and deficiencies in the design of the tender (which can also be related to lack of capacity).

27 At the time of data collection for the completion of this study (February and March 2016), there was little experience with the national measures transposing the ‘new’ Directives, as in most cases, these measures had only very recently been notified or not yet notified to the Commission (according to the information available at www.eur-lex.europa.eu).
projects, in six out of the ten Member States covered by the study the perception is the same – the complexity of the applicable rules (mainly resulting from the transposition and application of the old EU Public Procurement Directives) is considered an obstacle to a quicker public procurement procedure. Thus, while in Germany, the Netherlands, Spain and the UK, the stakeholders interviewed did not consider the existing framework complex to the point of slowing down the procedure (and indirectly result in increased costs), in the remaining countries (Austria, the Czech Republic, Hungary, Italy, Poland and Romania) the general understanding was that the applicable rules were difficult to interpret and/or to put in practice.

The high volume of applicable legislation (Romania), the fact that the applicable rules were not aggregated in a single act (Czech Republic) or the frequency with which these rules are amended (Italy, Poland) have all been noted as problematic – these characteristics of public procurement rules require therefore a high level of expertise that often the contracting authorities are not able to match (see also below the section 5.1.4 – Limitations in capacity of contracting authority). Interestingly, while both in Austria and Romania the rigidity of procurement rules has been referred to as an issue (see also below section 5.1.5 – Deficiencies in the design of the tender), in Czech Republic, the stakeholders interviewed considered that the rules were not detailed enough in order to avoid numerous challenges to the award decision (see also below section 5.1.3 – Characteristics of review procedures). Inconsistent interpretation of the existing legislation by the authorities was only mentioned in one case (Romania).

It appears therefore that main problem relates more to the way the applicable framework is organised, an aspect on which EU influence is rather limited, than to the complexity of the rules stemming from the implementation of the EU Public Procurement Directives. In addition, one of the issues referred to by stakeholders – rigidity of rules – was, at least partially, addressed with the adoption of the new directives and the introduction of innovation partnerships.

2.1.2 Absence of time limits for the award procedure

The EU Procurement Directives are not exhaustive in their regulation and there are a series of procurement-related matters that are still of exclusive competence of Member States. One of the matters that is not regulated, or at least not regulated in detail, at EU level, is the time limit for the contracting authority to take a decision on the award of the contract. In fact, the three new EU Procurement Directives all contain a similar provision on informing candidates and tenderers (Article 40 of Directive 2014/23/EU, Article 55 of Directive 2014/24/EU and Article 75 of Directive 2014/25/EU) stating merely that the contracting authorities must as soon as possible inform each candidate and tenderer of the decisions reached concerning the award of the contract. Therefore, is up to the Member States to define what ‘as soon as possible’ exactly means.

Table 11 Time limits to take award decisions

<table>
<thead>
<tr>
<th>Member State</th>
<th>Maximum time limit to take award decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>5 months</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Not prescribed in law</td>
</tr>
<tr>
<td>Germany</td>
<td>30 days</td>
</tr>
<tr>
<td>Hungary</td>
<td>60 days</td>
</tr>
<tr>
<td>Italy</td>
<td>Not prescribed in law</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Not prescribed in law</td>
</tr>
<tr>
<td>Poland</td>
<td>Not prescribed in law</td>
</tr>
<tr>
<td>Romania</td>
<td>25 days</td>
</tr>
<tr>
<td>Spain</td>
<td>Not prescribed in law</td>
</tr>
</tbody>
</table>
Our study found that, in four out of the ten Member States covered there is a legal time limit for the contracting authority to take a decision – Austria, Germany, Hungary and Romania. As the table above shows, the time limits vary between 15 days to 5 months, but normally these can be extended in exceptional and justified cases. In addition, the information reported by stakeholders showed that very often, at least in most Member States, the legal time limits are not complied with.

<table>
<thead>
<tr>
<th>Member State</th>
<th>Maximum time limit to take award decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK</td>
<td>Not prescribed in law</td>
</tr>
</tbody>
</table>

Thus, the existence of time limits on the award decision does not appear to be immediately related to a quicker procedure. As explained in our report, legal complexity and the lengthy appeals appear to be stronger drivers to a long procurement phase than the absence of rules on the time limit for the awards.

### 2.1.3 Characteristics of review procedures

As explained above, Directive 92/13/EEC and Directive 89/665/EEC (the Remedies Directives) regulate the review procedures concerning the award of public contracts. The Remedies Directives, which were amended in 2007 by Directive 2007/66/EC, aim at coordinating national provisions and making sure there were effective and rapid procedures for review of the award of public contracts. While the importance of having an effective review procedure in place is easy to understand, the revision of award decisions will impact on the duration of the preparation of the projects. According to the stakeholders interviewed for this study, there is a general perception that it became routine for the losing candidates to appeal the contracting authority’s decision in some countries (for example, in Austria, Hungary, Romania), which makes the need for a quick review procedure even more relevant.

| Austria       | Promoters, particularly those of waterborne projects, complain that appeals are very frequent, and can lead to costly delays. |

This study looked at three elements of the review procedures in order to assess whether these procedures can have a significant impact in the total duration of the project preparation: the automatic suspensive effect of appeals, the time-limit to initiate the review and the time-limit to take a decision on the review.

#### a) Appeals with suspensive effect

Article 2(4) of the Remedies Directives states expressly that review procedures do not necessarily have an automatic suspensive effect on the contract award procedures. It is therefore up to the Member States to decide whether the application for review of the decision of the contracting authority will automatically suspend the public procurement.

Our study found that six out of the ten Member States covered go beyond what is required by the Remedies Directives and automatically suspend the contract award procedure upon appeal. In the remaining four Member States – Austria, Italy, the Netherlands and Romania – the suspension of the contract award procedures has to be requested by means of a separate application for interim measures. The advantage of this second approach, in term of the length of the public procurement
procedure, is that the court (or the competent body) will only allow for the suspension when strictly necessary. In accordance with Article 2(5) of the Remedies Directives, the review body ‘may take into account the probable consequences of interim measures for all interests likely to be harmed, as well as the public interest, and may decide not to grant such measures when their negative consequences could exceed their benefits’.

b) Time-limit to initiate review

Under Article 2c31 of the Remedies Directives, any application for review of the decision of a contracting authority must be made before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract decision is sent to the tenderers and candidates concerned if fax or electronic means are used or 15 calendar days if other means of communication are used, or at least 10 calendar days from the day following the date of the receipt of the contract award decision. The period during which the application for review can be submitted corresponds to the so-called ‘standstill period’, defined in Article 2a of the Remedies Directives. This minimum period exists in order to ensure that appellants have sufficient time to request the review of the award decision before the conclusion of the contract. However, the Remedies Directives only provide for a minimum number of days (10 or 15 depending on the circumstances) and Member States are free to go beyond this.

Our study found that in seven out of the ten Member States covered the period to initiate the review corresponds to the standstill period as defined in the Remedies Directive (10 or 15 days). Notable exceptions include the Italy and the UK, where the appellant has 30 days to submit its request for review; in any case, even in these two Member States it can be considered that the extended time limit to initiate the review will have only limited direct impact on the overall duration of appeals procedures.

c) Time limit for review

There are no requirements in the Remedies Directives concerning time limits for the review decisions of the contract award procedure, even though Article 1(1) states that Member States must ensure that such decisions must be taken ‘as rapidly as possible’. As the table below shows, our study found that in three out of the ten Member States covered there is no time limit for the review procedure prescribed in law; where a time limit is set, this varies between 15 days and 60 days.

Table 12: Time limits for review

<table>
<thead>
<tr>
<th>Member State</th>
<th>Time limit for review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Six weeks</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Up to 60 days</td>
</tr>
<tr>
<td>Germany</td>
<td>Up to seven weeks</td>
</tr>
<tr>
<td>Hungary</td>
<td>Up to 35 days</td>
</tr>
<tr>
<td>Italy</td>
<td>Not prescribed in law</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Not prescribed in law</td>
</tr>
<tr>
<td>Poland</td>
<td>Up to 15 days</td>
</tr>
<tr>
<td>Romania</td>
<td>Up to 30 days</td>
</tr>
<tr>
<td>Spain</td>
<td>27 days</td>
</tr>
</tbody>
</table>

31 For the purposes of this report only the general rule of Article 2c was taken into consideration as an indicator.
These time limits might contribute to shorter duration of appeals procedures. However, further study would be required to determine the impact of these time limits on the duration of award procedures in practice.

2.1.4 Limitations in capacity of contracting authority

As explained above, the legal complexity of the existing framework for public procurement would require that the contracting authorities are well equipped in terms of resources (staff, technical knowledge, etc.). In addition, the financing mechanisms used, in particular the resort to public-private partnerships (PPPs), and to a lesser extent, the technical specificities of the services or works contracted, also require that contracting authorities possess the necessary knowledge to draft the terms of reference, evaluate the proposals and manage the contract. The lack of capacity of the contracting authorities in terms of public procurement expertise (which can have impact, for example, on the time spent to take the award decision – see above section 5.1.2 – Absence of time limits for the award procedure - or on the quality of the terms of reference – see below section 5.1.5 – Deficiencies on the design of the tender) has been noted in other reports specific on the transport sector.

In any case, it appears that within the specific context of TEN-T projects, the lack of capacity of contracting authorities to tender and manage the necessary contracts is not a major obstacle to the timely preparation of the projects (probably due to the scale and relevance of this type of projects in terms of, for example, financial resources). Still, our study found that in five out of the ten Member States covered (the Czech Republic, Germany, Italy, the Netherlands and Romania), the stakeholders interviewed – which included contracting authorities – were of the opinion that there was not sufficient capacity to run the public procurement procedures, i.e. draft the terms of reference and evaluate the proposals; and only in two out of the ten Member States covered (the Czech Republic and Romania), the understanding was that there was not sufficient capacity to manage the contract resulting from the tender.

In most of the Member States concerned, the contracting authorities have specialised public procurement departments; where this is not the case, or where specialised departments exist but only to address occasional shortage of staff or lack of specific expertise, the contracting authorities usually resort to sub-contractors. The outsourcing of the organisation and the running of the public procurement procedures (or the management of the contracts) was expressly mentioned by the stakeholders interviewed in the Czech Republic, Germany, Poland and Romania as the main tool used to address lack of capacity. Nevertheless, in Romania this solution is not considered optimal as occasionally sub-contractors also do not possess themselves the necessary knowledge. In some cases, stakeholders have also mentioned the existing of guidance (e.g. Germany, Poland and the UK) or special procedures (Austria) to ensure that the necessary requirements are complied with.

Overall, it appears that the capacity of the contracting authorities is considered adequate, either during the original tender process or because problems are easily tackled, and does not impact significantly on the project preparation of TEN-T projects. Nonetheless, capacity issues can impact on the ability of

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contracting authorities to conduct procurement procedures where they have less experience, such as public-private partnerships (see section 5.2 below)

2.1.5 Deficiencies in the design of the tender

2.1.5.1 Failure to ensure sufficient competition

In order to respond to the objectives of EU Procurement rules, a well-designed tender should result in strengthened competition, which by its turn should guarantee a better product for a lower price and reduce the probability of unexpected costs or delay at a later stage of the implementation of the project. While the number of competitors can be a good indicator of the strength of competition, the number of international competitors can show to which extent the full potential of cross-border procurement has been explored. The DG MARKT evaluation of the old EU Public Procurement in 2012 showed that there were large differences between the Member States concerning the number of bidders. It also provided evidence showing a low level of direct cross-border procurement and indicating a general reluctance of companies to participate in cross-border tenders; the main reasons invoked included “no experience doing business abroad”, language and legal barriers and “too much local competition”.

In order to assess the competitiveness of the public procurement procedures, our study assessed whether tender processes for TEN-T projects usually attract multiple competitors, including international competitors. The study found that, only in two out of the ten Member States covered, public procurement for TEN-T projects does not normally attract multiple competitors – Germany and Spain. Our study also found that in those same two Member States (Germany and Spain) plus Italy, international bidders rarely apply for TEN-T projects. In the case of Germany and Italy no particular reasons were advanced by the stakeholders interviewed – but it was noted that there were particular projects that do attract the participation of international bidders, such as tunnel construction (Germany) and cross-border projects (Italy). In Spain, the lack of multiple bidders, and in particular of international bidders, appears to be related to the fact that tenders are published and processed within a very short time-span. Finally, it should be noted that where international bidders apply to tenders, they are typically integrated in a consortium together with national companies (this was mentioned for example, for the Czech Republic or Romania).

### Italy

Tender processes seem to be quite competitive internally but international competitors do not participate very often in transport projects. Bigger and cross border projects do have more international competitors participate in tender processes. The Brenner Base Tunnel, for example, has had different offers also from Germany and Spain.

2.1.5.2 Over-emphasis on cost or price criteria

The EU Public Procurement Directives do not set detailed requirements on the award criteria, referring to ‘overall economic advantage for the contracting authority or the contracting entity’ (Directive 2014/23/EU) or ‘the most economically advantageous tender’ (Directives 2014/24/EU and 2014/25/EU). In order to assess which is the most economically advantageous tender, the Directives recommend using a cost-effectiveness approach taking into account life-cycle costing and best price-

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quality ratio and leave to the Member States the possibility to prohibit the use of price only or cost only as the sole award criterion or restrict their use to certain categories of contracting authorities or certain types of contracts. The use of criteria other than price or cost will ensure that other important elements were evaluated and increase the chances of the best proposal to be awarded.

Our study assessed whether, in the specific context of public procurement for TEN-T projects, the evaluation procedure balances cost criteria with other criteria (e.g. quality). The study found that, only in three out of the ten Member States covered, public procurement for TEN-T projects does not normally take into account criteria other than cost or price – Austria, the Czech Republic and Romania. In Austria, however, the situation is expected to change in view of the recent amendments to the Austrian Procurement Law as the result of the strengthened Best-Tenderer Principle. In the Czech Republic, both the law and guidance refer to other criteria than the lowest price but these are not used in practice. In Romania, the low use of quality criteria appears to be related to their subjectivity and the perception of an increased risk of appeals. Specifically with regards to award criteria that allow sufficient room for innovation and the consideration for the optimisation of costs, the scarce information gathered only allows to conclude that in general these are not consistently used in the ten Member States covered by the study.

One of the project promotors interviewed, applies the “60-20-20-rule” meaning that the price accounts for 60%, the amount of workdays scheduled to realise the project accounts for 20% and references of the tenderer account for 20%.

2.2 PUBLIC-PRIVATE PARTNERSHIPS

Broadly defined, a public-private partnership (PPP) is an agreement between a government authority and a private firm for the delivery of an asset and/or service. Defining characteristics of PPPs are that the private firm assumes significant management responsibility and operating risk and the private partner’s remuneration is linked to its performance in delivering the asset and/or service. Concessions contracts – whereby remuneration to the private partner is directly linked to payments from the users of the infrastructure – are frequently used to deliver PPPs and are thought to amount to approximately 60% of PPPs in Europe. In the delivery of transport infrastructure, PPPs are an alternative to classical procurement that have the potential to deliver significant benefits. Well-designed PPPs have the potential to enhance the efficiency of the delivery and operation of transport infrastructure, by devolving responsibility for certain tasks (for example, design, build, operation, maintenance) to private sector operators with a commercial incentive to reduce costs. Where appropriate safeguards are in place, PPPs can also promote better quality in the infrastructure delivered, by bringing the expertise of private sectors specialists into the process, and innovation, as private firms are less likely to be constrained by governmental budgeting processes and distracted by competing priorities.

However, there is a number of barriers to the use of PPPs, potentially resulting in their under-utilisation in the procurement of infrastructure. Realising the benefits of PPPs is very much dependent on certain necessary conditions being in place, relating to the quality of the design of the partnership,

37 Adapted from Public-Private Partnership in Infrastructure Resource Centre (PPPIRC) definition, http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships
40 OECD, Transport Infrastructure Investment – Options for Efficiency, 2008, p.23
the appropriate sharing of risk in the contract and the effective management of the contract. Managing the relationship between the tendering authority and the private company over the contract tenure is vital for the success of a PPP project. Authorities are often constrained in their ability to design, award and manage PPPs, which limits the use of PPPs in many countries. Indeed, lack of public sector capabilities is recognised in the literature as a key barrier to the utilisation of PPPs.\textsuperscript{41} Drafting a robust Request for Proposal that sufficiently balances the project’s needs and characteristics, the authority and stakeholder desires and the political and economic context, necessitates sufficient technical, legal, financial and administrative experience.

Private finance is also typically more expensive than public finance. This reflects commercial borrowing rates that are higher than public borrowing rates, although the difference may be small. It is also a reflection of project risk. This is borne by the taxpayer under public financing but allocated to private investors under PPPs and priced explicitly. Risks not backed by government guarantee have to be covered by the purchase of insurance, hedging and other financial instruments.

The task of achieving an appropriate allocation of risk creates an additional layer of complexity in the design of PPPs and requires a certain level of technical expertise and previous experience which exacerbates the technical capacity barriers to PPPs. Maximising the potential value-for-money of a public investment would require a greater allocation of risk to the private partner, but may undermine contractor and investor interest in the contract and increase the private partner’s costs in financing the project. A contracting authority might accept a greater allocation of risk to ensure market interest. However, this could undermine the potential value-for-money of the investment\textsuperscript{42} and may also affect the statistical treatment of the PPP (see section 2.2.2 below).

\begin{table}[h]
\centering
\begin{tabular}{|p{0.9\textwidth}|}
\hline
**Public consultation – Comment from a company**
\hline
Infrastructural development projects within the rail sector are not attractive for private Investors due to a very limited return on Investment (ROI). The enhancement of attractiveness of such projects towards private investors would only be possible by transferring a significant amount of risks towards the sponsor of such project (which mainly would be the state itself) leaving almost no advantages to the sponsor in relation to the private investor. (with all the risks the sponsor could do the project by himself).
\hline
\end{tabular}
\end{table}

Where PPPs are delivered through concessions contracts, the new Concessions Directive (Directive 2014/23/EU) is expected to provide greater clarity regarding the distinction between a concession and other public contracts, and therefore reduce uncertainty in procurement procedures.\textsuperscript{43} Compared to the Public Procurement Directives, the Concessions Directive is less prescriptive and provides greater flexibility to contracting authorities in designing procurement procedures for concessions contracts.\textsuperscript{44} However, there are concerns the greater flexibility in the Concessions Directive may lead to contracting authorities with less expertise in designing PPPs inadvertently breaching general EU Treaty principles, due to less prescriptive procedures in the Directive. Furthermore, concerns have been raised about continued lack of clarity in the definition of a concession\textsuperscript{45}, which may create undue risks in the procurement phase if this lack of clarity leads to the application of the incorrect Directive.

Infrastructure projects delivered through PPPs may also face unique challenges relating to permitting procedures, arising out of the tension between the objectives of efficiency and accountability. PPPs, such as those based on Design-Build or Design-Build-Operate-Maintain models, work best when the contractor is given maximum flexibility to innovate. But, giving the contractor maximum freedom and

\textsuperscript{41} Copenhagen Economics for E3PO, *Public Outsourcing Potential in the EU: Benefits and Barriers*, 2015, p.31
\textsuperscript{42} EPEC, *PPP Motivations and Challenges for the Public Sector*, 2015, p.19
\textsuperscript{44} EPEC, *PPPs and Procurement: Impact of the new EU Directives*, 2016, p.15
\textsuperscript{45} Ibid, p.28
flexibility in design can be in conflict with the need for certainty in assessment and permitting procedures. In addition, permitting is often perceived by potential contractors as a risk in PPPs, potentially undermining the ability of contracting authorities to procure the project at an acceptable price. Often in PPPs, final permit acquisition occurs following award of the contract to the contractor (as permit applications are based on the contractor’s final design), which holds uncertainty and risk due to possible obstructions and delay in the permitting and possible claims or contract renegotiations. If, in such cases, the contractor is assigned permitting and mitigation/compensation responsibilities, uncertainty regarding permit acquisition will be shifted to the post-procurement phase. This risk can often result in project bids involving an unacceptably high price or a renegotiation of the contract post-award.

Table 13: Drivers for under-exploitation of PPPs

<table>
<thead>
<tr>
<th>Drivers</th>
<th>Problems</th>
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</thead>
<tbody>
<tr>
<td>Organisational barriers to PPPs</td>
<td>Under-exploitation of PPPs for the preparation and delivery of TEN-T projects.</td>
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<tr>
<td>Statistical treatment of PPPs in public balance sheets</td>
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2.2.1 Organisational barriers to PPPs

Issues relating to institutional technical capacity and organisational attitudes to PPPs were reflected in the country studies. Transport authorities reported significant difficulties in preparing and implementing PPPs, and were often discouraged as a result of unsuccessful previous attempts. In Austria, transport authorities reported that two previous PPPs in the road and rail sectors had been considered to be particularly difficult, due to a lengthy procurement process and legal challenges. As a result, in Austria, authorities do not give particular consideration to the use of PPPs in the delivery of transport projects. Similar experiences were reported in Hungary. In contrast, in Czech Republic, while the one previous attempt at using a PPP in the delivery of transport projects was unsuccessful, the potential use of PPPs in the transport sector is nonetheless under consideration. Other countries, for example Poland, also reported that, where EU finance is available for transport projects there is limited incentive to explore PPPs as an alternative means of financing projects. Political considerations may also undermine organisational support for PPPs. Political sensitivities regarding PPPs were reported to be a challenge in the Seine-Scheldt case study, where a change of government in France resulted in less political support for the delivery of the project via a PPP.

In some cases, PPPs are considered by authorities likely to be unsuccessful due to limited interest among tenderers. For example, in Italy, stakeholders reported the view that very few private firms would be able to deliver particularly complex projects such as the Brenner Base Tunnel, implying that such projects are unsuitable for PPPs. Experiences in the case studies reflect similar challenges. For example, in Seine-Scheldt project, the PPP was abandoned due to limited private sector interest, based on concerns about the operational and commercial risks associated with the project.

Nonetheless, some countries reported positive experiences of PPPs. In the Netherlands, it has been reported that public acceptance of PPPs is growing. PPPs are promoted by the Dutch Government in general, projects are routinely screened for PPP potential, and a number of PPPs in place in the transport sector. Similarly, in the United Kingdom, in the transport sector there have been 30 projects delivered through PPPs worth over GBP 80 billion. Within the United Kingdom, there is significant institutional capacity available to support the use of PPPs through the Infrastructure and Projects

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46 CMS, PPP in Europe, 2010
Finally, a challenge to the implementation of PPPs arises out of the statistical treatment of PPPs under the Eurostat European System of Accounts. The Eurostat rules treat Member State contributions to projects, including loan guarantees, as 100% public debt. This can result in certain PPPs being regarded as Member State debt, and impact the government balance sheet for the purpose of meeting Member State obligations under the Stability and Growth Pact. While this problem did not arise in the case studies or country studies completed as part of this study, interviews with stakeholders suggest that where this problem occurs it can have a significant impact on a project. This question of the statistical treatment of PPP contracts can create additional complexity for contracting authorities and may discourage the utilisation of PPPs in Member States seeking to avoid public debt. In the long-term, this challenge could discourage the investments necessary for the completion of the TEN-T network.

Determining whether a PPP is kept off balance sheet requires identification of the ‘economic ownership’ of the infrastructure asset, which includes determination of whether the Member State has transferred most risks and rewards associated with an asset to the private partner. In bilateral communications with the European Commission, private project sponsors have called for a revision or clarification of Eurostat's position on certain issues relating to the classification of a PPP project as on/off balance sheet. These issues include the question of what constitutes transfer of ‘most’ of the construction or availability risk and of ‘most of the rewards’ to the private partner, the transfer of the asset at the end of the contract, as well as issues relating to force majeure or termination compensation in the event of private partner default.

Private project sponsors have indicated that the lack of a timely ex-ante assessment from Eurostat often leads to negotiations being launched on the basis of documentation that does not meet the conditions for off-balance sheet treatment, where this is sought, therefore requiring substantial changes during tender procedures and sometimes even leading to the abandonment of a project at the end of a tender procedure. They suggest that contracting authorities seeking off-balance sheet treatment for a PPP project should be given access to preliminary Eurostat ESA 2010 assessment mechanisms.

Eurostat opinions on the classification of individual PPP projects are rarely published, due to the confidential nature of the contracts concerned. Contracting authorities therefore don't have access to a database of past decisions allowing them to draw on the lessons from previous decisions on similar. One possibility of addressing this could be to make public disclosure a condition of requests for ex-ante assessment from Eurostat. This could lead to the development of a joint database within national accounting authorities to share knowledge on the issue.

Guidance and clarification is needed to assist Member States in designing PPPs that effectively transfer risk to the private operator. It is understood that this guidance is currently under development by EIB and Eurostat, and should assist authorities in the design and successful implementation of PPPs. This guidance should be assessed to ensure it provides clarification. If so, it should be widely disseminated, and may be complemented by targeted capacity building actions to assist authorities in applying it. If a lack of clarity remains in spite of this guidance, additional measures may be necessary to address this challenge.

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These problems suggest that a focus on authority capacity and willingness to explore PPPs as a potential procurement method is needed. Potential solutions may involve capacity-building activities targeting transport authorities, particularly in those countries with limited experience with PPPs. Synergies with similar activities under JASPERS and the European Investment Advisory Hub should be sought. In addition, the Concessions Directive should deliver greater clarity in the design of concessions contracts when these are used in the delivery of PPPs; however, there are concerns that the Concessions Directive may also create challenges in Member States with less experience with PPPs in terms of identifying whether a project is a concession and the correct Directive (and procurement procedure) to be followed.

2.3 CONCLUSIONS ON THE PROCUREMENT OF TEN-T PROJECTS

The impact of procurement-related problems to the overall length and cost of TEN-T projects seems to be minor when compared with impact of the obstacles related to permitting procedures. In addition, its effects in the smooth implementation of projects are clearly more relevant in cross-border projects (see below section 9 – Challenges in cross-border procurement). Nevertheless, our study shows that some problems exist.

In terms of delay in the completion of the procurement phase, this appears to be mostly the consequence of a complex legal framework and, in particular, the long review procedures to challenge the award decision. Even though legal complexity has been often mentioned by stakeholders, problems appear to be more related to the way the applicable framework is organised at national level, than to the complexity of the rules stemming from the implementation of the EU Public Procurement Directives. Long review procedures, which have also been referred by practically all interviewees, appear thus to be the main driver causing delay. In this respect, our study looked at the automatic suspensive effect of appeals, the time-limit to initiate the review and the time-limit to take a decision on the review. Most of the Member States covered go beyond what is required by the Remedies Directives and automatically suspend the contract award procedure upon appeal, which means that suspension will take place even when it could be considered unnecessary. While in almost all Member States the period to initiate the review corresponds to the standstill period as defined in the Remedies Directive (10 or 15 days), the exceptions set the limit on 30 days and thus will have only limited direct impact on the duration of appeals procedure. Time limits for the review exist in most of the Member States but further study would be required to determine the impact of these time limits on the duration of award procedures in practice.

Increased costs are related to the selection of poor quality projects, which appears to be mainly driven by deficiencies in the design of the tender, especially the failure to ensure sufficient competition and the over-emphasis on cost or price criteria. However, our study shows that this is an issue only in a small minority of Member States. On one hand, most of Member States appear to manage to attract multiple tenderers, including international competitors. On the other hand, only in an equally small number of cases Member States do not normally take into account criteria other than cost or price.

Regarding PPPs, the country studies and a case study revealed organisational challenges that may result in the under-utilisation of PPPs in the delivery of transport projects. Concerns about the statistical treatment of PPPs in public accounts may also create additional complexity to the process of designing PPP contracts, compounding the technical expertise barriers facing PPPs. The statistical treatment can also create uncertainty for contracting authorities, contractors and investors in the contract negotiations process for transport infrastructure PPPs.
3 CHALLENGES IN STATE AID PROCEDURES

State aid procedures can be a source of significant uncertainty and risk for transport projects. The purpose of EU State aid rules is to prevent Member States from providing economic advantages to certain activities or undertakings that would distort competition in the internal market. Article 107 of the Treaty of the Functioning of the European Union established a general prohibition on State aid. However, State aid may be permissible in certain cases where it can be considered compatible with the operation of the internal market.

The European Commission is responsible for investigating potential cases of prohibited State aid and approving State aid measures. The key procedure for this approval process is the notification procedure, through which Member States are responsible for notifying the Commission (specifically, DG Competition in the case of transport projects) of new aid measures. The Commission will then investigate the measure on the basis of the information provided by the Member State and adopt a final decision on whether the measure is compatible with EU rules. The Commission may issue a positive decision (i.e. the measure is not State aid or it is compatible aid); a conditional decision (i.e. the measure is compatible and may be implemented, subject to certain conditions); or a negative decision (i.e. the measure is incompatible). In the case of a negative decision, the measure cannot be implemented or, if it has already been implemented, the aid must be recovered from any beneficiaries.

A pre-notification procedure also exists, which Member States can use to seek Commission input into the drafting of the official notification. This procedure can be used to help Member States ensure that their notification to the Commission is complete and of a high quality, which may assist in expediting the notification process.

There are multiple factors that can lead to State aid creating uncertainty in the project preparation process. Given its inherent focus on Member State financial assistance for a project, State aid procedures directly related to the financial structure of a project; an adverse State aid decision puts the financial structure underpinning the project at risk. Thus, any uncertainty about State aid decisions potentially contributes to significant uncertainty among promoters and investors.

In addition, a State aid decision can occur at any point in the project preparation process. While time limits apply to the Commission’s process for deciding State aid cases, the decision can nonetheless be lengthy should the Commission be required to seek further information from the Member State. The Commission applies a two-month time limit to decisions from the point of receiving a complete notification. However, some Member States allow between six and 12 months for the final decision.

<table>
<thead>
<tr>
<th>Driver</th>
<th>Problems: delays, costs, uncertainty</th>
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<tr>
<td>Lateness and/or poor quality of State aid notifications</td>
<td>Uncertainty and risk concerning the timing of State aid decisions</td>
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3.1.1 Lateness and/or poor quality of State aid notifications

Transport authorities may find State aid notifications particularly challenging, given that until relatively recently investments in transport infrastructure was considered to fall outside State aid rules.

50 EC, State Aid Manual of Procedures – Internal DG Competition working documents on procedures for the application of Articles 107 and 108 TFEU, Section 5 Notification, Para 30
51 See, for example, the United Kingdom State Aid Manual, 2015, p.8. Also reported in the Czech country study.
Until 2000, the Commission’s view was that ‘the construction [or] enlargement of infrastructure projects (such as airports, motorways, bridges, etc.) represents a general measure of economic policy which cannot be controlled by the Commission under the Treaty rules on State aid.’ However, in the Aéroports de Paris\textsuperscript{53} judgement in 2001 and Leipzig/Halle\textsuperscript{54} judgement in 2011, the European Court of Justice found that investments in the construction and operation of airport infrastructures may constitute State aid. Since these decisions investments in transport infrastructure have been considered to be falling with the Treaty rules on State aid\textsuperscript{55}.

As a result of this relatively recent development, some transport authorities may be unaware of the need to notify potential State aid cases to the Commission. In general, transport authorities are very much aware of the need to comply with relevant environmental and public procurement procedures. They are less aware of the potential that State aid issues may be relevant to their project. This can result in them notifying late, potentially magnifying the risk to their project. In addition, their lack of experience with State notifications may lead to notifications that are of a lower quality. This can lead to Commission requests for further information, delaying the final decision. In addition, project promoters that are uncertain about the applicability of State aid rules to their project may need to seek expert opinions\textsuperscript{56}, contributing to additional project costs.

In addition, the information Member States may find it burdensome to prepare the information necessary required to submit in a State aid notification. Due to the inherent nature of State aid procedures and the focus on the impact of the funding on competition, the information requirements are very different to those for other project processes (e.g. permitting under CEF). As a result, transport authorities may be required to gather and provide significant information. This can be seen as an additional burden.

There have been recent efforts at the EU-level to reduce the burden of State aid procedures on project promoters. In 2016, the European Commission has been consulting on a proposal to exempt ports and airports from the requirement to notify aid measure to the Commission, provided certain criteria are met\textsuperscript{57}. This exemption would essentially Member States who intend to provide support to port and airport developments to assess whether the measure meets the criteria set out in the exemption and, if so, proceed with implementing the measure without the need to notify the Commission and wait for approval. A further streamlining measure has been adopted in relation to projects receiving financing under the European Fund for Strategic Investment (EFSI). Where such projects receive Member State co-financing, which is considered State aid, the Commission has committed to apply a fast-track process for assessing the compatibility of the national financing with State aid rules\textsuperscript{58}. Under this process, the Commission aims to complete assessments within six weeks of receiving a complete notification.

\textsuperscript{52} ‘Application of Article 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector’, OJ C 350, 10.12.1994, p. 5, as cited in Draft Commission Notice on the notion of State aid pursuant to Article 107(1) TFEU.

\textsuperscript{53} Case T-128/98, Aéroports de Paris v Commission of the European Communities, European Court of Justice, 2000

\textsuperscript{54} Joined Cases T-443/08 and T-455/08 Freistaat Sachsen, Flughafen Leipzig/Halle et al v Commission of the European Communities, European Court of Justice, 2011, ECR II-1311

\textsuperscript{55} Under a current targeted review of Regulation (EU) No 651/2014 on the General Block Exemption Regulation (State aid), it is proposed that regional airports, maritime ports and inland ports be included in the General Block Exemption. This would mean that State aid for these infrastructure types would be considered compatible if certain criteria are met, and notification would not be required.

\textsuperscript{56} Stakeholder interview, Germany


Thus, two key problems at the Member State-level appear to drive particular delays and uncertainty in State aid notifications: Late notification; and poor quality of notification (including information gaps). Early consultation with Member State competition authorities, and DG COMP where appropriate (through the pre-notification procedure), is considered important in ensuring that any State aid decision proceeds in a timely manner. Early consultation will assist in ensuring that the formal notification, and thus the decision, can occur earlier, thus avoiding uncertainties later in the project preparation process. Early consultation will also assist authorities in submitting a high quality notification, reducing the risk that the Commission will need to request further information leading to further delays.

This suggests there may be a need for measures that support transport authorities in the timely development of high quality notifications. At the Member State-level, these measures could 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 (e.g. the BIS State aid team in UK, the State Aid Monitoring Office in Hungary). In many cases, these units also centralise the process and ensure a consistent quality of notifications (e.g. the Romania Competition Council). In addition, Member State guidance to transport ministries and authorities on the need to consult with the relevant agency/unit on whether State aid issues may be present. Among the countries assessed as part of this study, many were found to provide guidance or procedures that assist authorities in the notification of State aid measures to the Commission. These Member States include Austria, Czech Republic, Hungary, Italy, Romania, Spain and the United Kingdom.

At the EU-level, specific and up-to-date guidance on State aid and transport (consolidated for all modes) targeting transport authorities is useful in assisting authorities in improving the timing and quality of notifications. Detailed guidance is currently available for railways and aviation. In addition, analytical grids are available and provide guidance on ports, airports and local rail transport infrastructure. These appear to be in use among transport authorities in some Member State-level. In addition, the Commission recently published guidance on the notion of State aid, which includes specific guidance on the public funding of infrastructure, including transport infrastructure (ports, airports, rail and roads). This guidance should further assist authorities in assessing whether proposed transport investments give rise State aid issues, and can be expected to promote earlier consultation between authorities and the Commission on these issues.

Commission Directorates-General and agencies that are involved in the preparation and funding of transport projects can assist in building awareness of State aid issues. DG REGIO currently does this for ESIF-funded projects. While projects that are fully funded through Union sources will not be subject to State aid procedures, any projects that involve co-funding at the Member State-level (including CEF and EFSI) may be subject to State aid rules. Thus, it should be explored whether funding or financing application processes under CEF and EFSI can be used to prompt applicants to consider whether State aid may be an issue and encourage early consultation with DG COMP.

3.2 CONCLUSIONS ON STATE AID

While State aid procedures are often raised as a potential barrier in the efficient planning and preparation of projects, there was limited evidence from the case studies and country studies that State aid procedures represented a significant concern from the project perspective. Some authorities noted that these procedures could be time-consuming and exceed the two-month time limit (most likely due to incompleteness of notifications). In one case study – the Fehmarn Belt Fixed Link – it was reported that State aid procedures could be used by project opponents to attempt to block a project. However,
there was little evidence of these procedures causing excessive delay or cost.

Therefore, it would seem that the priority for action in regard to State aid should be to continue to encourage Member States that seek to invest in transport infrastructure to engage with the Commission early, and supporting transport authorities in making timely, complete State aid notifications. Recent guidance documents (the Communication on the Notion of State aid) and efforts to streamline procedures for EFSI projects receiving national co-financing should also assist.
PART TWO: SPECIFIC CHALLENGES IN PERMITTING OF TEN-T WATERBORNE PROJECTS

4 CHALLENGES IN THE PERMITTING OF WATERBORNE PROJECTS

The waterborne transport sector – which includes maritime ports, inland ports and inland waterways – faces unique challenges in the permitting of projects, particularly in relation to environmental permitting. While all transport projects are heavily influenced by EU environmental protection legislation, environmental assessment and permitting of waterborne projects in particular need to take into account the complex interactions between multiple environmental objectives (involving, for example, objectives relating to groundwater level, nature protection, agriculture). In addition, waterborne projects are more likely to be subject to EU and Member State legislation focused specifically on water protection, including the Water Framework Directive, Nature Directives and the Maritime Spatial Planning Directive (to be transposed in September 2016). The potential impacts of waterborne transport projects on sensitive and complex ecosystems, and on Natura 2000 protected areas, create unique challenges for project promoters and authorities in the planning and preparation of projects.

Table 15: Drivers for specific challenges in the permitting of waterborne projects

<table>
<thead>
<tr>
<th>Driver</th>
<th>Problem: delays, costs, uncertainty</th>
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<tbody>
<tr>
<td>Potential impacts on bodies of water give rise to the requirements of</td>
<td></td>
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<tr>
<td>the Water Framework Directive</td>
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<tr>
<td>Projects located on coasts or rivers are more likely to have an effect</td>
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<tr>
<td>on Natura 2000 protected areas, leading to obligations under the</td>
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<tr>
<td>Birds and Habitats Directives</td>
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<tr>
<td>Some waterborne projects (maritime and inland ports) are linked to</td>
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<tr>
<td>industrial developments, potentially giving rise to a need to comply</td>
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<td>with requirements under industrial accident legislation (i.e. Seveso</td>
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<tr>
<td>Directive)</td>
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<tr>
<td>Dredging activities are particularly likely to raise environmental</td>
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<tr>
<td>permitting issues</td>
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<tr>
<td>Requirements under the Maritime Spatial Planning Directive may add to</td>
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<tr>
<td>the complexity in authorising maritime port projects</td>
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<tr>
<td>Proximity to water creates complexity in the permitting process</td>
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</table>

4.1 CHALLENGES RELATED TO THE LEGAL FRAMEWORK FOR WATERBORNE PROJECTS

Given their proximity to water bodies, waterborne projects can be more likely to impact water bodies and protected areas, including Natura 2000 sites. Thus, waterborne projects often face permitting challenges relating to the legal framework protecting water bodies and protected areas.

4.1.1 Water Framework Directive

The Water Framework Directive (WFD) 61 establishes a framework for the management and protection of all surface waters and groundwater at EU level. The overall objective of the Directive is to achieve (at least) good water status for water bodies (measured according to the ecological and chemical status

of a water body). Article 4 requires Member States to prevent the deterioration of water bodies and protect, enhance and restore water bodies, with the aim of achieving good status for all water bodies by 2015. In particular, Article 4(1)(a)(i) sets out that ‘Members States shall implement the necessary measures to prevent deterioration of all bodies of surface water’.

The challenge of applying this Directive in the permitting and preparation of waterborne projects has been particularly highlighted by a recent case in the European Court of Justice (ECJ), which demonstrates the issues faced by project promoters, competent authorities and national courts in interpreting these requirements when planning individual waterborne transport projects that could potentially impact the ‘good ecological and chemical status’ of waters.

**ECJ Decision in the Weser Case C-461/13 on the interpretation of the WFD**

The German ports in Hamburg and Bremen had planned to dredge rivers to make improve access to new large container ships, in the face of intense competition from rival ports in Rotterdam and Antwerp. The competent German authority had granted authorisation for the deepening of parts of the River Weser.

A German environmental NGO, BUND, challenged the authorisation before the German Federal Administrative Court (the Bundesverwaltungsgericht), Germany, arguing that dredging of the River Weser in Bremen would cause excessive damage to water quality and so damage marine life. The German court sought a decision from the European Court of Justice (ECJ) on whether Article 4(1)(a)(i) of the Directive should be interpreted to mean that if a project may cause deterioration in the status of a surface water body, the Member State is required to refuse to authorise the project unless a derogation is granted. The ECJ was also asked to consider what constitutes a deterioration of a body of water within the meaning of the Directive.

The ECJ concluded that the obligations of Member States under the Directive do not amount a general obligation, but also apply to individual projects. The Court accordingly found that Member States are required - unless a derogation provided for by the directive is granted - to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Directive.

As to the question from what moment there is ‘deterioration of the status’ of a body of surface water, the ECJ replies that such deterioration is established as soon as the status of at least one of the quality elements, within the meaning of Annex V to the WFD, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. (However, if the quality element concerned, within the meaning of that annex, is already in the lowest class, any deterioration of that element constitutes a ‘deterioration of the status’ of a body of surface water.)

The ECJ decision in the Weser Case makes it clear that, when deciding whether to authorise an individual project, the requirements of Article 4 of the Water Framework Directive are a decisive factor. If it is likely that a project will cause the deterioration of a water body, then the project authorisation must be refused unless a specific derogation is granted. As a result of this decision, projects or activities that could result in the deterioration of a water body – which are likely to include most projects involving dredging – will need to meet the conditions for a derogation under Article 4(7) of the Directive. This requirement will apply if a project impacts the status of a single quality element, even if that does not result in a fall in the classification of the water body as a whole. These conditions for a derogation require that: all practical steps are taken to mitigate the adverse impacts on the body

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of water; the project is included in the relevant river basin management plan; the project is justified on the grounds of overriding public interest; and the objectives of the project cannot be achieved by other means due to reasons of technical feasibility or disproportionate costs. This decision emphasises the importance of setting out the rationale, costs and benefits of waterborne projects – and any alternatives – in the strategic planning phase.

The impact of the ECJ ruling at the project level has been noted in the case studies. In the Elbe-Weser case, the port authorities noted the importance of complying with legislation and finding a solution that satisfies stakeholders, but uncertainties in the legislation tend to result in delays in preparing necessary documentation and permitting procedures. Similarly, in the cross-border Fehmarn Belt Fixed Link project the promoter reported that the consequences of this new jurisprudence in permitting procedures are not yet clear. Stakeholders interviewed fear that, as a consequence of the ECJ ruling, EIA procedures will most likely become more exhaustive, potentially leading to increased cost and delay. The EIA report in Germany for that project is currently being updated as a result of the comments from the first round of public consultation, and will be subject to a second public consultation round. The update of the EIA report will have to take into account the consequences of the ECJ decision, and the promoters have reported that they will now need to give greater attention to the sections of the report relating to the WFD. The updated report will include a 600-page report on the WFD, as opposed to the original documentation which covered around 60 pages, in part as a result of the ECJ decision. (It should be noted that some changes in the updated report are a result of comments received during the first consultation phase, and are unrelated to the ECJ decision.)

### 4.1.2 Birds and Habitats Directives

Waterborne projects are also more likely to impact Natura 2000 sites, as many of Europe’s most valuable natural areas are situated in the valleys of its main rivers – and those rivers are priority axes for inland waterway transportation. Similarly, the extension of ports generally requires deepening and maintenance of fairways and reclamation of land. Many ports are located in estuaries, or close to nature reserves, which consist of tidal flats and wetlands that provide habitat for vulnerable plant and animal species. These valuable habitat zones are also home to - often dredged - access channels and newly constructed port developments. As a result of the proximity between waterborne transport infrastructure and protected areas, the Birds Directive and Habitats Directive often particularly impact waterborne projects, and have a particular impact on developments in waterways that cut across multiple protected areas (for example, the Danube).

Projects that are likely to have a significant impact on protected areas are subject to an Appropriate Assessment, under Article 6(3) of the Habitats Directive, to review the implications of the project for the site. Authorities may only approve a project if they have ascertained that it will not adversely affect the site (Article 6(4)) or, in cases of projects necessary for reasons of overriding public interest, if compensatory measures are taken. Projects in protected areas can be impacted in terms of additional time and cost during the Appropriate Assessment phase, or in terms of additional cost for potential mitigation or compensatory measures. A recent CJEU decision on the application of Article 6(4) of the Habitats Directive in the development of the Port of Antwerp suggests that project promoters continue to face challenges in the application and interpretation of this provision.

The particular impacts of these provisions on waterborne projects were noted in the Czech country study, where authorities reported that almost every waterborne project is delayed, due in part to the

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65 Court of Justice of the European Union, Judgement in Case C-387/15 Orleans and others, 21 July 2016,
likelihood that large-scale waterborne projects will impact a nationally or EU-protected species or habitat. (These projects may also be hindered due to concerns that the economic feasibility of a project has not been sufficiently demonstrated.) Construction works in protected areas can also be delayed due to understandable prohibitions during particular seasons to protect the habitats of local species, as reported in Romania.

As noted in Section 4 above, the limitations in available environmental data can impact the efficient preparation of environmental assessments. Given the increased likelihood of waterborne projects impacting Natura 2000 sites, data limitations can disproportionately waterborne projects in the preparation of Appropriate Assessments. Basic data on Natura 2000 sites (for example, maps, Standard Data Forms accompanying the sites at the time of designation, information on the site’s Conservation Objectives) can be limited in some cases66, requiring that project promoters to collect, and if necessary update it, as part of the Appropriate Assessment. Uncertainties or weaknesses in data can result in a need for additional surveys or permitting authorities taking an unnecessarily cautious approach to permit conditions and compensatory measures67, potentially leading to increased costs and delays in the planning and preparation of waterborne projects.

The Romanian-Bulgarian cross-border Danube case concerning the accompanying studies for the improvement of navigation conditions on Danube illustrated the challenges of dealing with Natura 2000 in the Appropriate Assessment process. The impact of the project on habitats and species protected by EU legislation was initially underestimated, leading to a need to update and improve assessments. Failures of the promoter to collect data early in the Appropriate Assessment process led to a later need for site visits. Weaknesses in the environmental studies appear to have fuelled opposition to the project. There continue to be doubts about whether the project has the required resources and expertise available to deal with such a large-scale, complex and sensitive waterborne project.

A number of good practices are available to assist project promoters in complying with the Nature Directives in the planning and permitting of waterborne projects. To assist project promoters and authorities in addressing the requirements of the Birds and Habitats Directives in the planning and preparation of waterborne projects, the European Commission has published two guidance documents: the Guidelines on the implementation of the Birds and Habitats Directives in Estuaries and coastal zones with particular attention to port development and dredging (2011) and the Guidance document on inland waterway transport and Natura 2000. Sustainable inland waterway development and management in the context of the EU Birds and Habitats Directives (2012).

These guidance documents strongly recommend the use of the integrated approach for planning waterborne projects. Under an integrated planning approach, the strategic plans for the waterborne transport infrastructure (for example, the port or inland waterway) is integrated into any relevant management plans for Natura 2000 sites (and relevant river basin management plans developed under the WFD and land-use plans developed under national legislation). This approach assists in ensuring that waterborne transport infrastructure projects and works are planned and implemented in line with local nature protection objectives. While possibly requiring an early investment in terms of time and planning, such integration may also reduce delay and public opposition later. For projects that may impact a Natura 2000 site, an integrated approach can assist promoters and authorities in considering the ecological requirements of those sites at an early stage in the design process and take specific

account of the site’s conservation objectives.

This integrated approach is increasingly used in a number of major international and national fora, for example the Worldwide Association for Waterborne Transport Infrastructure (PIANC) (see box below) and the European Dredging Association.

**Working with Nature – PIANC Position Paper**

‘Working with nature’, as described by PIANC in its 2011 position paper, is an approach to planning waterborne transport projects that aims to integrate environmental issues into project planning from the earliest possible phases. The goal of this integrated approach is to identify and exploit win-win solutions which respect nature and are acceptable to both project proponents and environmental stakeholders. This approach seeks to integrate environmental objectives, and seek the input of stakeholders, at a stage the project when flexibility is still possible, and before projects become locked into a particular option.

The goal of the ‘working with nature’ approach is to avoid environmental impacts, but also to deliver and enhance environmental protection and restoration, potentially resulting in a net benefit to the environment. The emphasis on avoiding environmental impacts is in line with the approach outlined in the Nature Directives, which emphasise the importance of avoiding – rather than compensating for – environmental impacts.

As outlined in the position paper, ‘working with nature’ requires doing things in a different order to the traditional project planning processes, which is tends to focus on developing a project design in the earliest phases. Under a ‘working with nature’ approach, a project should follow the following process:

1. Establish project need and objectives
2. Understand the environment
3. Make meaningful use of stakeholder engagement to identify possible win-win opportunities
4. Prepare initial project proposals/designs to benefit navigation and nature.

‘Working with nature’ focuses on achieving a project’s objectives within the context of the local environment, rather than assessing the consequences of a pre-defined project design, with the goal of finding solutions that benefit both the project and the environment, rather than simply minimising ecological harm.

The use of an integrated approach as a solution to an earlier failure to adequately take the Nature Directives into account is seen the Port of Le Havre, situated on the mouth of the Seine estuary. Plans for massive port expansion started in 1994. Initially the port expansion was foreseen to be compensated by significantly expanding the Special Protected Area (SPA). This however did not foresee in compensation of valuable habitat zones that would disappear due to port construction. The scheme was rejected by the European Commission. French authorities subsequently decided to develop an integral ecological management plan for the estuary, taking a more holistic approach to the 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.

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69 As mentioned in stakeholder consultation platform meeting of 17 May 2016.
4.1.3 Maritime Spatial Planning Directive

In July 2014, the EU adopted the Maritime Spatial Planning Directive\(^{73}\). The Directive establishes a common legal framework for Member States for the planning of maritime activities, including fisheries, tourism, energy, and maritime transport. EU countries are required to transpose the Directive into national legislation and appoint competent authorities by 18 September 2016. Member States must adopt maritime spatial plans for their jurisdictional by March 2021. Article 9 of the Directive requires that stakeholders be consulted during an early stage of the development of the plans. The Directive does not specify the planning or management objectives to be included in plans, leaving these details to Member States. However, ultimately the Directive will result in the adoption of maritime spatial plans in all EU waters, in accordance with common minimum requirements and according to a set timeframe.

As noted above, integrating planning of transport projects into other relevant planning documents can assist in ensuring these projects are delivered in accordance with environmental and other objectives. Maritime spatial plans provide an opportunity for such integration. They can also facilitate broader stakeholder participation in project planning. Nonetheless, given the early phase in the process of implementing the Directive, some project promoters have expressed concerns about the potential impacts of the Directive at the project level. Northern German Port stakeholders (Hamburg and Bremen) reported that their experiences from the WFD raise concerns about the future application of the Maritime Spatial Planning Directive. One of the crucial issues according to them is the underwater noise from ships. They believe that future developments under the Directive should not impair international and short sea shipping. Shipping lines of course can and will adapt to new regulation, but enough time is required and market conditions need to allow investment certainty.

4.2 CHALLENGES RELATED TO DREDGING ACTIVITIES

Dredging activities, in particular, raise numerous legal issues. Dredging is an important part of managing inland waterways and ports, allowing infrastructure managers to maintain and improve accessibility. However, dredging is particularly impacted by two areas of environmental legislation: water protection and waste management.

In relation to water protection legislation, as detailed above, and illustrated by the Weser Case, the Birds and Habitats Directives and, in particular, the Water Framework Directive can have particular implications for dredging activities. The designation of protected areas under the Habitats Directive poses limitations on both the dredging and disposal of dredged material. The Water Framework Directive may limit dredging in certain water bodies, given that turbulence resulting from dredging could impact the quality of water bodies.

Regarding waste management legislation, the treatment or disposal of dredged material can give rise to certain legal obligations under the Waste Framework Directive\(^{74}\) and related EU waste legislation. Under the Waste Framework Directive, waste is defined as any substance or object which the holder discards or intends or is required to discard. Thus, under the Directive, dredged material may be considered waste if an operator cannot identify suitable options for re-use, recycling or recovery\(^{75}\). The relocation of sediments within surface waters for the purpose of managing waters and waterways is not considered waste within the meaning of the Directive under Article 2(3), provided the sediment is not hazardous. This means that, provided the dredged material is non-hazardous and relocated within


\(^{75}\) In addition, the European Waste Catalogue categorises ‘dredging spoil’ as waste; Annex, 2000/332/EC, Commission Decision of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes
the surface water, it is not subject to the requirements of the Waste Framework Directive. However, if an operator seeks to dispose of the material elsewhere (for example, on land), it will be subject to the Directive (and potentially, the Landfills Directive). These legal considerations may lead to additional compliance costs for projects involving dredging. While the need for these legal protections is well understood, particularly when dredged substances concern hazardous materials, stakeholders report uncertainty to how the requirements of the Waste Framework Directive and the Landfills Directive may be interpreted and applied in relation to dredging. In particular, stakeholders report a lack of consistency between the way Member States classify dredged material for the purpose of waste management. In certain Member States (for example, Netherlands, Germany), dredged material is not presumed to be waste unless it is hazardous. However, in other countries for example, the United Kingdom) dredged material is more likely to be classified waste. These stricter classifications can contribute to additional costs for project promoters, as they will need to pay additional waste management costs. They may also result in lost opportunities to reuse or recycle non-hazardous dredged material and reduce landfill.

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76 Directive 1999/31/EC of 26 April 1999 on the landfill of waste
PART THREE: SPECIFIC CHALLENGES IN THE AUTHORISATION FRAMEWORK FOR TEN-T CROSS-BORDER PROJECTS

5 CHALLENGES IN CROSS-BORDER PERMITTING

Cross-border projects face particular challenges, that impact the timing and efficiency of delivery. The involvement of more than one Member State, and often of multiple regional and/or local authorities, can particularly impact the timely completion of permitting procedures. Any delay or obstacle on one side of a border will necessarily impact project delivery on the other side, as project promoters will not proceed with a project until the delivery on both sides of the border can be assured. Given the priority that TEN-T policy gives to cross-border projects, TEN-T core network projects are likely to be particularly impacted by these challenges.

Table 16: Drivers for specific challenges in the permitting of cross-border projects

<table>
<thead>
<tr>
<th>Drivers</th>
<th>Problems</th>
</tr>
</thead>
<tbody>
<tr>
<td>Different procedures and phasing of procedures</td>
<td>Advancement on project blocked until approval on both side</td>
</tr>
<tr>
<td>Limited cooperation in cross-border EIA procedure</td>
<td></td>
</tr>
<tr>
<td>Divergence of infrastructure priority objectives between the Member States involved</td>
<td>Complex negotiation on the route / advancement of project blocked</td>
</tr>
<tr>
<td>Poor strategic planning</td>
<td></td>
</tr>
<tr>
<td>Change of government (if lack of formal cooperation agreement)</td>
<td></td>
</tr>
<tr>
<td>Incompatible national technical standards</td>
<td>Complexity of design / interoperability issues</td>
</tr>
</tbody>
</table>

5.1 UNALIGNED PERMITTING PROCEDURES

Cross-border projects encounter specific problems arising out of inconsistencies between legal permitting frameworks and procedures across Member States. As demonstrated in previous section of this report, the number of permits, the sequence of approvals, time limits, requirements for public consultation can vary greatly between countries and can result in permitting procedures happening at different speeds on either side of the border. Increased coordination of procedures is key in cross-border projects to ensure that the project can develop at roughly the same pace. Different procedures and sequence of permitting procedures generally impact the whole approval process and create time gaps between authorisations in both countries. The challenge of aligning these different permitting procedures was highlighted in the Seine-Scheldt project, outlined below.

Seine-Scheldt link, Belgium and France

The responsibility for the river recalibration works of Common Lys River was assigned to one of the three partners - Flanders, Walloon region, France - each for one of 3 different river sections. Each of the three partners was responsible for the design of works at both sides of the river bed. Design works were delegated to the leading partner, while the SEA/EIA and permitting application – which are strongly interrelated with these design documents – were implemented in the separate cross-border countries. Moreover, the French authorities applied one overarching EIA for their Deûle and Common Lys river projects.

Different phasing of EIA and permitting in France compared with Belgium (Wallonia and Flanders) (EIA

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78 See, for example, recital 13 of the TEN-T Regulation.
**Seine-Scheldt link, Belgium and France**

Following design in France, versus design following EIA in Belgium) resulted in permitting procedures going at different speeds in both countries. The EIA - and water system impact assessment - in Flanders is carried out at the start of the detailed design process (end of predesign phase). The decisions on the best possible alternative and themitigating measures to be applied are finally decided upon in the permit decisions. In France the (detailed) EIA is carried out at the end of the design process and integrated into the public consultation document. While in general the country with permitting procedure implemented last will determine the overall timing, the planning process had to anticipate maximising opportunities for:

- Parallelism of processes where it is possible;
- Synchronisation of process steps.

For authorisation of infrastructures as part of border rivers between two countries, this different phasing could represent a large difference in the time schedule for implementation between the two countries. In the specific case of the Common River Lys between France and Flanders (the section between the border and Menen), the time gap between authorisation procedures the two countries was up to three years.

The current project design team structure in the three individual countries/region, with each of them responsible for a river section, is perhaps less suited to coordinating processes across borders – a dedicated project design team consisting of experts from each Member State would be better suited to managing the interdependent aspects of the permitting project. This project management approach, combined with the complex permitting procedures, have been a key cause of delays in the project.

The risk of significant delay that authorisation procedures can pose for cross-border projects are well illustrated in the Fehmarn Belt Fixed Link project.

**Fehmarn Belt Fixed Link, Denmark and Germany**

The authorisation procedures in the two involved countries differ significantly. In Denmark, the approval process went quite smoothly – the EIA for the project was approved by the Danish parliament in the form of a Construction Act in April 2015. As part of the EIA process public consultations were organized, and based on the EIA and consultation reports, a Construction Act was drafted. Under this process, Parliament was able to resolves conflicts and finalise the approval through legislation.

The procedure in Germany takes more time, in comparison to Denmark, due to the numerous public consultations and hearings. In Germany, often one participation and approval round is not enough. Second or even third participation rounds are required before the administrative approval is given - which was the case for this project. The number of updates in the original application is - due to the hearing process - so large, that the German hearing authority has deemed it necessary to do a second participation round and a full update of documents. This procedure will take another two years, significantly delaying the project.

The original time table was approval in 2015 and construction start in 2016. Now the estimated approval date is set for 2017 with construction start in 2018.

### 5.2 LIMITED COOPERATION IN EIA

The EIA Directive sets out obligations regarding cross-border EIAs. The EIA Directive establishes that, when a Member States 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. CJEU rulings have also stressed that EIAs must take into account cross-border impacts when part of the project is located in another
Member State, in spite of the challenges encountered by large-scale cross-border projects, in view of not compromising the effectiveness of the of the EIA Directive (case C-205/08)\textsuperscript{79}. The Commission has produced guidance on transboundary EIAs\textsuperscript{80}; However, the implementation of Article 7 of the EIA Directive and in particular requirements concerning public consultation has proved challenging in cross-border projects, first because it creates additional obligations such as translating and adapting consultation documents, and because Member States have to define responsibilities on both sides for the organisation of the public consultation. Amendments to Article 7 of the EIA Directive, adopted in 2014 and to be transposed by Member States by May 2017, are expected to facilitate EIAs for cross-border projects. Under these changes, Member States involved in projects likely to have transboundary effects are 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 amendment provides the Member States with the option of conducting transboundary consultations through a joint body.

During the permitting procedure of the Fehmarn Belt Fixed Linked project outlined above, the EIA procedure and the public consultation have not been coordinated between Denmark and Germany, with the result that delays in Germany are severely impacting the timeframe of the project, already approved in Denmark. Although Member States will often decide to carry out separate EIAs in line with their own EIA procedures, aligning timeframes for the EIA procedure, the public consultation and the decision-making process would facilitate the process leading to approval.

There are also a number of examples of inadequate assessment of transboundary impacts in the case studies. The failure to consider such impacts can fuel public opposition and provide project opponents with justified grounds for appeals against projects. In the Romanian-Bulgarian common section of the Danube, the EIA in the initial feasibility study was not properly addressed in a cross-border project context. The lack of attention to good coordination between the two countries in the preparation and execution of the EIA was one of the failures of that study. The risk of appeals was highlighted in the Brno-Vienna case, where appeals were raised against the permits for the R52 (CZ) based on the lack of trans-border assessment. This project is likely to have, in the sense of Article 7(1) of the EIA Directive, a significant effect on the environment of its neighbouring country Austria. The Czech EIA process did not assess transboundary impacts and did not comply with the requirements of the EIA Directive on trans-border projects.

In the Zevenaar-Emmerich-Oberhausen rail case, 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 planning approval section 3.5 (Emmerich-Elten) 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. The Zevenaar-Emmerich-Oberhausen rail project particularly highlights the advantage of carrying joint EIAs applying the most stringent rules of both national legal frameworks. Nonetheless, the case also illustrates the risk that common public consultations are likely to foster comparisons between legal frameworks and increase public opposition if national laws do not ensure the same level of protection in each country.

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5.3 POOR STRATEGIC PLANNING AND DIVERGING OBJECTIVES

Cross-border infrastructure projects require an early and strong strategic planning based on clear objectives and providing a sound basis for later decisions. The absence of this planning can lead to weaknesses in project planning documents and assessments, resulting in obstacles and delays in implementation.

The originally planned doubling of the cross-border rail line between Trieste and Divača was connected with the need to increase the available transport capacity. The railway has a strategic importance to Slovenia in international railway freight transport, due to the role of the cargo port of Koper in linking the hinterland Slovenian and European economies with countries overseas. Due to existing railway connections of the port of Trieste, the new project is of a smaller strategic importance to Italy. An early high-level strategic study for the project suggested that the social, economic and environmental benefits could significantly exceed the risks and negative impacts of the project. It took several years of assessments and evaluations – including a reconsideration of the project in light of improved demand forecasts – before a common decision between Italy and Slovenia for upgrading, rather than doubling, the existing Trieste-Divača line was taken, with a rail connection to the port of Koper. The failure of the project partners to consider an upgrade earlier seems linked to an absence of thorough strategic planning, as well as diverging priorities and lack of coordination at the international level between Italy and Slovenia.

The absence of strategic planning, and its potential to impact later planning and permitting of cross-border projects is illustrated in the case of the Brno-Vienna project.

**Brno-Vienna motorway, Austria and Czech Republic**

While the cross-border Brno-Vienna motorway project is delayed largely due to unresolved environmental issues on the Czech site and legal appeals regarding the procedures on both sides; there is a need for coordinated planning of the project in both Member States. In particular, there is a need to consider the way how the A5 motorway should be connected to the Czech Republic and integrated and cumulative impacts of both connected routes (and alternatives) should be assessed.

First, the early phase of strategic project planning was not conducted on a sound basis. The negotiations in 1999 – which resulted in the selection for the alternative with a border crossing at Mikulov – were not conducted on the basis of objective criteria for optimal network design and assessment of alternatives. So far, no conclusive evidence for the necessity and financial feasibility of the project (and its alternatives) has been produced. Doubts about the financial feasibility of the project remain.

Second, there has been a lack of environmental impact assessment for real route alternatives, despite the fact that alternatives are available and the chosen alternative will lead to excessive traffic generation in a Nature 2000 site and Unesco World Heritage Site. There is a need for coordinated planning of the project in both countries, in a way that there is a need to consider the way how the A5 motorway should be connected to the Czech Republic and integrated and cumulative impacts of both connected routes (and alternatives) should be assessed.

There is a particular need for early and transparent public participation, assessment of alternatives and
a clear project definition prior to the project decision.

Cross-border projects are often faced with different policy options, especially when multiple countries are involved. The realisation of the Rail Baltica project is dependent on many factors influencing the success of the investments, but the major problem is divergence of infrastructure priority objectives between the Member States involved. The national transport political interests and strategies do not always match, even if the basic principles and objectives are shared. Ministries of transport often focus on domestic transport markets and needs of the national key players. Addressing these differences will be one of the key success factors of this project, the foundation of the Joint Venture Rail Baltica SA was an important step. Still, existing differences from a political point of view stay an important risk for delay, offering room for European initiatives and instruments aiming at overcoming barriers rising at local and state level.

5.4 CHANGE OF GOVERNMENT

Cross-border projects can be very vulnerable to change of governments and political priorities at national level. To ensure continuity in the management of the project, stakeholders in selected Member States and case studies have stated that cross-border agreements were necessary and generally successful.

An important factor in the delay in the Seine-Scheldt project Seine-Nord Europe was the suspension of the ongoing PPP-procedure and the project re-engineering between 2012 and 2015. This caused a delay in the project time schedule, of at least 2-3 years. Besides the project budget overrun - caused by high elevated costs for financing the project to private contractors - the change in government in France 2012, and associated changes in political commitment to the planned PPP-structure, was one key factor in the suspension of the ongoing PPP-procedure.

The setting up of the organisational structure EEIG for the Trieste-Divaca line has taken much longer than originally foreseen, partly due to two recent changes of government in Slovenia. Infrastructure projects in cross-border sections often involve a high financial burden while usually having a lower political priority than domestic projects. In this project the cooperation of two countries with often diverging priorities was required, and there were no predefined structures for cooperation available.

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.

5.5 INCOMPATIBLE NATIONAL TECHNICAL STANDARDS

In addition to the challenges outlined above, technical interoperability issues can impact the efficient delivery of transport projects. Technical interoperability issues have long been understood as a key barrier to the implementation of a trans-European transport network. These issues create challenges in cross-border sections of networks, and are particularly an issue in rail networks, as a larger number of issues are present – rail gauge, voltage of electrification systems, signalling systems, running direction, clearance profiles all pose potential issues for cross-border sections of rail networks. Interoperability issues are less an issue in other modes; however, harmonised standards are absent in the waterborne sector (i.e. for inland waterways) where decisions on technical specifications are made at the national-level.

These challenges are highlighted in a number of the cross-border rail case studies. For example, in the Rail Baltica project, the involvement of multiple countries will create particular challenges, with rail gauge issue in Baltic States expected to be a complicating factor in the interoperability of the project.
Similarly, the Trieste-Divaca-Koper case study is facing challenges arising out of the fact that the 40 kilometre section between Trieste and Divaca does not currently meet maximum axle load standards. These technical challenges can impact the permitting of projects, as seen in the Zevenaar-Oberhausen-Emmerich project. Differing voltage systems between the German and Dutch rail networks has led to huge complexity in the commissioning phase, with a need to coordinate between many regulatory bodies to obtain final certification for the project.

A large number of measures are being implemented at the EU-level to harmonise these technical issues and improve interoperability. In particular, the TEN-T Regulation aims to ensure that infrastructure within the core and comprehensive networks meet certain standards. The European Railway Agency (ERA) Technical Specifications for Interoperability, adopted in a Commission Decision in 2002, establish Europe-wide technical standards for rail networks. However, the complexities of applying the existing ERA technical specifications, which currently amount to around 6000 pages, suggests that there may be a need to simplify the specifications and procedures.

5.6 CHALLENGES IN CROSS-BORDER PROCUREMENT

As already mentioned in Section 5 above, the DG MARKT evaluation of the ‘old’ EU Public Procurement in 2012 showed that there was a low level of cross-border procurement. It is acknowledged in the evaluation that ‘direct cross-border procurement has not increased as much as was anticipated’ and that ‘regulatory guarantees established by the Directives may be a necessary but not a sufficient condition to break down the barriers to cross-border participation in public procurement markets’. Overall, the stakeholders interviewed for this study confirmed this understanding: even though (or for this reason) there is still little experience with cross-border procurement – the existence of mechanisms for cross-border procurement both for specific projects (e.g. Austria) or of a more general nature (e.g. Italy, Spain) was only occasionally mentioned – this is perceived as one of the most complex issues of public procurement.

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, including the use of centralised purchasing activities offered by central purchasing bodies located in another Member State, and brought clarity on the applicable national law.

Nevertheless, the new rules have already impacted the way some projects are governed. In the case of the Brenner Base Tunnel, between Austria and Italy, a Shareholder Agreement defining the rules governing the project signed on 18 April 2011 had decided to tender 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 on 16 June 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 the Fehmarn Belt Fixed Link, the competitive dialogue procedure (under the 2004 Sectors Directive) was used because this (relatively) new solution for public authorities awarding contracts for complex infrastructure projects allows for a higher degree of flexibility when it comes to aligning approval processes and procurement processes. The project promoter has reported that this has allowed them to manage uncertainties and risk in the project permitting process.

The complex legal framework for procurement applied in France and Italy in the Lyon-Turin case gave rise to prolonged discussions between both countries on the implementation of the European Procurement Directive (2014/25/EU). The implementation of specific measures to prevent criminal infiltrations in public procurement was one of the specific points of discussion, since French and Italian law did not implement European law in a similar way at national level. These differences in implementation can lead to significant delay in the signing of international agreements on procurement. Guidance on the applicability of the EU public procurement directive for cross-border projects would be useful. Also, the drafting of guidelines for international agreements - based on the European Directives for Procurement - would be an interesting tool to limit debates between Member States and avoid delays as a consequence hereof.
BIBLIOGRAPHY


Regulatory and administrative arrangements lead to disproportionate delay and cost in implementation of TEN-T projects

- Unnecessary delays arise out of permitting procedures, including environmental assessment
- Cross-border TEN-T projects face particular challenges
- Public procurement practices lead to unnecessary delays and cost
- Public funding for TEN-T projects triggers State aid procedures, creating delay and risk
- Waterborne projects face unique permitting challenges
Unnecessary delays arise out of permitting procedures, including environmental assessment under the SEA and EIA Directives.

Legal uncertainty and complexity

Changing legal framework

Lack of understanding of legal framework

Legal appeals suspend final decision

Insufficient capacity of competent authorities

Lack of coordination between promoters and authorities

Different timings and scope for procedures

Unclear share of responsibilities between different authorities (including other MS)

Lack of binding timelines for permit procedures

Long assessment procedures

Poor quality of environment report

Poor coordination of procedures

Poor timing of consultation (too late, too short)

Stakeholders’ concern on compensation

Poor communication of information to stakeholders

Fragmented consultations

Poor information on ownership in some Member States

Long negotiations with landholders

Complexity of land acquisition procedures

Long and/or ineffective consultations

Lack of coordination between promoters and authorities

Different timings and scope for procedures

Unclear share of responsibilities between different authorities (including other MS)

Lack of binding timelines for assessments

Long assessment procedures
Public procurement practices lead to unnecessary delays and cost

- Lack of capacity of the CA
- CA has no time-limit to take a decision
- In some MS decision is suspended until a final decision on appeals
- In some MS there is no time limit for review
- Transposition and gold-plating of EU Directives
- No motivation for international competitors
- Form of procedure can reduce interests of some competitors
- Perceived lack of transparency
- Procedure prioritises cost criteria over other criteria (e.g. quality)

- Length of the award procedure
  - Length of period to take a decision
  - Decision can be challenged by tenderers
  - Complex legal framework

- Insufficient competition
- Unrealistic terms of reference
- Insufficient room for innovation
- Inaccurate assessment of costs and benefits
- Inappropriate or ineffective sharing of risk
- Ineffective drafting and management of procurement contracts
- Ineffective management of contract leads to increased cost/delay
- Contractors lack incentives to optimise CAPEX/OPEX balance.
- Lifecycle costs are not optimised
- PPPs face specific problems
- Procurement procedures do not encourage the use of PPPs when appropriate

- The project selected is of low quality or high costs
- Insufficient competition
- Unrealistic terms of reference
- Insufficient room for innovation
- Inaccurate assessment of costs and benefits
- Inappropriate or ineffective sharing of risk
- Ineffective drafting and management of procurement contracts
- Ineffective management of contract leads to increased cost/delay
- Contractors lack incentives to optimise CAPEX/OPEX balance.
- Lifecycle costs are not optimised
- PPPs face specific problems
- Procurement procedures do not encourage the use of PPPs when appropriate

- Ineffective management of contract leads to increased cost/delay
- Inappropriate or ineffective sharing of risk
- Ineffective drafting and management of procurement contracts
- Ineffective management of contract leads to increased cost/delay
- Contractors lack incentives to optimise CAPEX/OPEX balance.
- Lifecycle costs are not optimised
- PPPs face specific problems
- Procurement procedures do not encourage the use of PPPs when appropriate

- Uncertainty about statistical treatment of public funding creates risk and delay
- Allocation of risk - specifically demand risk is challenging
- Renegotiation of contracts increases costs
- Limited interest from subscriptions due to high promoter risks
- EU-ROSTAT rules are unclear
- Contract and/or procurement method poorly structured
- Assymetrical negotiation position between public and private partners
- Lack of competent authority capacity
- Lack of competent authority capacity
Annex 2.3 General Problem Definition – State Aid

Public funding for TEN-T projects triggers State aid procedures, creating delay and risk.

State aid decisions can occur late in project process, leading to delay and uncertainty.

State aid decision procedure is not aligned with other Commission procedures (e.g. CEF applications).

Member States do not notify or notify late.

Application of State aid rules to transport projects is unclear.

Limited understanding of State aid rules among authorities.

Notifications are incomplete.

Delays in pre-notification stage due to multiple information requests.

Commission requests for information can be uncoordinated.
ANNEX 2.4 GENERAL PROBLEM DEFINITION – CROSS-BORDER PROJECTS

Cross-border TEN-T projects face particular challenges

- There are unnecessary costs and delay in cross-border public procurement.
- Absence of a procedural framework for cross-border procurement, dealing with issues such as choice of language, legal seat, etc.
- Cross-border projects can be subject to multiple, potentially inconsistent, permitting arrangements
- Permitting is not coordinated to allow for sequencing of works
- Institutional arrangements delay the implementation of cross-border projects
- Inconsistent permitting procedures can require duplication of efforts
- At the government level, cross-border coordination between authorities is challenging (particularly at local and regional levels)
- At the project level, project governance arrangements for cross-border projects can lead to delays and inefficiencies
- Cross-border projects are particularly vulnerable to changes in policy
- Competing policy or political objectives of different authorities
- Negotiations with multiple authorities on route options result in long delays
- Members States display differing approaches to prioritising projects
Waterborne projects face unique permitting challenges.

- Proximity to water creates complexity in the permitting process.
- Some waterborne projects (maritime and inland ports) are linked to industrial developments, potentially giving rise to a need to comply with requirements under industrial accident legislation (i.e., Seveso Directive).
- Dredging activities are particularly likely to raise environmental permitting issues.
- Complexity of coordination and alignment of technical design and procedures in projects with cross-border impacts on water.
- Requirements under the Maritime Spatial Planning Directive may add to the complexity in authorising maritime port projects.
- Cross-border impacts on water levels: mutual influence and coordination problems.
- Different timings and scope of procedures in countries: "EIA following design" versus "design following EIA".
- Lack of cross-border master plan.
- Need to consider alternatives.
- Potential impact on Natura 2000 sites will give rise to the requirements of the Birds and Habitats Directives.
- Potential impact on bodies of water will give rise to the requirements of the Water Framework Directive.
- Re-use, treatment or disposal of dredged material gives rise to obligations under the Waste Framework Directive.
- Potential implications for land use planning.
- Potential impact on Natura 2000 protected areas, leading to obligations under the Birds and Habitats Directives.
- Need to consider alternative solutions.
- Need to demonstrate overriding public interest.
- Need to adopt compensatory measures.
- Planning and reporting obligations (major accident prevention policy, emergency plans, safety reports).
- Notification of authorities.
- Inclusion of project in River Basin Management Plan.
- Demonstration of overriding public interest.
- Demonstration that objectives of project cannot be met by other means for reasons of technical feasibility or disproportionate cost.
- Need to consider steps to mitigate adverse impacts on body of water.
- Appropriate assessment.
- Potential impacts on bodies of water give rise to the requirements of the Water Framework Directive.
- Projects located on coasts or rivers more likely to have an effect on Natura 2000 protected areas, leading to obligations under the Birds and Habitats Directives.
- Appropriate assessment.
- Need to consider alternatives.
ANNEX 3: SUMMARY OF COUNTRY STUDIES
AUTHORITY FRAMEWORK FOR TEN-T PROJECTS

Spatial planning takes place at multiple levels: the federal government has sectoral competence for transport, while the federal states retain all remaining spatial planning competence. This includes both ‘actual’ spatial planning competence and sectoral competence in those areas of substantive law for which the states have legislative and executive competence (e.g. nature protection). The municipalities have executive competence for local land use planning.

For permitting of projects requiring an EIA, a distinction is made between federal roads and rail projects and all other projects. In this context, the formal definition of ‘federal roads’ includes all freeways and fast roads included in the annex of the Federal Street Law (BSiG). These are, generally, major, high-performance roads that extend long distances without crossings. For federal roads and rail projects, a two-tiered structure is in place: the first layer comprises EIA and all federal law permitting, including areas such as water and waste law, which are integrated into a single procedure for which the Transport Ministry is the relevant authority. All remaining state-level permitting determinations form the second level, in particular nature protection permits, which fall within state competence. This second level is dealt with by the relevant state government, although a subordinate regional administrative agency may sometimes serve as the permitting authority. Where a project crosses state administrative boundaries, the state level procedure must be carried out in each of the states concerned. All other types of projects requiring an EIA (i.e. non-federal roads or rail projects) have a single procedure in which all necessary permits required by federal and state law are issued by the relevant state government. Here, again, projects crossing state administrative boundaries will require parallel processes in a number of states.

The issue of acquiring the land necessary for a road or rail project is distinct from the EIA process. In Austria, this is a relatively straightforward undertaking and is usually resolved through private contracts. Where such agreements cannot be made, Austrian law provides for a quick and effective appropriations procedure.

Major promoters, all of whom are fully federally owned, are: (1) the Austrian Federal Railways (‘ÖBB’), ASFINAG (for federal roads), and (3) via donau, tasked with the preservation and development of the Danube Waterway. Promoters are responsible for their own land procurement processes and contracts.

Austrian law grants the Ministry for Science, Research and the Economy competence in matters of State aid, particularly support for notification of measures to the Commission. This competence includes, in principle, the area of transport. The Transport Ministry has its own council working group for transport, and reports that there have been no difficulties with State aid notifications and decisions.

Summary table: Permitting road and rail projects in Austria

<table>
<thead>
<tr>
<th>Procedures</th>
<th>Number of procedures required for a typical project</th>
<th>Procedures required for typical transport projects</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Between one and three, depending on the nature of the project. Federal roads and railways require three decisions.</td>
<td>Federal roads and rail (two-tiered procedure): EIA and federal substantive law permitting (one overarching decision). Decision as per state law, especially nature protection law, but also for areas such as fishing or hunting (one overarching decision).</td>
</tr>
</tbody>
</table>
### Study on permitting and facilitating the preparation of TEN-T core network projects

**Other projects (including waterborne):**

Single procedure at state level: EIA; Federal substantive law permitting (water, cultural heritage, forestry, worker protection, noise) and state substantive law permitting (particularly nature protection, but also fishing or hunting) resulting in one overarching decision.

**If the project crosses several states:**

Parallel procedures at state level in each state concerned (e.g., several applications, public consultations and decisions).

---

### Duration of permitting

**Number of permitting authorities**

Between one and three, depending on the nature of the project. For federal roads and rail projects, there are two permitting authorities (Transport Ministry and state government(s)). For other projects (including waterborne) state government(s) is the sole permitting authority.

**Average duration of procedures for a typical project**

About 15 years, from early planning to construction, according to project promoters.

---

### Cost of permitting

**Cost of permitting procedure**

The EIA procedure (including preparation, permitting and compensatory measures) is the main cost, estimated by project promoters at 5-15% of the entire project spend: for rail, the promoter reported EIA cost at around 5%; for waterborne projects, the cost was estimated at 10-15% of the project budget. Planning alone can cost up to 5%, including pre-monitoring and other measures to establish the baseline. In other cases, despite inexpensive planning, the compensatory mechanisms required can reach 20-25% of the entire project spend. This difference stems from the Danube running through nature parks and other areas under the highest level of protection according to national and EU law.

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### Streamlining measures

**One-stop-shop?**

Yes, for projects where the permitting procedure is fully integrated. This is not the case for federal roads and rail.

**Fast-track scheme?**

No. There is a simplified EIA procedure, which is linked to the categories of projects defined in EIA law rather than to any public benefit of the project.

**Legislative time limits for procedures**

There are legislative time limits for EIA procedures (12 months for federal roads and rail and nine months for other projects). These limits, however, are not always respected.

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### Public consultation

**Effectiveness of public consultation procedures**

Public consultation takes place between one and three times during the process (during SEA, if carried out; in the pre-project procedure for federal roads and rail; and during EA). SEA, which would allow for very early consultation, is not commonly used. For federal roads and rail, the public is consulted prior to the permitting process. Promoters often choose to go beyond the legal requirements and set up extensive consultation mechanisms (e.g. stakeholders’ platforms). This is especially the case for waterborne projects.

Stakeholders who are parties to the procedure (with party status according to EIA Law) have the right to submit comments at any stage of the procedure. Although the permitting authority has the power to close the procedure to new comments, it rarely does so. This approach has proved inefficient and results in considerable delays.
Summary table: Public procurement for road and rail projects in Austria

<table>
<thead>
<tr>
<th>Public procurement efficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Decision speed</strong></td>
</tr>
<tr>
<td>63 days(^1).</td>
</tr>
<tr>
<td>There is a legal time limit of five months for awarding decisions,</td>
</tr>
<tr>
<td>unless otherwise specified in the tender.</td>
</tr>
<tr>
<td><strong>Emphasis on price in award criteria</strong></td>
</tr>
<tr>
<td>53% of contracts are awarded on the basis of price(^2).</td>
</tr>
<tr>
<td><strong>Routine screening for PPPs</strong></td>
</tr>
<tr>
<td>According to stakeholders, there are no prospects for PPPs in</td>
</tr>
<tr>
<td>Austria.</td>
</tr>
<tr>
<td><strong>Suspensie effect of appeals against award decisions</strong></td>
</tr>
<tr>
<td>Appeals do not automatically suspend the award decision. A</td>
</tr>
<tr>
<td>successful application for an interim injunction, however, blocks</td>
</tr>
<tr>
<td>the conclusion of a contract until a decision is reached by the</td>
</tr>
<tr>
<td>Court.</td>
</tr>
</tbody>
</table>

**MAIN CHALLENGES AND GOOD PRACTICES**

**Main challenges:**

- Unclear constitutional competency for spatial planning has led to litigation and significant delays. Procedures can be blocked in situations where state governments draw stricter conclusions than, or contradict the conclusions of, the Transport Ministry. The Semmering Base Tunnel is an example of this difference of opinion. In this instance, the Lower Austrian state government rejected the application for a nature protection permit, despite the Transport Ministry finding the nature protection issues ‘environmentally acceptable’. The project remained suspended until it was withdrawn and re-submitted as the Semmering Base Tunnel New Project. Delays stem from the fact that procedures must be duplicated as soon as a state administrative border is crossed, as do additional costs. Differences in the legal frameworks of each of the states involved also creates greater legal uncertainty, weakening the effectiveness of Austria’s otherwise high-functioning EIA integration.

- The Austrian Strategic Transport Assessment Act (SP-V-G), transposing the SEA Directive for the transport sector, only requires an SEA for plans and programmes required by legislative, regulatory or administrative provisions (Federal Roads Law, Federal Law on High-Performance Railway Lines). These changes to the transport network were mostly accomplished long before the creation of the SEA Directive and it is unlikely that that they will occur again in the near future. Consequently, a low number of SEAs have been conducted since the transposition of the SEA Directive (seven, as of February 6, 2016). The SP-V-G therefore falls short of EU requirements. This limited use of SEAs has been criticised by the Austrian Court of Auditors, which believes the SEA has the potential to avoid problems in permitting procedures later on\(^3\). Case studies have also shown that a wider use of SEA in Austria would improve project planning, facilitate the discussions between the federal government and the States, and reduce public opposition by ensuring earlier public consultation.

- Extensive stakeholder intervention often delays permitting procedures, particularly if the authorities have continued to allow comments and interventions from interested parties throughout the permitting process. Stakeholder intervention has also been repeated, successful appeals against permitting decisions, necessitating new procedures and causing delays of several years.

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1. Taken from 2014 data in Table 5 from the EU Single Market Scoreboard.
2. Taken from 2014 data in Table 4 from the EU Single Market Scoreboard.
Stakeholders view the current national legal framework for procurement as cumbersome, given that it requires extensive legal involvement for all promoters, irrespective of their size or resources. Although the appeals processes for procurement are swift in principle, projects regularly face delays as a result of challenges to award decisions. The potential difficulties in the present legal framework for procurement creates considerable concern in a cross-border context, where the variety of legal, linguistic and cultural practices for procurement have led to considerable delays.

**Good practices:**
- Within state administrative borders, the mid- to high-level of procedural concentration streamlines the process for promoters and decreases the complexities which could cause delays, costs, and increased legal uncertainty. Where the Transport Ministry has competence as the process coordinator, this facilitates a smoother, quicker process.
- Early stakeholder involvement is increasingly seen as necessary, not only for major infrastructure projects (especially those in sensitive areas) but to facilitate more efficient permitting procedures generally, avoid lawsuits (the most significant cause for delay), and contribute to better quality projects overall.
- Although it increases costs, the use of external experts to close knowledge or resource gaps within the authorities concerned helps to avoid unnecessary delays and is generally well integrated into the EIA process.
- Quick and successful negotiations help to acquire land with the minimum of delay. Where such negotiations fail, effective appropriation mechanisms are in place.
CZECH REPUBLIC

AUTHORISATION FRAMEWORK FOR TEN-T PROJECTS


In the Czech Republic, there are three state organisations concerned with construction and management of the three different types of infrastructure, i.e. road, rail, and water. ‘Reditelství silnic a dálnic’ (https://www.rsd.cz/wps/portal/) is the road transport authority, ‘Sprava železničný dopravní cest’ (http://www.szdc.cz/index.html) is the rail transport authority and ‘Reditelství Vodních cest’ (http://www.rvccr.cz/) is the water transport authority. Each of these authorities is responsible for permitting of individual projects, while the actual construction of the projects is determined by tender, as identified during the public procurement procedure.

In principle, all current TEN-T projects follow a workflow based on the applicable national legislation. The overview of this workflow is presented below:

1. Territorial planning (if project is not already included in the land use plan).
2. Obtaining EIA.
3. Obtaining decisions and binding opinions of the authorities concerned.
4. Zoning decision (EIA binding opinion, as well as further opinions and decisions of the authorities concerned are prerequisites).
5. Obtaining opinions of the authorities concerned.
6. Building permitting (EIA binding opinion, as well as further opinions and decisions of the authorities concerned are prerequisites).
8. Actual construction of the project.
9. Final operation approval (EIA binding opinion, land use permit, building permit, decisions and opinions of the authorities concerned are all prerequisites.)

The Czech Republic has no so-called one-stop-shop for permitting of TEN-T projects. Different authorities are involved in issuing permits for both land use and building procedures, depending on the type and location of infrastructure. On average, the timeframe to complete all procedures (including the EIA) for a TEN-T project would take between four and 10 years.

Summary table: Permitting of transport projects in the Czech Republic

<table>
<thead>
<tr>
<th>Procedures</th>
<th>Number of procedures required for a typical project</th>
<th>Three permits and the EIA statement (four main decisions) plus approximately 10-15 individual permits/opinions from independent authorities for each land use permitting and building permitting procedure.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures required for typical project</td>
<td>EIA final statement⁴.</td>
<td>⁴ The EIA process is not an integral part of the permitting procedure. However, the EIA statement (if applicable) is issued before the project promoter applies for the first permit (zoning decision). Since April 2015, the EIA statement is binding; making conditions attached to the final EIA statement binding and enforceable in the subsequent permitting procedures, i.e. land-use permitting.</td>
</tr>
</tbody>
</table>
transport projects | Land use permit.  
| Building permit.  
| Final operation approval. This permit allows the actual operation of the construction. However, the project can be in so-called trial operation pending the issuance of the final operation approval, as in the case of the Prague ring road.  
| Approximately 10-15 other decisions/opinions issued by independent authorities, depending on the specificities of the project.

Number of permitting authorities | Three authorities are responsible for delivering the EIA statement and the three main permits (the authority which issues the building permit also issues the final operation approval), plus 10-15 individual authorities, depending on the project.

Duration of permitting

Average duration of procedures for a typical project | Average duration for road and rail is four years, three years for water projects.

Cost of permitting

Cost of permitting procedure | Up to 10% of the construction cost for road and rail projects including EIA.

Streamlining measures

One-stop-shop? | No.

Fast-track scheme? | No.

Legislative time limits for procedures | Yes. Time limits exist but are rarely complied with. No sanctions for exceeding these time limits are provided in the legislation.

Public consultation

Effectiveness of public consultation procedures | Moderate.

Summary table: Public procurement in the Czech Republic

<table>
<thead>
<tr>
<th>Public procurement efficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision speed</td>
</tr>
<tr>
<td>Emphasis on price in award criteria</td>
</tr>
<tr>
<td>Routine screening for PPPs</td>
</tr>
<tr>
<td>Suspensive effect of appeals against award decisions</td>
</tr>
</tbody>
</table>

MAIN CHALLENGES AND GOOD PRACTICES

The main challenges and good practices in permitting of TEN-T projects in the Czech Republic are described below:

³ Figures provided here are as stated by interviewees from authorities and project promoters. Stakeholders stated that problematic cases can take between seven and 10 years, while highly complex and problematic cases can take up to 12 years.

⁴ As stated by the representative from the rail transport authority.

⁵ Taken from 2014 data in Table 5 from the EU Single Market Scoreboard.

⁶ Taken from 2014 data in Table 4 from the EU Single Market Scoreboard.
Main challenges:

- **Lack of proper strategic planning and application of the SEA Directive** - Many land use plans or other strategic documents were previously compiled without SEAs, including those for the transport sector. The new SEAs should be carried out to adapt to the new circumstances. An example of inadequate strategic planning can be seen in the case of the Czech Transport Master Plan (so-called SeStra2). This plan was finalised in 2014 but, despite being subject to an SEA, still ‘re-confirmed’ the network as it was designed decades ago. This highlights the problem with the implementation of some critical investments. Another issue is that less problematic sections are being implemented first, using the routing identified decades ago. This approach is followed by the project promoters instead of using the SEA process as an opportunity to weigh all relevant interests (including environmental) in a holistic way, while it is still possible to find alternatives. This creates a situation where the problematic sections can only be implemented – and, therefore, the project completed - with huge difficulties and by disregarding some interests (inevitably resulting in appeals). Examples of this are the Prague ring road as part of the TEN-T and D8 highway projects.

- **Land acquisition and expropriation** – In the Czech Republic, during land use permitting procedures it can prove very difficult to trace all private owners and it is not uncommon for this process to take several years. Disputes over land acquisition prices were also common, as the price was not set by the legislation. The upcoming legislative amendment of the Act 416/2009 on accelerating the building of transport, water and energy infrastructure (in force from April 2016) partly addresses this problem by setting out the calculation to be used for buying-out of land. This Act has also enabled expropriation under certain circumstances. However, lengthy procedures are still very likely. In addition, homeowners’ reluctance to sell is sometimes linked to the high environmental or agricultural value of the land, which itself would be lost by the construction. This can also lead to delays.

- **Outdated EIAs, lack of proper transposition and application of environmental acquis** — A large number of EIAs for transport projects took place under the first EIA Act from 1992 and are now outdated. This also impacts TEN-T projects, as 70% of projects from the current Operational Programme for Transport have EIAs dating from at least 10 years ago. In accordance with the EIA Act of April 2015, all of the old EIAs must be verified, with new environmental assessments undertaken. Exceptions may be made where a project falls under the specific regime of accelerated procedure. Also, a so-called coherence stamp is applicable to ensure compliance with the acquis. The transposition and application of the Water Framework Directive remains problematic (in relation to the assessment of deterioration of water bodies and application of derogations under Article 4(7)), as does application of the Habitats (and Birds) Directive (through the non-completed designation process of Natura 2000 sites), both of which might affect TEN-T projects.

- **Inexperienced building authorities within the individual municipalities** – land use permits for all types of infrastructure are issued by building authorities, all of whom, according to the stakeholders interviewed, have insufficient experience and competence in permitting large infrastructure projects (despite many years’ experience with issuing house or garage permits). This lack of knowledge and experience among local authorities often leads to delayed and inefficient processes, such as repetitive requests for documentation.

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9 Two infringement proceedings for non-conforming transposition of the EIA Directive were opened against the Czech Republic since its accession into the EU; Lack of proper application of the environmental acquis - the Habitats (and Birds) Directives and Water Framework Directive. These infringements raise the serious issue of compliance of TEN-T projects with the environmental acquis which is a pre-condition for their co-financing from EU funds.
Lack of a one-stop-shop for TEN-T projects - A so-called one-stop-shop for transport infrastructure permitting is opposed by all permit issuing authorities. Any such body would also be dependent on changes in legislation to merge some of the permitting processes. The absence of such coordination can lead to duplication of certain procedures/requirements needed for various permits, or even contradictory requirements requested by different authorities, lengthening procedures unnecessarily.\(^{10}\)

Shortcomings in the public procurement tender process - Tenderers often encounter a number of mistakes in the initial tender, particularly when the investor is less experienced in preparing tenders. The subsequent corrections, changes and interpretations create require re-submission of documents, causing delays in the process.

Good practices:

Both road and rail transport authorities stated that consultations with municipalities for large-scale projects, including TEN-T, are often conducted very early in the process to avoid future problems. Where this has happened, the experience has been positive.

There is good cross-border cooperation at government level, with several bilateral meetings taking place with neighbouring Member States. In addition, the cross-border commission for water projects is in place to enable smoother permitting of cross-border projects.

\(^{10}\) As stated by the Czech water authority
GERMANY

AUTHORISATION FRAMEWORK FOR TEN-T PROJECTS

The German Federal Government is responsible for the construction and maintenance of the German Federal transport routes. Every 10-15 years, the Federal Ministry for Transport and Digital Infrastructure draws up a Federal Transport Route Plan (Bundesverkehrswegeplan - BVWP), a framework programme which sets out all planned transport infrastructure projects and their maintenance needs. The 2003 BVWP is currently live. The Federal Ministry establishes multi-annual plans, each covering a timespan of five years and setting out the corresponding investment needs, with the Federal Parliament deciding annually on the projects to be funded.

Six of the nine TEN-T core network corridors entail construction or maintenance works on German territory. TEN-T projects situated solely on German territory - purely national projects - are subject to the German Basic Law (Grundgesetz - GG), as well as federal law and the laws of the relevant federal state(s). They must undergo a unique, centralised permit procedure called the ‘planning approval procedure’ before works may start. This planning approval procedure is governed by the Administrative Procedure Act (VwVfG), and centres on the hearing procedure that ensures early and effective public participation, thereby increasing acceptance of the project and avoiding litigation.

The competent authority for the planning approval procedure for rail projects is the Federal Railway Agency, for road projects it is the regional government or the district council, while the Federal Waterways and Navigation Authority have competence for waterborne transport projects. The CA acts as a central administrative body or ‘one-stop-shop’.

The key steps of the planning approval procedure are:

- The project developer submits the plan to the hearing authority.
- The plan is made available to the public (for a period of one month), in order to engage with the parties concerned, obtain opinions from the responsible bodies and clarify environmental matters.
- Hearing:
  Those public authorities whose spheres of competence are affected by the project shall report their opinions within a period not exceeding three months, to be determined by the hearing authority.
- Eventual alteration of the plan (if required).
- Statement of the hearing authority.
- Planning approval decision.
- Eventual judicial review of the planning approval decision.

The average duration of the plan approval procedure for a typical project is about two years, with no fast-track scheme provided for by law. Some procedural steps are subject to legislative time limits.

Costs of the permitting procedure are incurred from fees for expert assessments and, for railway projects, the EBA charges the project developer EUR 10,000, on average, to examine the initial planning documents. To-date, only a few TEN-T projects have been authorised. This is partly due to the recent creation of the Connecting Europe Facility (CEF), a European Fund created to co-finance such projects, and partly due to the particular challenges faced by cross-border transport projects, such as additional requirements for administrative steps and financial resources, which create lengthy procedures. On average, a project is required to complete one single permitting procedure (Planfeststellungsverfahren) within a general overall timeframe of two years.

In 2013, the German Ministry of Transport appointed a Construction of Major Projects Reform Commission to identify shortcomings in the system and propose improvements in the delivery of major public sector infrastructure projects. The Reform Commission published their report in 2015,
calling for better project planning and the implementation of a ‘first plan, then build’ concept to ensure that construction does not start before the detailed design of the entire project, to provide information on costs and risks, and to consolidate the schedule for the implementation of the project into a single document. The Commission also recommended that the provision of funds be made contingent on the identification and evaluation of risks, together with a value-for-money assessment. For public procurement, the report suggested that tenders for construction works should not be granted exclusively on the basis of price but on qualitative assessment criteria, including risk management.

**Summary table: Permitting of transport projects in Germany**

<table>
<thead>
<tr>
<th>Procedures</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of procedures required for a typical project</td>
<td>One.</td>
</tr>
<tr>
<td>Procedures required for typical transport projects</td>
<td>Plan approval decision.</td>
</tr>
<tr>
<td>Number of permitting authorities</td>
<td>One12.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Duration of permitting</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average duration of procedures for a typical project</td>
<td>Two years.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cost of permitting</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of permitting procedure</td>
<td>Fees for expert assessments and, for railway projects, EBA consulting fees.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Streamlining measures</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>One-stop-shop?</td>
<td>Yes13.</td>
</tr>
<tr>
<td>Fast-track scheme?</td>
<td>No.</td>
</tr>
<tr>
<td>Legislative time limits for procedures</td>
<td>Some.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Public consultation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Effectiveness of public consultation procedures</td>
<td>Moderate.</td>
</tr>
</tbody>
</table>

**Summary table: Public procurement in Germany**

<table>
<thead>
<tr>
<th>Public procurement efficiency</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision speed</td>
<td>52 days14.</td>
</tr>
<tr>
<td>Emphasis on price in award criteria</td>
<td>4% of procedures are awarded solely on the basis of lowest cost15.</td>
</tr>
<tr>
<td>Routine screening for PPPs</td>
<td>No16.</td>
</tr>
<tr>
<td>Suspensive effect of appeals against award decisions</td>
<td>Yes, appeals against the tender award decision suspend the implementation of the project, however, an exemption from this general rule can be requested from the remedies body.</td>
</tr>
</tbody>
</table>

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12 District government or regional council.

13 Plan approval authority.

14 Taken from 2014 data in Table 5 from the EU Single Market Scoreboard.

15 Taken from 2014 data in Table 4 from the EU Single Market Scoreboard.

16 Taken from Table 3.3 below.
MAIN CHALLENGES AND GOOD PRACTICES

Main challenges:
- Balancing the benefits of a fast permitting procedure with the requirements of democracy (such as guarantees for effective public participation and judicial review).
- Balancing a dynamic regulatory framework with the need for detailed planning.
- Stakeholders and the literature agree that public consultation and public opposition to projects appears to create particularly long delays in Germany\footnote{EC SWD(2016) 75 final, Country Report Germany 2016, European Semester 2016 Country Report, 26 February 2016, p.48.}.

Good practices:
- Strong political commitment to effective interconnection of the transport infrastructure and integration with the TEN-T network. For example, in Frankfurt, shareholders of Regionaltangente-West Planungsgesellschaft (RTW), the agency that manages the construction of the railway link in the western area of the city, are all relevant public sector stakeholders, such as the City of Frankfurt and neighboring municipalities\footnote{Thirteen letters of support from counties, municipalities and transport companies were annexed to the response to the call for TEN-T proposals.}.
- The strong contribution of the RTW project to decision-making is facilitated by its governance structure, making it an example of good practice in the removal of non-monetary barriers to implementation of the TEN-T network.
- The substantial EUR 60 million investment by the federal state of Bavaria demonstrates good practice in implementing the TEN Priority Project 17, with the aim of improving intermodality between railway and air transport, thereby accelerating travel from Munich airport to the city centre.

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\textsuperscript{18} Thirteen letters of support from counties, municipalities and transport companies were annexed to the response to the call for TEN-T proposals.
HUNGARY

AUTHORISATION FRAMEWORK FOR TEN-T PROJECTS

TEN-T core network projects are subject to the same rules that govern the general permitting procedures for all transport infrastructure projects or investments. A series of permits are needed for a typical TEN-T core network project (see Table below). If the environmental permit (EIA) is not granted, however, no further permits can be obtained and the project is halted. The ‘main’ licensing authority must cooperate with the special competent authorities required by law and take their additional requirements and/or decisions into consideration. Each of the relevant permitting procedures follows the rules in Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (Admin. Act), and the main elements of each permitting procedure are usually dealt with by the ‘special’ or ‘specialist’ authorities designated by law. The body responsible for overall preparation and implementation of transport projects is the Deputy State Secretariat for Transport Operation Programmes within the Ministry of National Development. The National Infrastructure Development Co. is the main implementation body. All environmental permitting procedures are managed by the county Government Offices Department of Environment and Nature Protection, and the National Environment and Nature Protection Chief Inspectorate.

In addition to the general framework for permitting of transport infrastructure projects or investments, a special regime was introduced by Act LIII of 2006 on the Simplification and Acceleration of the Execution of Investments with National Priority (Priority Projects Act) for investments of national interest. The Priority Projects Act sets out those projects which can be classified as ‘investments of national priority’ if, inter alia, they are implemented from EU funding, or funding from the national budget, or have a total cost of at least HUF 90 million and establish at least 15 new jobs, or facilitate the realisation of environmental, research and development, education, healthcare and welfare goals. In 2015, new special procedural provisions were inserted into the Priority Projects Act and these are applicable to transport infrastructure projects designated investments of national interest by the Priority Transports Decree (Government Decree No. 345/2012. (XII. 6.) on the assignment of authorities and of administrative procedures of transport infrastructure investments with national importance). The TEN-T core network projects pre-identified through CEF Regulation in Hungary are also included in the Annexes of the Priority Transport Projects Decree, copper-fastening their priority status.

The new provisions of the Priority Projects Act (Article 6/E) require the project promoter to enter into negotiations with all authorities (including special authorities) concerned before initiating the environmental permitting procedure, in order to identify possible routes for the project. These negotiations should include possible obstacles to the permit and identify the aspects to be considered during planning and impact assessments, as well as any other circumstances that may hinder or prevent implementation of the project. The amendment of the Priority Projects Act in 2015 allows for the exclusion of the environmental permit as a prerequisite of the building permit for transport infrastructure projects of national importance. Although the possibility of parallel permitting procedures may accelerate the entire permitting procedure, when the building permit contradicts the environmental permit, it is the building permit which must be modified, leading to repeated procedures.

Summary table: Permitting of transport projects in Hungary

<table>
<thead>
<tr>
<th>Procedures</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of procedures required for a typical project</td>
<td>Between seven and nine.</td>
</tr>
<tr>
<td>Procedures required for typical</td>
<td>(Spatial planning permit).</td>
</tr>
</tbody>
</table>
transport projects | (SEA), EA / Environmental permit, Water permit, Building permit, Rural land permit, Forestry use permit, Archaeological excavation permit, Land acquisition.

Number of permitting authorities | Four or five.

Duration of permitting
Average duration of procedures for a typical project | Between one and four years.

Cost of permitting
Cost of permitting procedure | It varies from 1%-10% of the project cost, depending on the complexity of the project.

Streamlining measures
One-stop-shop? | Yes.
Fast-track scheme? | Yes.
Legislative time limits for procedures | Yes.

Public consultation
Effectiveness of public consultation procedures | Moderate.

Summary table: Public procurement in Hungary

Public procurement efficiency
Decision speed | 69 days\(^{19}\).
Emphasis on price in award criteria | 65% of contracts are awarded on the basis of price\(^ {20}\).
Routine screening for PPPs | No.
Suspensive effect of appeals against award decisions | No, for projects of national significance.

**MAIN CHALLENGES AND GOOD PRACTICES**

**Main challenges:**

- The ever-changing legal environment creates uncertainty and additional difficulties for authorities and project promoters.
- Despite the ‘one-stop-shop’ and a good level of coordination between authorities, the preparation of TEN-T projects normally requires seven to nine permitting procedures and involves a minimum of four authorities. The capacity of the authorities involved is not always adequate, creating difficulties in complying with the time limits prescribed by law.
- Usually, there are many comments from the public and municipalities during public consultations, lengthening the process and impacting on the overall duration of the project preparation.

\(^{19}\) Taken from 2014 data in Table 5 from the EU Single Market Scoreboard.

\(^{20}\) Taken from 2014 data in Table 4 from the EU Single Market Scoreboard.
Public procurement procedures are very long, in some cases taking longer than the design of the project and the permitting procedures. It is also very common for the unsuccessful tenderers to appeal the award decision following the tender. Public procurement for cross-border projects adds an additional level of complexity.

**Good practices:**

- There is a fast-track scheme in place for major projects or projects with a significant public benefit (No. 345/2012. (XII. 6.) Government Decree on the appointment of transport infrastructure investments with national importance).
- The permitting procedures provide adequate tools for speeding-up the timeframe, such as shorter time limits. These provisions do not prevent delays linked to deficiencies in the planning of the project and environmental assessments, however.
- The deadline for administrative expropriation proceedings is 45 days, and this deadline cannot be extended for projects of national importance.
- There is a dedicated department coordinating consultations for different procedures, which can accelerate the overall process.
ITALY

AUTHORISATION FRAMEWORK FOR TEN-T PROJECTS

In Italy, the authorisation framework for TEN-T projects is highly integrated, with a single permitting procedure encompassing all approvals to be obtained and leading to the final approval of the transport infrastructure project. The project is permitted as a whole, with no division into administrative and technical sections\textsuperscript{21}. The number of authorities involved in the procedure depends on the number of authorities affected and varies from project to project. The Ministry of Infrastructure and Economic Development coordinates the procedure and is responsible for consulting with all relevant authorities through the Conference of Services (Conferenza di Servizi), a forum gathering all competent authorities (local, regional national and sectoral) involved in the permit granting process. The majority of permitting and public procurement procedures have legal time limits, although, with no sanctions for authorities for delays, the duration of the procedure varies significantly from one project to another.

The main steps in the permitting procedure are:

1. EIA: This includes a non-mandatory scoping, a public consultation and the environmental technical evaluation. This first step also includes spatial planning and the declaration of public interest. The Ministry of Environment is the competent authority for EIAs for TEN-T projects, while the regions and provinces are also responsible for carrying out EIAs for smaller transport projects. The Ministry is supported by the EIA-SEA Technical Commission of the Ministry of Environment, a body composed of 50-60 independent experts appointed by the Ministry, which provides recommendations in view of the final approval. The Conference of Services is convened by the Ministry of Transport and each authority represented can provide an opinion. The whole procedure is intended to last 150 days.

2. Technical analysis: The technical department of the regional government or the Ministry is responsible for consulting with all relevant authorities and issuing the decision on the technical analysis.

3. Land acquisition: During this phase the project promoter negotiates the right to use privately-owned land and agrees compensation with the landowners. If an agreement is not reached, the land can be acquired through the expropriation procedure.

Some projects may benefit from a fast-track scheme (Legge Obiettivo) which avoid lengthy procedures. Projects which may avail of this scheme are those included on the ‘national strategic list’ established by the Interministerial Committee for Economic Planning (Comitato Interministeriale per la Programmazione Economica, CIPE). The fast-track scheme is based on a single procedure, which includes a requirement for the Ministry to carry out an EIA on the preliminary project within 60 days. The Conference of Services has a maximum of 90 days to provide an opinion. If they agree, the project is then subject to the final approval of the CIPE within 30 days of the closure of the Conference of Services. Critics question if all environmental impacts could be established and considered at this preliminary project stage. An infringement procedure was opened by the European Commission and subsequently closed when Italy provided guarantees that its EIA procedures were compliant with EU requirements.

Summary table: Permitting of transport projects in Italy

<table>
<thead>
<tr>
<th>Procedures</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of procedures required for</td>
<td>One.</td>
</tr>
</tbody>
</table>

a typical project

Only one permitting procedure (SEA-EIA decision), leading to the final approval of the project, and which includes all opinions/decisions to be obtained.

Procedures required for typical transport projects

The main permitting procedures required for a typical transport project include:
- Spatial planning.
- SEA-EIA (including nature protection and cultural heritage).
- Land acquisition.

Transport projects, depending on the type of project and the affected areas, may need additional decisions on:
- Water protection.
- Safety.

These permits are bundled together in a single authorisation framework.

Number of permitting authorities

Two permitting authorities: the Ministry of Economic Development, Transport and Infrastructure and the Ministry of Environment (for the EIA).

The entire permitting procedure is coordinated by the Ministry of Economic Development, Transport and Infrastructure, which is responsible for consulting all other relevant authorities. Approximately 10 authorities are involved in the permitting procedure.

Duration of permitting

Average duration of procedures for a typical project

On average, a project of over EUR 50 million will take up to 10 years and three months. This refers to a typical infrastructure project covering, but not specific to, transport.

Cost of permitting

Cost of permitting procedure

No average cost was provided by stakeholders. Costs vary according to the size and characteristics of the individual project.

Streamlining measures

One-stop-shop?

There is no authority designated as a one-stop-shop, although the Ministry of Economic Development, Transport and Infrastructure acts as a coordinating body.

Fast-track scheme?

Yes, for projects listed on the ‘national strategic list’.

Legislative time limits for procedures

There are legislative time limits, although no sanctions for authorities are set out in case of delays. In practice, these time limits are often disregarded.

Public consultation

Effectiveness of public consultation procedures

Moderate.

Summary table: Public procurement in Italy

Public procurement efficiency

Decision speed

183 days.

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23 Taken from 2014 data in Table 5 of the EU Single Market Scoreboard.
Emphasis on price in award criteria | 45% of contracts were awarded on price\(^24\).
--- | ---
Routine screening for PPPs | Yes.
Suspensive effect of appeals against award decision | Yes.

**MAIN CHALLENGES AND GOOD PRACTICES**

**Main challenges**

According to stakeholders, most of the issues arising in transport projects are linked to permitting rather than to public procurement and contracting:

- **Time limits** are a key issue. In Italy, the legislation sets out specific time limits for permitting procedures, however, the absence of any sanctions for delays makes these time limits difficult to enforce in any meaningful way. These time limits are often set for single steps in the permitting procedure, rather than for the entire procedure. The same problem occurs in procurement procedures, where time limits for award decisions are set out in the tender.

- The number of authorities involved in the permitting procedure can cause delays, given the complexity of coordinating all regional and local authorities and reaching agreement among all involved. It is not unusual for a project to be abandoned because no agreement has been reached. In addition, the complexity of the legal framework and legislative changes can make procedures more difficult for project promoters.

- Some of the authorities involved in the procedure are understaffed and do not have the financial resources to hire qualified staff, which can significantly delay assessments and effective decision-making. Stakeholders have also reported that political appointments in the EIA-SEA Technical Commission can create delays.

- Public opposition to projects can be a source of significant delay in project implementation, according to project promoters.

For public procurement, the anti-mafia legislation is claimed to slow the process, especially for cross-border projects for which the legislation needs to be streamlined.

**Suggestions for improvements:**

Stakeholders, in particular project promoters, have suggested improvements for permitting and procurement procedures in Italy:

- Introduce simplified procedures for projects that receive funding from the EU, whereby permitting procedures must respect the time limits set in order to avail of the EU funding.
- Introduce earlier consultation on the objectives of the project, along the lines of the model of the French public debate (*débat public*), which takes place after feasibility and opportunity studies have been conducted.
- Improve communication on projects to increase public acceptance and engagement with consultation processes.
- Conduct good archaeological explorations, in order to avoid interruptions due to unforeseen archaeological finds at implementation stage.
- Limit contractual modifications through better planning and anticipation of project requirements, thereby avoiding unnecessary delays and costs.

\(^{24}\) Taken from 2014 data in Table 4 of the EU Single Market Scoreboard.
**NEtherlands**

**Authorisation Framework for TEN-T Projects**

The Ministry of Infrastructure and Environment (I&M) is the national competent authority for infrastructure development in the Netherlands. The Minister of Infrastructure and Environment is responsible for all matters in the area of road infrastructure, shipping, spatial planning (environmental law (omgevingsrecht)) and water.

The two main legal acts regulating and streamlining major infrastructure projects are the Infrastructure Act (Tracewet, IA); and the Crisis and Recovery Act (Crisis en herstelwet, CRA). If a project does not fall within the scope of these two laws, then the default legislation applies. In those situations, the permitting procedure is regulated by the Law on general provisions on the environment (Wet algemene bepalingen omgevingsrecht)\(^\text{25}\), providing the ‘environmental permit’ (omgevingsvergunning).

The Infrastructure Act, which entered into force in 1993, oversees the main infrastructure for traffic and transport, and specifies how decisions are to be made on infrastructure projects\(^\text{26}\). Where the Infrastructure Act applies, there are two possible procedures:

- Comprehensive procedure (for main roads with more than two lanes).
- Regular procedure (for changes to an existing road).

Where the Infrastructure Act applies, the procedure is\(^\text{27}\):

- Start decision by the Ministry: This covers the area concerned, current spatial issues driving the project, the manner in which the public can be involved and the time frame in which the check list (verkenning) should be conducted.
- Checklist (verkenning) issued by the Ministry: This includes information on the area concerned, the scope of the problem, spatial issues and solutions. The public and relevant organisations are consulted – for example via public information meetings.
- Preferred option (voorkeursbeslissing): On the basis of the checklist report, the Minister (of Environment and Infrastructure) gives his/her position on the ‘preferred option’ for the project. At the same time, the EIA is made available to the public.
- Draft planning procedure order (ontwerp- tracebesluit): The preferred decision is further developed in the draft-infrastructure decision, which is available for consultation for a minimum period of six weeks, together with the environmental impact report.
- Planning procedure order (tracebesluit): The draft planning procedure order is amended following the public consultation. The Minister of Infrastructure and the Environment then issues the final planning procedure order. This is made available for consultation (ter inzage). Only those persons or organisations that provided an opinion on the draft decision can appeal to the Council of State (Raad van State).
- After a decision from the Council of State, the planning procedure order (tracebesluit) becomes irreversible.
- Following construction, an evaluation and completion test (evaluatie en opleveringstoets) is conducted.

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\(^{25}\) The core of the Wabo (that came into force in October 2010) is that various licences and permits (previously dealt with separately) are incorporated in a single environmental permit. There are 25 different licences and permits, such as the building permit under the Housing Act; environmental permit and notification under the Environmental Management Act; exemptions zoning plans and planning permission under the Spatial Planning Act; permit under the Nature Conservation Act; and exemption under the Flora and Fauna Act. Where it was previously necessary to carry out several permit requirements, this is now been replaced by the (integrated) environment permit.


The Crisis and Recovery Act (CRA) entered into force in March 2010. The scope of the CRA covers all major projects: it does not have blanket application to all infrastructure projects in the Netherlands but, rather, to certain categories of activities (e.g. construction of a new motorway), to (many) projects that have been named explicitly (e.g. windfarm Second Maasvlakte) and to areas that have appointed later by council in order (e.g. the redevelopment of the city harbours of Rotterdam)\textsuperscript{28}. Chapter 1 of the CRA contains exceptions to the provisions of the General Administrative Law Act (Algemene wet bestuursrecht). These exceptions are intended to reduce the number of appeals against spatial projects, thereby speeding up processes. These key ‘streamlining’ aspects include\textsuperscript{29}:

- Limitation of legal standing
  According to Article 4(1) of the CRA, municipalities do not have legal standing in national decisions. The objective of this limitation is to ensure a swift decision-making process.

- Time period for judgment
  According to Article 1(6)(4) of the CRA (Section 2.4 on appeal), the Administrative Court must make a ruling within six months.

- Appeal pro forma
  An appeal pro forma (an appeal where the grounds are given at a later stage) is not possible in cases that fall under the CRA (Article 1(6)(2e) CRA).

- Re-use of examinations
  Examinations (such as on soil, noise) do not need to be redone, i.e. they can be re-used, where a decision nullified by the court is then reinstated by the administrative body (Article 1(10) CRA).

Summary table: Permitting of transport projects in the Netherlands

| Procedures |  
|-----------------|--------------------------------------------------|
| Number of procedures required for a typical project | One permit (integrating a number of decisions/opinions). |
| Procedures required for typical transport projects | Planning Procedure Order under the Infrastructure Act or Environmental permit (omgevingsvergunning) |
| Number of permitting authorities | One coordinating authority appointed, responsible for consulting and coordinating with other authorities. |

| Duration of permitting |  
|---------------------|--------------------------------------------------|
| Average duration of procedures for a typical project | On average, six years from the start of the EIA and the final Routing Decision\textsuperscript{30}. |

| Cost of permitting |  
|--------------------|--------------------------------------------------|
| Cost of permitting procedure | For rail projects, the cost of the permitting procedure is around 2% of the total project cost, but can be higher depending on the characteristics of the project. |

| Streamlining measures |  
|----------------------|--------------------------------------------------|
| One-stop-shop? | Yes (although the term one-stop shop is not used, a coordinating authority is appointed per sector (rail/road/water). |
| Fast-track scheme? | Yes. |
| Legislative time limits for procedures | Yes (for specific parts of the procedures). |

\textsuperscript{28} Hobma, F. Case Study – the Netherlands, p. 24.
\textsuperscript{29} Progress report of the Minister of Infrastructure and Environment (2014-2015) on the CRA, p. 75.
Effectiveness of public consultation procedures | High.

Summary table: Public procurement in the Netherlands

<table>
<thead>
<tr>
<th>Public procurement efficiency</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision speed</td>
<td>64(^{31}).</td>
</tr>
<tr>
<td>Emphasis on price in award criteria</td>
<td>10% given to price in the award criteria(^{32}).</td>
</tr>
<tr>
<td>Routine screening for PPPs</td>
<td>Yes (depending on the type of project).</td>
</tr>
<tr>
<td>Suspensive effect of appeals against award decision</td>
<td>Yes.</td>
</tr>
</tbody>
</table>

MAIN CHALLENGES AND GOOD PRACTICES

Main challenges:

- **Procurement procedure**
  
  An evaluation of the Procurement Act 2012\(^{33}\) (required by the Act itself) concluded that that there was room for improvement in terms of the application of certain provisions of the law, although the content of the law itself needed no change. The application of the criterion ‘most economically advantageous tender’ (economisch meest voordelige inschrijving) and the inclusion of social conditions in procurement were particularly noted as areas that should be improved.

Good practices:

- **Coordination and bundling of permits**
  
  Recent legislation has aimed to streamline the permitting procedures by integrating all permits into one procedure and appointing one coordinating authority. Major infrastructure projects that took place before these laws came into force had to obtain several permits and did not benefit from any streamlining and coordination processes.

- **Intensive and early stakeholder consultation**
  
  A number of consultations with the public and other stakeholders, such as local authorities and municipalities, take place before the start of the permitting procedure. This focus on early consultation gives the project developer the opportunity to demonstrate the need for the project, increasing its acceptance by the public and local authorities\(^{34}\).

- **Time limits for judicial decisions reduced to six months (Article 1(6)(4) CRA)**
  
  A limitation for judicial decisions to six months (Article 1(6)(4) CRA) is useful in terms of planning, as well as creating legal certainty\(^{35}\).

- **PPP**
  
  Public awareness and acceptance of PPP projects has increased over the past years. The current political discussion focuses on stimulating and facilitating PPP rather than questioning its legitimacy\(^{36}\).

\(^{31}\) Taken from 2014 data in Table 5 of the EU Single Market Scoreboard.

\(^{32}\) Taken from 2014 data in Table 4 of the EU Single Market Scoreboard.


\(^{35}\) Ibid.
Treaty to establish agreements in transboundary project
For the Gent-Terneuzen project, the Dutch Minister of Infrastructure and Environment and the Flemish Minister of Mobility and Public Works signed the ‘Treaty for the Establishment of the New Lock’. This treaty covers the political, legal and financial agreements of the project. More specifically, it covers the establishment, infrastructural management and maintenance of the lock, the procedures for any possible adjustments to the canal, the applicable law, and consultation and dispute settlement. This also includes provisions on the procurement procedure. The treaty makes the project less vulnerable to political change and ensures continuity in the development of the project.

Early contractor involvement
A recent study (2012) concluded that conducting the procurement procedure in parallel with the permitting procedure added value in terms of time gains, improved project control and more innovative solutions. Early contractor involvement was not identified in any of the projects studied for this report.

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36 CMS. PPP in Europe (2010).
AUTHORISATION FRAMEWORK FOR TEN-T PROJECTS

The general legislative framework for authorisation of infrastructure investment projects in Poland is regulated by the Spatial Development Law, Construction Law, EIA law and Code of Administrative Procedure. In principle, the permitting procedure can be two-fold depending on whether or not there is a valid land use plan. Where there is no land use plan, the procedure consists of three stages: a decision on environmental conditions (for projects which fall under the EIA legislation), a location decision and a construction permit. Where there is a land use plan in place, the location decision is not required.

Special legislation was adopted in 2003, streamlining permitting procedures and reducing the number of authorisations needed for certain investments in the road and railway sectors. The procedure for roads has two steps: 1) obtaining the decision on environmental conditions and 2) obtaining the decision on implementation of the road project (ZRID, zezwolenie na realizację inwestycji drogowej). For railways, there are three main steps: 1) obtaining the decision on environmental conditions, 2) obtaining the decision on location of the railway project and 3) obtaining a construction permit. In addition, a water permit may be needed for investments with significant impact on water, or which are implemented in flood-prone areas. The streamlining of investments in the road and railway sectors stems largely from the expropriation implications related to decisions on the location of road and rail projects.

Land and real estate covered by the decision of the Voivode on implementation of road or railway projects automatically become the property of the State Treasury. There is no one-stop-shop in Poland which could further facilitate the permitting procedures. The environmental decision is a standalone one which remains valid for up to 10 years and provides for access to justice. The timeframe between submission of a request to a decision can be up to one month, or two months in more complicated cases (Article 35 of the Code of Administrative Procedure). The procedure is extended in cases when an opinion is required from other authorities, or if additional documentation is requested from project promoters. Stakeholders consulted for this study indicated that the procedure of obtaining environmental decisions for road and railway infrastructure projects can often take more than a year.

The main authorities involved for road and railway investments are regional authorities (Voivode and RDOŚ), while for waterborne projects starosta and municipal authorities are involved. Some water-related projects do not need a construction permit and projects can be implemented under the notification procedure (tacit agreement). TEN-T core network projects are unlikely to fall into this category, however. Two state-owned project promoters (GDDKiA and PKP PLK) manage large contracts implementing strategic public investments in the road and rail sector, respectively.

Despite the improvements to roads and railways, project preparation procedures in these sectors (including procurement) take on average about two-and-a half years (while other investments, including waterborne sector TEN-T projects, can take about four years).

38 Information obtained from the representatives of GDDKiA and PLK.
39 Information about road and rail investments was obtained from the stakeholders (GDDKiA and PLK, respectively). The interviewees indicated that for road and railway projects, the EIA procedure, together with preparation of the EIA report, may take over a year, especially in cases where additional documentation is requested and the clock is stopped for the administrative procedure. ZRID (the decision on location of the railway project) can be obtained quickly, in principle within 30 days (plus two additional months for possible appeals). Procurement procedures take typically about a year (according to the interviewed representative of GDDKiA, the usual schedule is set at 12 months plus two months for eventual appeals). For investments in the waterborne sector, the permitting procedures may take longer, as this sector is covered by the general procedures. In this case, land acquisition may turn out to be a bottleneck. According to the Roland Berger study on permitting
### Summary table: Permitting of transport projects in Poland

<table>
<thead>
<tr>
<th>Procedures</th>
<th>Number of procedures required for a typical project</th>
<th>Procedures required for typical transport projects</th>
<th>Number of permitting authorities</th>
<th>Duration of permitting</th>
<th>Average duration of procedures for a typical project</th>
</tr>
</thead>
</table>
| Roads: Two to three. Railways: Three to four. Other modes: Up to seven. | Roads: Environmental decision; Decision on implementation of road project; Water permit when water bodies are affected, if relevant. Railways: Environmental decision; Decision on location of railway project; Construction permit; Water permit, if relevant. Infrastructure projects in sectors other than roads and railways: Varies according to project type and location (e.g. a decision on changing the designation of agricultural or forestry land, or a permit for removing trees, or expropriation decisions may not necessarily be needed for each project). | Two to three (RDOŚ and a Voivode, plus a Marshall of the Voivodeship or starosta of Poviat for water permits), but this can reach 10 when opinion-giving authorities are included. | For the road sector: 12-14 months for the environmental decision (including preparation of the EIA report and public consultations). Maximum three months for the decision on implementation of a road project. Two months for the water permit. Total about one-and-a-half years. For the railway sector: 9-12 months for the environmental decision (including preparation of the EIA report and public consultations; Six to eight months for decisions where no EIA report is required). Three months for the location decision. Two months for the water permit. Two months for the construction permit. Total about one-and-a-half years. For other sectors: Up to two years for the environmental decision (including procedures, the average duration of these procedures in Poland (for those energy projects which also fall under regular procedures) equals approximately four years.  
For other sectors (e.g. waterborne), the following permits/decisions are typically required: (1) decision on changing the designation of agricultural and forestry land (either in the form of a change in the municipal spatial management plan or in the form of a decision on building conditions issued by local authorities); (2) decision excluding land from agricultural or forestry production (if the project crosses such land); (3) location decision for an investment of public interest must be obtained in case of lack of a municipal plan of spatial management; (4) construction permit; (5) water permit; (6) permit to remove trees/shrubs; (7) expropriation decisions. Furthermore, additional opinions of various authorities such as port authorities or national park authorities may be required, depending on the character and location of the investment.  
The administrative procedure which leads to issuing of the environmental permit is set out in the legislation at a duration of one month and, in particularly difficult cases, two months. The procedure is suspended for the time when the project promoter is requested to submit specific documentation, in particular the EIA report and public consultations. The EIA decision can be obtained in four to six months. However, if the EIA procedure is lengthy, it is often because the developer started to prepare the EIA report after applying for the environmental decision, or because the procedure is suspended by the authorities due to requests for further information from the applicant.
preparation of the EIA report and public consultations). Three months for the location decision. Two months for the water permit. Two months for the construction permit. Other decisions (specifically, expropriation) may take another two or three months but litigation may increase this duration. Total about three-four years. In addition, procurement procedures last about one year.

Cost of permitting

| Cost of permitting procedure | The managers of roads and railways, being state-owned units, are exempt from the State Treasury fees that apply to private entities during permitting procedures. EIA procedure, including preparation of an EIA report, permitting and compensatory measures may imply a cost of 7-15% of overall investment spend\(^{42}\). |

Streamlining measures

| One-stop-shop? | No (except for the EIA procedure, which integrates all environmental aspects into a single environmental decision). |
| Fast-track scheme? | Yes – for road and railway projects. |
| Legislative time limits for procedures | Yes, but procedures may be suspended for procedural reasons (e.g. if an opinion is sought from a consulted authority, or if the project promoter is asked to provide additional evidence). |

Public consultation

| Effectiveness of public consultation procedures | Moderate. |

Summary table: Public procurement in Poland

<table>
<thead>
<tr>
<th>Public procurement efficiency</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision speed</td>
<td>43 days(^{43}).</td>
</tr>
<tr>
<td>Emphasis on price in award criteria</td>
<td>83%(^{44}) of contracts are awarded on the basis of price.</td>
</tr>
<tr>
<td>Routine screening for PPPs</td>
<td>No, currently no PPP planned for TEN-T projects.</td>
</tr>
<tr>
<td>Suspensive effect of appeals against award decisions</td>
<td>Yes.</td>
</tr>
</tbody>
</table>

MAIN CHALLENGES AND GOOD PRACTICES

Main challenges

Some challenges in project implementation have been identified:

- Project promoters claim that limited financial resources allow for the implementation of projects fulfilling only basic needs, while more comprehensive and innovative investments have to be postponed.
- Project promoters also point to insufficient human resources in design services in Poland.


\(^{43}\) Taken from 2014 data in Table 5 from the EU Single Market Scoreboard.

\(^{44}\) Taken from 2014 data in Table 4 from the EU Single Market Scoreboard.
especially for railways, as well as insufficient expertise on EU certification.

- While contractors’ proposals are allowed to indicate other qualified firms who may subcontract certain parts of the contract, these firms are not always subsequently used, and no mechanism exists to ensure their use.
- Late integration of environmental aspects in the preparation of projects may lead to problems and delays when the preparation of the projects is already quite advanced.
- There is a lack of consistency among regional institutions (including RDOŚ and Voivodeship administration) in interpreting the legal requirements. Differences in approach can create delays.
- For other sectors’ investments, expropriation procedures are the main source of delays. Appeals against decisions on contract awards can also cause delays, especially if filed with the court (second instance).
- The legal environment in Poland is subject to frequent changes, with project promoters particularly pointing to the Act on Public Procurement as the act most frequently amended. They also highlight frequent changes in technical requirements and standards, including standards set in EU legislation.

**Good practices**

- Unnecessary delays are avoided, in particular in relation to expropriation of land through the adoption of special legislation for the road and railway sectors. The possibility to assign the status of immediate execution for road and railway investments, as well as the opportunity to increase the amount of compensation for the owners of real estate who make them available within 30 days of receiving the final decision on implementation of the investments, are particularly effective.
- Integration of environmental aspects from the beginning of preparation of projects, in particular for projects with an expected impact on Natura 2000 sites.
- Project promoters consider long-term sectoral strategies useful in providing stability where there is a lack of legal certainty. They also often prepare internal procedures and guidelines which help to alleviate the problem to a certain extent.
ROMANIA

AUTHORISATION FRAMEWORK FOR TEN-T PROJECTS

There is no one-stop-shop for TEN-T projects in Romania. Instead, responsibilities are shared between the Ministry of Transportation, the Ministry of European Funds and other public authorities. Several authorities are involved in the approval of a typical transport project: the Ministry of Transportation, the environmental authorities at national or local level, Forestry/Agriculture Directorates, county council(s), and one or several municipalities. This number can be increased if there are specific conditions for that project (e.g. safety, special location, etc.).

In the transport infrastructure sector, project promoters are usually public organisations, such as Romanian Railways, National Company for Highways and National Roads. These are granted funds, either of national or EU origin, to design and execute projects. Throughout the project, much of the design and execution is subcontracted.

The legal permitting framework for TEN-T projects requires several permits, depending on the specifics of the project. The construction permit is the final permit granted in the permitting process, and is granted only after all other permits have previously been granted by the competent institutions.

The following procedures are mandatory for the vast majority of TEN-T projects:

- EIA procedure: Environmental agreement is required for the development of projects with a significant impact on the environment.
- Expropriation procedure: This is necessary whenever project promoters do not own the land on which the infrastructure works are planned.
- Local administration endorsement: Where the county council is the competent authority to issue the building permit and the urbanism certificate, the mayor of the affected city/commune must approve the project.
- Utilities endorsements: The approval of the utilities’ suppliers (water, sewer, electricity, gas, heating, telecommunications, sanitation, urban transportation, etc.) must be obtained if a TEN-T project might affect their infrastructure.
- Agriculture and/or forestry endorsements: These are necessary if land is to be removed from the agriculture/forestry circuit and re-zoned for another purpose (road or railway, etc.).
- Construction authorisation: The building permit shall be issued after the project promoter has submitted a standard application accompanied by (i) the urbanism certificate; (ii) proof of securing the necessary land; (iii) the permits, agreements and opinion/administrative document of the competent authority for environmental protection, the technical reports, the expert studies and other documents required under the urbanism certificate; and (iv) the proof of payment of fees for issuing the building permit.
- Public procurement: Tendering occurs each time the project promoter wishes to procure goods, services and works in the implementation of the TEN-T projects. This includes subcontracting design services and construction works.

Permits for water protection, nature protection, spatial planning and cultural heritage are often required, and, depending on the specific project, other permits may also apply.

National law provides for the concept of ‘project of national interest’, which corresponds to the highest national significance possible and applies to almost all TEN-T projects. Projects of national interest benefit from a shortened expropriation procedure to secure a right over the land, and are also exempt from some administrative fees. The shortened terms/waived fees are not systematically applied in practice and do not, therefore, speed up the entire permitting process. The time needed to secure all permits for transport infrastructure projects is at least two years but, in practice, most projects need a
longer period of time to finalise the permitting stage.

A new legislative document (Emergency Government Ordinance no. 7/2016) also attempts to shorten the time allocated to permitting. The law applies to all large-scale transport infrastructure projects and aims to speed up the procedures on land planning, land expropriation, removal of land from the agriculture/forestry circuit, registration of expropriated land in the Land Registry, as well as to prolong the validity of all permits until the end of the works.

Summary table: Permitting transport projects in Romania

<table>
<thead>
<tr>
<th>Procedures</th>
<th>Number of procedures required for a typical project</th>
<th>Six or seven, but this can increase depending on the project.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Procedures required for typical transport projects</td>
<td>The following permits are mandatory for the vast majority of TEN-T projects: EIA permit, expropriation decision, construction authorisation, local administration endorsement, utilities endorsements, agriculture and/or forestry endorsements. Permits on water protection, nature protection, spatial planning and cultural heritage often apply. Depending on the specific project, other permits may also apply.</td>
</tr>
<tr>
<td></td>
<td>Number of permitting authorities</td>
<td>Six or seven, but this can increase depending on the specific project.</td>
</tr>
</tbody>
</table>

Summary table: Public procurement in Romania

<table>
<thead>
<tr>
<th>Public procurement efficiency</th>
<th>Decision speed</th>
<th>51 days45.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Emphasis on price in award criteria</td>
<td>90% weighting on price in the award criteria46.</td>
</tr>
<tr>
<td></td>
<td>Routine screening for PPPs</td>
<td>No.</td>
</tr>
<tr>
<td></td>
<td>Suspensive effect of appeals against award decision</td>
<td>No, launching an appeal does not automatically suspend the procurement procedure. Nevertheless, because in the majority of cases continuing the procedure would undermine the legal efficiency of an appeal, the appealer can also request the</td>
</tr>
</tbody>
</table>

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45 Taken from 2014 data in Table 5 from the EU Single Market Scoreboard.
46 Taken from 2014 data in Table 4 from the EU Single Market Scoreboard.
MAIN CHALLENGES AND GOOD PRACTICES

Main challenges

Several of the authorities interviewed stated that many of the difficulties arising in the preparation and implementation of transport projects derive from the publicly declared objective to shorten the time dedicated to implementing such projects. This objective is an outcome of the public and political pressure to realise large infrastructure projects. In the absence of well-thought out shortening procedures, this haste has negative impacts, particularly where a plan was initially insufficiently documented and needs to be changed frequently. If the changes are significant, this requires the permitting process to be re-started. Project promoters have identified several issues that hinder the efficiency of permitting:

- Difficulties in understanding and putting into practice the principles laid down in complex legislation (especially related to environmental permitting and public procurement).
- Complexity of the background documentation submitted for permitting might represent an obstacle, as project promoters often incorrectly view this as a mere formality.
- Lack of standard documentation for permitting.
- Lack of available prior studies and data when drafting background documentation for permitting procedures presents a significant challenge.
- Confusion about the background documents in the preparation stage - both a feasibility study and technical project plan are required as separate documents during project preparation. As expropriations are made based on the feasibility study, additional expropriations may be necessary where the content of the technical plan differs from the feasibility study.
- Delays in the expropriations procedure, in particular, serious difficulties in identifying land owners.
- Time limits for issuing permits are not always respected, despite Law no. 255/2010 reducing the time limits for a number of permitting procedures.

In the public procurement process:

- The main delays occur as a result of appeals against the award decision of the contracting authority, or appeals against the terms of reference. This can block the public procurement procedure for up to one year.
- Preparation of the award documentation can also be lengthy and time consuming, especially, if it involves external collaboration, including tendering for consultancy services.
- Evaluation of received offers can be very lengthy, as the procedures require submission of numerous and complex documents by the tenderers, the evaluation of which is time-consuming.
- A very rigid approach towards the terms of reference initially defined in the tender documentation leads to later difficulties in contract implementation.

Additional delays stem from:

- There is no updated map of utilities in Romania, causing delays in receiving the necessary permits from the utilities companies. Further delays may be caused by the discovery of cables, pipelines etc. in unexpected places during construction works.
- Neither a cadastre nor a GIS exists for the whole territory of Romania.

Lack of resources, especially human resources, both at the level of the project promoters and the permitting authorities, hampers the preparation of TEN-T projects.

Cooperation between project promoters and the Romanian authority dealing with management of
EU funds is not effective. The main issues raised were the lack of clear guidance for beneficiaries, procedures published with delays, rigid vision and lack of engagement with the issues faced by promoters. Given that the vast majority of TEN-T projects are EU-funded, uncoordinated communication between the Ministry of European Funds and the Transport Management Authority creates delays which then impact on the permitting procedures. This is especially relevant in view of the decision-making power of the Management Authority, making it impossible for project promoters to act without their prior agreement in many instances. Delays in obtaining those agreements occur regularly and are reflected in the low standard of the project preparation / implementation.

Good practices

- Law no. 255/2010 regarding expropriation for public utility causes, necessary to reach objectives of national, county and local interest, can be considered a good practice, as it simplified expropriations procedures, shortened some permitting timelines, and waived some of the permitting costs. It also imposed penalties on those public authorities which delay the permitting process unnecessarily.

- A new fast-track scheme (Emergency Government Ordinance no. 7/2016) which attempts to shorten the time allocated to permitting, and which waives the related permitting fees, was adopted in March 2016.
SPAIN

AUTHORISATION FRAMEWORK FOR TEN-T PROJECTS

The general authorisation framework for TEN-T projects has its basis in the Spanish Constitution (CE). Article 149(1) CE refers to those policies for which the Central State has exclusive competence, including the general framework for the planning of economic activities (149(1)(13)), harbours and airports of general interest (149(1)(20)), rail and terrestrial transport infrastructure when it crosses the territory of two or more Autonomous Regions (149(1)(21)), public works of general interest and those that affect more than one Autonomous Region (149(1)(24)), and the basic legal framework of environmental protection.

A number of laws have been adopted that regulate all modes of transport, whether terrestrial, aerial or maritime. The framework includes the following laws and regulations: Terrestrial Transport Act (Law 16/1987); Road Act (Law 37/2015); Rail Act (Law 38/2015); Maritime Transport Act (RDL 2/2011); and the Air Navigation Act (Law 48/1960), as well as their associated regulations and ordinances. All of these Acts share a fundamental feature, in that for transportation works of general interest, the State has exclusive competence in the general framework and execution of those projects with a national or international dimension (which go beyond the territory of one Autonomous Region). Spain’s legal framework for transport infrastructure does not distinguish between core and global projects (as defined in Regulation 1315/2013) and other projects. That means that it is possible for regional authorities to be competent for some of those larger-scale projects whenever they fall entirely within their territory.

Another key piece of legislation that applies to all TEN-T projects is Law 21/2013, the EIA Act, which regulates both SEA and EIA and to which all TEN-T projects must be subjected. This EIA Act takes also into consideration other specific environmental assessments, e.g. the Birds and Habitats Directives or the Water Framework Directive. Finally, RD 3/2011, the Public Procurement Act, regulates the contractual relationship between public authorities acting as project promoters and private participants undertaking the construction works.

From a policy perspective, the Infrastructure, Transport and Housing Plan (PITVI) is the main instrument laying down the policy framework for the development of TEN-T projects. The current PITVI will remain in operation until 2024.

Summary table: Permitting of transport projects in Spain

<table>
<thead>
<tr>
<th>Procedures</th>
<th>Number of procedures required for a typical project: Three.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures required for typical transport projects</td>
<td>(1) Environmental Impact Declaration.</td>
</tr>
<tr>
<td></td>
<td>(2) Declaration of Public Interest.</td>
</tr>
<tr>
<td></td>
<td>(3) Construction permit for the specific transport project.</td>
</tr>
<tr>
<td></td>
<td>(4) Public procurement procedures to grant the construction of the project to private developers.</td>
</tr>
<tr>
<td>Number of permitting authorities</td>
<td>MAGRAMA, Ministry of Public Works (and authorities and public companies under their remit). In addition, within the SEA/EIA procedures, Autonomous Regions and local authorities are competent to issue SEA/EIA statements.</td>
</tr>
<tr>
<td>Duration of permitting</td>
<td>Average duration of procedures for a typical project: No information provided by stakeholders interviewed.</td>
</tr>
<tr>
<td>Cost of permitting</td>
<td>Cost of permitting procedure</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>Streamlining measures</td>
<td></td>
</tr>
<tr>
<td>One-stop-shop?</td>
<td>Yes.</td>
</tr>
<tr>
<td>Fast-track scheme?</td>
<td>Yes.</td>
</tr>
<tr>
<td>Legislative time limits for procedures</td>
<td>Yes.</td>
</tr>
<tr>
<td>Public consultation</td>
<td></td>
</tr>
<tr>
<td>Effectiveness of public consultation procedures</td>
<td>High.</td>
</tr>
</tbody>
</table>

Summary table: Public procurement in Spain

<table>
<thead>
<tr>
<th>Public procurement efficiency</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision speed</td>
<td>107 days47.</td>
<td></td>
</tr>
<tr>
<td>Emphasis on price in award criteria</td>
<td>24% weighting on price in the award criteria48.</td>
<td></td>
</tr>
<tr>
<td>Routine screening for PPPs</td>
<td>Yes.</td>
<td></td>
</tr>
<tr>
<td>Suspensive effect of appeals against award decision</td>
<td>Yes.</td>
<td></td>
</tr>
</tbody>
</table>

MAIN CHALLENGES AND GOOD PRACTICES

Main Challenges

- Spain has seen an enormous number of transportation projects built in recent years, suggesting that unnecessary delays are not an issue. If anything, there is some evidence of excessive speed in the awarding procedure, implying a lack of transparency and competition in the awarding procedures.
- Possible additional costs stem from the project design phase and the feasibility studies conducted by the project promoter. As they are often carried out very rapidly, they frequently need to be modified ex-post, raising project costs above those budgeted in the contract.
- The complexity of the legal and administrative framework effectively dissuades foreign participants from becoming involved in the public procurement procedure. Increased time periods for public procurement, in particular for requests for technical criteria for participation, have been proposed in order to facilitate participation of foreign investors in public procurement procedures.
- Legal uncertainty may have an impact on the public procurement procedure, since all of the other stages in the development of the project are controlled by public authorities. Legal uncertainty stems from:
  - The possibility that the competent authority may modify the project ex-post, thereby changing the economic viability of the project and transferring the risk to the builder.
  - The infrequent use of the ‘competitive dialogue’, despite its potential advantages for complex projects. The complexity has to do with the following issues: (i) high degree of discretion granted to the competent authority in selecting the participants; (ii) complexity inherent in the project makes the ‘dialogue’ complex; (iii) the costs carried by the participant in this dialogue can be substantial and, unless compensated by the competent authority, represent a disincentive to engage; (iv) different solutions to complex projects are proposed by different participants, which may lead the competent

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47 Taken from 2014 data in Table 5 from the EU Single Market Scoreboard.
48 Taken from 2014 data in Table 4 from the EU Single Market Scoreboard.
authority to choose a mix of solutions, which the participants must then implement. This is another disincentive for participants to work for the ‘best’ solution, as it does not necessarily increase their chances of securing the contract.

- Uncertainty related to project finance, particularly in the context of a financial and economic crisis, coupled with over-capacity in the transport system.
- Other risks in the implementation of the project.

Other, more general challenges include:

- A transport system, which is heavily weighted towards road transport.
- Lack of sufficient intermodality.
- Insufficient coordination between competent authorities in relation to transport logistics.
- Large body of legislation on the transport of goods, but far less on transport logistics.
- Administrative practices that are too rigid for all modes of transport and do not sufficiently promote private initiative.

**Good practices**

- The PITVI has sought to change the approach of transport infrastructure policy and law, moving away from the promotion of new infrastructure and more towards the promotion of effective and efficient use and intermodality. This has meant focusing on promoting agreements to connect railway infrastructure to ports, and promoting the adoption of legislation on logistics, including the creation of a logistics unit in the Ministry of Public Works and Transports (Ministerio de Fomento), as well as a Logistics Forum where public authorities meet private operators to adapt the legal framework to the needs and realities of the logistics sector.
- In the framework of the European Semester process, the EU has recommended that Spain introduce mechanisms to ensure better strategic planning of transport infrastructure. Following this recommendation, an advisory Council for infrastructure (a body issuing non-binding opinions on major future infrastructure projects) was established in July 2015. While this mechanism could be stronger, it nonetheless represents a step in the right direction.
- From a purely legal perspective, sectoral legislation for all modes of transport fully references the EIA Act, and project approval procedures are fully coordinated with the EIA.
UNITED KINGDOM

AUTHORISATION FRAMEWORK FOR TEN-T PROJECTS

Authorisation for major transport projects in the UK centres on spatial planning, with Development Consent Orders – a form of secondary legislation – providing the authorisation for development to commence. Although there are differences across the UK, due to devolution of responsibilities to national parliaments / assemblies, major transport projects place an emphasis on streamlining processes, with the potential to include several consents within the Order permitting development. These ‘bundled’ consents can include associated development (consent for subordinate developments required as part of the overall development), compulsory acquisition of private property, and more site-specific consents, such as changes to hedgerows and trees.

Project promoters for large projects tend to be public or semi-public authorities and are thus subject to public procurement legislation. For major transport projects, the competent authority in England and Wales is usually the Department of Transport or Devolved Ministers. In Scotland, national developments are subject to approval by the Scottish Parliament, with Scottish Ministers approve major developments. The Department of Infrastructure is the planning authority for infrastructure developments in Northern Ireland.

A key feature of the system is its front-loading, with the majority of the promoter’s duties must be completed before the application for planning permission, as they are considered by the competent authority in the planning application decision. Once the application has been made, the promoter’s involvement in the planning decision should be only to clarify information and provide further evidence, if required. Although the promoter is encouraged to consult widely in the development of the project plan and application documents, it is the competent authority that is required to carry out consultation with various statutory bodies ahead of the planning decision. In addition to consultation responses, national and local development plans guide the competent authority in its decision-making process.

Aside from spatial planning, most large transport projects will require the development of an Environmental Statement, which assesses the environmental implications of a transport project. An EIA can potentially take several years to complete. An Environmental Statement, if required, should accompany the planning application. Where the project is likely to affect the status of water bodies, the requirements of the Water Framework Directive must also be taken into account in the permitting procedure.

For project with potential impacts on a site protected by conservation legislation, a Habitats Regulation Assessment (HRA) must be completed. Again, this should be done ahead of the planning application and is a lengthy process, although much of the information needed overlaps with that for the EIA. Projects that significantly impact protected sites can only be granted planning permission if granted by the Secretary of State for Transport and only then if there are imperative reasons of overriding public interest.

Other additional procedures not included within the Development Consent Order include licensing for European Protected Species under the Habitats Directive, which is dealt with only after the development consent has been granted, the development of a flood risk report and hazardous substances consent.
Summary table: Permitting of transport projects in the UK

<table>
<thead>
<tr>
<th>Procedures</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of procedures required for a typical project</td>
<td>One 49.</td>
</tr>
<tr>
<td>Procedures required for typical transport projects</td>
<td>Development Consent Order (or equivalent), which includes a number of other permits as prerequisites.</td>
</tr>
<tr>
<td>Number of permitting authorities</td>
<td>One 50.</td>
</tr>
</tbody>
</table>

Duration of permitting

| Average duration of procedures for a typical project | Two years, not including significant pre-application period which can be between seven months and four-and-a-half years. |

Cost of permitting

| Cost of permitting procedure | No information available. |

Streamlining measures

| One-stop-shop? | Yes, except in Scotland. |
| Fast-track scheme? | Yes, for nationally significant infrastructure projects (or equivalent). |
| Legislative time limits for procedures | Yes. |

Public consultation

| Effectiveness of public consultation procedures | High. |

Summary table: Public procurement

<table>
<thead>
<tr>
<th>Public procurement efficiency</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision speed</td>
<td>84 days (2014) 51.</td>
</tr>
<tr>
<td>Emphasis on price in award criteria</td>
<td>7% (2014) 52.</td>
</tr>
<tr>
<td>Routine screening for PPPs</td>
<td>No.</td>
</tr>
<tr>
<td>Suspensive effect of appeals against award decision</td>
<td>Yes.</td>
</tr>
</tbody>
</table>

MAIN CHALLENGES AND GOOD PRACTICES

Main challenges

The main challenges identified relate to the time needed for pre-application procedures, the delays that can result from the public consultation process, and the costs associated with employing external experts to carry out some of the aspects of the planning approval process.

Interviewees pointed to the burdensome nature of EIA and HRA in terms of the time required to fulfill legislative requirements. The potential for EIA to take several years means that projects face a

49 Protected species licences must be obtained after the development consent is granted. Where protected species licences are required, more than one permit is needed.
50 Protected species licences will be delivered by Natural England, so two permitting authorities will be involved.
51 Taken from data in the EU Single Market Scoreboard
52 Ibid.
substantial amount of time in pre-application planning, irrespective of the public benefit that may result. Despite this time lag, EIA and HRA are generally built into the project timelines of the promoter, reducing their impact on transport projects.

Substantial delays are noted in relation to public consultation, where significant objections are often lodged by the public, either in relation to the project itself or, more regularly, in relation to compulsory acquisition. Where objections cannot be resolved, a public inquiry may be held by the competent authority to assess the severity of the complaints, a process which can significantly delay the project. Although interviewees cited examples where developments were ‘held to ransom’ by land owners objecting to the valuation of land subject to compulsory purchase, it was acknowledged that developers should work with stakeholders with legitimate grievances, where, for example, the benefits of development would not be felt by the affected parties.

Interviewees acknowledged the need to employ external services to complete several of the requirements faced by promoters, for example in relation to EIA and the development of draft Development Consent Orders. Although this can be costly, it is unavoidable, given the technical nature of some tasks.

**Good practices**

Good practices identified include the planning of infrastructure projects at national level, the streamlining of processes, the one-stop shop, public consultation and public procurement.

Investments in the areas of transport, energy, flood defences, communications, science and research, waste, water, housing, and social infrastructure, are planned through the National Infrastructure Delivery Plan 2016-2021 (NIDP). The NIDP covers infrastructure across the UK that is not devolved to the Northern Ireland Assembly, Scottish Parliament or Welsh Assembly. It contains the national infrastructure pipeline, which provides an overview of the planned investments, and gives an indication of likely implementation timeframes. The pipeline aims to provide greater visibility and certainty to promoters, as well as greater transparency with respect to the maintenance and improvement of the infrastructure network.

Within England and Wales, specific legislation provides the basis for simplifying the planning application for major infrastructural developments, including major transport projects that reach certain size thresholds. For these projects, a large number of consents can be ‘bundled’ within the development Order, avoiding the need for separate procedures. These consents include compulsory land acquisition, where private land can be bought for market rates by the promoter, as well as associated development rights, which are subordinate developments, such as minor access road development. By bundling consents, the need for separate public consultation on each issue is avoided. For large projects that do not meet the thresholds for nationally important developments, there are other types of development Orders that likewise permit the bundling of some, if not all, of the same consents.

For all planning applications, there is generally a key focal point that, while not a coordinating body, provides pre-application guidance. In the UK this focal point is centred on spatial planning, on which development approval depends. Although separate consultation with key bodies is encouraged at the pre-application stage, the focal point can facilitate meetings and is the first point of call for promoters. Where consents can be bundled within a Development Consent Order, as in the case with NSIPs, there is a one-stop shop (Planning Inspectorate) for the project promoter that handles most, if not all, of the development approval process.

There are clear processes for public involvement, both at the pre-application stage of spatial planning and during examination of the planning application. Although highlighted as a challenge, the fact that grievances are taken seriously by the competent authority demonstrates the importance given to public opinion.
Finally, public procurement processes are well understood, both by project promoters and infrastructure development companies and are not believed to contribute to delays, costs or uncertainty. Guidance on procurement is widely available and institutional capacity is considered high, particularly in relation to PPPs, with which the UK has significant experience.
Study on permitting and facilitating the preparation of TEN-T core network projects

Annex 4 – Case studies

N’MOVE/B3/2014-751

September 2016
TABLE OF CONTENTS

1 CASE RAILWAY CONNECTION LYON TURIN (VAL DE SUSA) ........................................ 4
   1.1 Project description ................................................................................................. 5
   1.2 Timeline – Key milestones .................................................................................... 5
   1.3 Analysis .................................................................................................................. 7
   1.4 Conclusions .......................................................................................................... 10

2 CASE FEHMARN BELT FIXED LINK ........................................................................ 11
   2.1 Project description ................................................................................................. 12
   2.2 Timeline – Key milestones .................................................................................... 12
   2.3 Analysis .................................................................................................................. 14
   2.4 Conclusions .......................................................................................................... 17

3 CASE BRENNER BASE TUNNEL ............................................................................. 18
   3.1 Project description ................................................................................................. 19
   3.2 Timeline – Key milestones .................................................................................... 19
   3.3 Analysis .................................................................................................................. 21
   3.4 Conclusions .......................................................................................................... 24

4 CASE RAIL BALTICA (INCLUDING THE WARSAW-BIALYSTOK LINK) ................... 26
   4.1 Project description ................................................................................................. 27
      4.1.1 Rail Baltica ..................................................................................................... 27
      4.1.2 Warsaw-Bialystok link .................................................................................. 28
   4.2 Timeline of key milestones .................................................................................... 28
      4.2.1 Rail Baltica ..................................................................................................... 28
      4.2.2 Warsaw-Bialystok link .................................................................................. 30
   4.3 Analysis .................................................................................................................. 31
   4.4 Conclusions .......................................................................................................... 33

5 CASE SEINE – SCHELDT ......................................................................................... 34
   5.1 Project description ................................................................................................. 35
   5.2 Timeline – Key milestones .................................................................................... 36
   5.3 Analysis .................................................................................................................. 39
   5.4 Conclusions .......................................................................................................... 43

6 CASE DANUBE – COMMON SECTION BULGARIA-ROMANIA ............................ 45
   6.1 Project description ................................................................................................. 46
   6.2 Timeline – Key milestones .................................................................................... 48
   6.3 Analysis .................................................................................................................. 49
   6.4 Conclusions .......................................................................................................... 51

7 CASE LIQUIFIED NATURAL GAS (LNG) TERMINAL IN RUSE (DANUBE) .......... 52
   7.1 Project description ................................................................................................. 53
   7.2 Timeline – Key milestones .................................................................................... 54
   7.3 Analysis .................................................................................................................. 54
   7.4 Conclusions .......................................................................................................... 57

8 CASE ROAD BRNO-VIENNA ................................................................................ 58
   8.1 Project Description ................................................................................................. 59
   8.2 Timeline – Key milestones .................................................................................... 60
1 CASE RAILWAY CONNECTION LYON TURIN (VAL DE SUSA)
1.1 PROJECT DESCRIPTION

The new railway link Lyon-Turin, totalling 270 km, is part of the Mediterranean Core Network Corridor and constitutes the core of the Lyon-Ukrainian border high capacity rail axis. The 1,638 km railway axis from Lyon to the Ukrainian border is the main east-west passage south of the Alps, connecting the Iberian Peninsula with the eastern part of Europe and beyond. This railway link comprises the 57 km long cross-border base tunnel, which starts at St-Jean-de-Maurienne (France) and exits in the Valley of Susa (Italy), replacing the existing line from 1871. It also comprises the access routes from Lyon and Turin. The new base tunnel will be dug at the base of the mountain between 570 and 474 m above sea level. It has a ‘plain profile’ with an almost flat line, allowing important energy savings, as well as optimum reliability, speed and safety of transport both for passengers and for freight. Civil works on the access routes and the base tunnel itself have not yet begun.

Lyon Turin Ferroviaire (LTF), a binational company under the responsibility of the Intergovernmental Commission (IGC), was the public developer of the cross-border section from 2001 to 2015. LTF was responsible for the preliminary studies (traffic, economic, legal and financial, technical, safety, environmental...) and building the exploratory tunnels, which allowed both governments to decide the specific rules for the tunnel and the cross-border section. Progress on the base tunnel, however, differed between France and Italy. While, in France, construction of the base tunnel has been authorised and the three access tunnels on French territory have been built, in Italy, preparation of the construction site for the La Maddalena exploratory and access tunnel near Chiomonte only began in June 2011 and finished in March 2012.

In February 2015, Tunnel Euralpin Lyon Turin (TELT) was appointed as the new public promoter responsible for building and running the cross-border section. The building phase will start in 2017.

France and Italy, together with the EU, are funding most of this Lyon-Turin connection. Almost EUR 1.194 billion was committed to LTF for the preliminary works between 2001 and 2014, of which 40% was funded by the EU. For tunnel build itself, 60% will be funded by France and Italy, at a rate of 25% and 35% respectively, under to the intergovernmental agreement of January 2012. The EU has confirmed additional funding of 40% under the new financial regulation (2014-2020) of TEN-T. The costs of the cross-border section (base tunnel, two international train stations and the two interconnections with the historic line) have been certified at EUR 8.6 billion. The total cost of the whole new railway link Lyon-Turin is estimated at EUR 26 billion.

1.2 TIMELINE – KEY MILESTONES

1991-2001: Early developments
- The Convention of Salzburg was signed in November 1991, aiming to reduce the risks and environmental impact of intra- and trans-alpine transport. Here, the Mont d’Ambin base tunnel was first suggested.
- The Lyon-Turin rail link was made a priority project by the European Commission in December 1994.
- The first Franco-Italian Intergovernmental Agreement for the construction was signed in January 2001, setting out the procedure for the first phase of the project, the so-called ‘shared part’. The agreement established a Developer (LTF-SAS).

2002-2014: Preliminary studies and geographical surveys
- In April 2002 excavation began on the first access tunnel at Modane.
- In March 2003, work began at Saint-Martin-la-Porte.
- In October 2005, work began La Praz.
- In 2006, the Italian PM formed a technical committee Osservatorio Tecnico (Observatory) to investigate the problems connected to the TAV project. Mario Virano, formerly a member of the pro-TAV committee, served as President of the committee.
In 2008, the Observatory Phase I ended, with a proposed new alignment in the Susa valley.

The Observatory continued two further phases of technical work with representatives of all interested parties. The third phase concluded on 30 June 2010 with the handover of the preliminary project to the authorities, for the line on Italian territory up to Turin.

In the fourth phase – from July 2010 onwards – the Observatory developed a plan for phased works, i.e. postponing the construction of the Orsiera tunnel in the Susa Valley in favour of connecting the new railway line with the historic line at Susa. It also developed a cost-benefit analysis.

The EU postponed the deadline – from May to June - for the Italian government to resolve all outstanding matters prior to the beginning of the works. These discussions were central to the provision of European funding to the project. Such was the pressure to begin works, that the building sites in the Valley were protected by the security forces throughout that year.

Despite a clear majority in favour of the project, a small yet determined group of opponents continued to stage violent protests throughout the summer of 2011, leaving 200 police injured. Criminal and civil liability charges were brought against the demonstrators and are still pending in the courts and tribunals of Turin.

In January 2012, the second Franco-Italian Intergovernmental Agreement on base tunnel funding was signed, modifying the previous agreement.

To-date – since the signing of the 2012 Agreement – the only two municipalities actually affected by physical changes (from the project itself and the ensuing construction sites) are Chiomonte and Susa:

- Chiomonte is the location of the Italian descending shaft, which will become one of the four access points of the base tunnel for safety and rescue purposes (the other three are in France).
- Susa will serve as the exit/entrance point for the base tunnel on the Italian side and will host the Italian construction site for the main works. This site is established on an area already housing an Autoporto and a Drive Safe driving track.

In September 2012 legal protocols, including increased precautionary anti-mafia measures, was signed with trade unions in Turin.

In November 2012 the survey gallery excavation at La Maddalena started.

In November 2014, the Order of Service was given for work to begin in Saint-Martin-La-Porte.

2015-2029: Construction phase

In February 2015 in Paris, French secretary of state for transport, Mr Vidalies, and Italian infrastructure and transport minister, Mr Lupi, signed an amendment to the 2012 agreement thus paving the way for the launch of the definitive works on the cross-border section. This third Franco-Italian Intergovernmental Agreement approved the established Public Developer, Tunnel Euralpin Lyon-Turin (TELT), successor of LTF, controlled equally by Italy and France.

On 8 March 2016, a supplementary protocol was signed by French president, Mr Hollande, and Italian prime minister, Mr Renzi, authorising the release of EUR 8.4 billion in funding for the initial stages of construction. The protocol, which is expected to come into force at the end of 2016, sets the foundations for procurement and includes provisions to minimise the risk of mafia infiltration of contracts for the construction of the cross-border section of the route.

Under this agreement, the EU is expected to meet 40% of the total project cost, with the Italian government committing 34.74% and the French government 25.26%. The EU has already committed EUR 813.8 million to the project through the Connecting Europe Facility (CEF), equivalent to 41.1% of the EUR 1.9 billion allocated to construction works before 2019.

The ratification of this supplementary protocol by the French and Italian governments will enable TELT to begin tendering for construction contracts.

The building phase is due to begin in 2017, with an expected finish date of 2029.
The initial plan was realistic. If the lack of support on the Italian side could have been assessed better beforehand, then the schedule would probably have had taken this into account.

1.3 ANALYSIS

The main barriers in the authorisation processes were twofold.

The French and the Italians took very different approaches to public participation and transparency. On the French side, public participation took place early in the project planning phase, leading to greater transparency and acceptance of the project by the local municipalities. Despite this, since the 2012 public interest inquiry on access to the proposed base tunnel, some opposition to the project is gaining momentum in France.

In his article ‘The Assertion of French Opposition to the “Lyon-Turin” Rail Link: a Conflict Between Liminality and Intermediate Spatiality’, the geographer Kevin Sutton summarises the differences, saying that the: ‘principle of usefulness is foremost in France while, historically, the principle of responsibility has been the driving force in Italy’. He states that the Italian ‘No Tav’ opposition, located in the Susa Valley since 1994, denies the legitimacy of the administration. In France, however, the legitimacy of administrative and political leaders has not been questioned, with Court of Auditors’ reports used on numerous occasions by the opposition.

Italian efforts to involve the local citizens in the planning process came only in 2006 after significant opposition from the local population in the Italian Susa Valley, organised under the ‘No Tav’ banner. They claimed that the current railway line was sufficient for the volume of traffic and that the construction of the line would have a negative environmental, economic and social impact on the local area. This opposition caused considerable delays at different stages of the project, i.e. the alignment was changed and a downsized project was proposed by the Italian Government in 2012.

The complex legal framework for procurement applied in both Member States gave rise to prolonged discussions between France and Italy on the implementation of the European Directive 2014/25/EU of 26 February 2014 on Procurement.

Specific measures to prevent criminal infiltrations of public procurement was one of the key points of discussion, given their different implementations of European law.

The project has also demonstrated a number of good practices.

Between 2001 and 2015, three Franco-Italian Intergovernmental Agreements were signed, allowing both parties to negotiate cross-border agreements.

The first Franco-Italian Intergovernmental Agreement for construction was signed in January 2001.

<table>
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<tr>
<th>Key project milestones</th>
<th>Original planning/timing</th>
<th>Real or currently estimated planning</th>
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<tbody>
<tr>
<td>Start of preliminary studies</td>
<td>2002</td>
<td>2002</td>
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<tr>
<td>Start of geographical surveys on French side</td>
<td>2002</td>
<td>2002</td>
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<tr>
<td>Start of geographical surveys on Italian side</td>
<td>2002</td>
<td>2012</td>
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<tr>
<td>Technical and environmental studies</td>
<td>2002-2009</td>
<td>2010-2016</td>
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<tr>
<td>Start of procurement phase</td>
<td>2010</td>
<td>2016</td>
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<tr>
<td>Start of building phase</td>
<td>2010</td>
<td>2017</td>
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<tr>
<td>End of building phase</td>
<td>2018-2020</td>
<td>2029</td>
</tr>
</tbody>
</table>
The second **Franco-Italian Intergovernmental Agreement** on base tunnel funding was signed in January 2012. This agreement modified the previous agreement.

The third **Franco-Italian Intergovernmental Agreement** was signed in Paris on 24 February 2015. This agreement approved the established Public Developer, Tunnel Euralpin Lyon-Turin (TELT), successor of LTF, controlled equally by Italy and France.

Large construction works, such as those related to the future Turin-Lyon high-speed railway, were identified in the public sphere as large-scale projects with a **high risk of potential diversion of public funds or infiltration by organised crime**.

In 2012, the Italian and French press reported on inquiries over rigged bidding, followed by a 2014 investigation that revealed connections between the 'Ndrangheta, an Italian organised crime network, and one of the companies in charge of building the tunnel. In 2015, the European Anti-Fraud Office (OLAF) undertook an examination of the project amidst the allegations of links with the Italian mafia and major cost overrun (estimated by the French Court of Auditors to have risen from EUR 12 billion in 2002 to EUR 26.1 billion in 2012). This investigation is particularly focused on whether or not the project has been subject to fraudulent activities and any impact this may have had on the budget.
provided by the EU.

Given the risks of corruption and infiltration by organised crime in public procurement, the 2015 Intergovernmental Agreement states that French and Italian governments must ensure that the Public Developer, TELT, imposes ‘severe’ contractual regulations to combat the risk of mafia infiltration. These contract regulations and measures will be inspired by the Italian rules, but will remain compatible with European law\(^1\). They are the first anti-mafia cross-border regulations in Europe.

### Third Franco-Italian Intergovernmental Agreement establishing TELT

The Public Developer is considered a contracting entity under Directive 2014/25/EU and is the infrastructure manager of the cross-border section according to Directive 2001/14/EU. The Public Developer must be considered a public undertaking, according to European law. This agreement states that French and Italian governments must ensure that the Public Developer imposes extremely ‘severe’ contractual regulations, to combat the risk of mafia infiltration. This regulation must be approved by the intergovernmental Commission.

This specific measure - to fight against the risk of mafia infiltration in the project – stems from concerns raised by project critics about the high risk posed by the cross-border nature of the project, and the lack of formal anti-filtration rules in the French legislation. While, on the French side, the reality of such a risk is questionable, it is indisputable on the Italian side, especially in that area of the Piedmont Region. Past evidence suggests that, in Italy, criminal organisations may hack public procurement processes.

The lack of public consultation and communication on the environmental and public aspects of the project caused significant problems and delays in the early 2000s. Since 2010, the new Public Developer, TELT-SAS, has taken steps to improve public involvement, treating communication as a key aspect.

### Public consultation through the ‘Observatory for the Lyon-Turin rail link’

The ‘Observatory for the Lyon-Turin rail link’ was set up by the Italian Government in 2005 to foster dialogue with stakeholders in the Susa Valley region. Over one hundred meetings with stakeholders took place, resulting in the 2008 proposal of a new alignment of the route through the Susa Valley.

This was followed by further work on the remaining technical issues and the development of a phased approach to the construction works by postponing the construction of a second tunnel and connecting the new line with the old historic line at Susa. By 2013, a clear majority of the local population supported the project.

According to a TEN-T investment study carried out in 2014, a delay of 10-15 years is under discussion\(^2\). Considerable stakeholder opposition, together with technical issues, have driven multiple re-designs of the project, with no exact data available on cost over-run. Over the past 20 years, the estimated investment cost has continuously increased, although comparisons should be done cautiously, given that the size and scope of the project has also increased (e.g. further elements were added, such as new tunnels, new stations, etc.) and decisions made earlier than 2010 were built on preliminary plans and estimates of investment costs\(^3\).

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1. In French law, the code of public procurements, Article 43, refers to exclusion grounds from public procurements. However, these provisions are less restrictive than in European law. In contrast to France, Italian measures can appear more restrictive than European law.
3. The cost is estimated by the French Court of Auditors to have risen from EUR 12 billion in 2002 to EUR 26.1 billion in 2012.
1.4 CONCLUSIONS

A key challenge is that the main benefits of TEN-T projects are often realised at EU level, rather than national, regional or local levels. A strategy to factor these benefits into national, regional or local decision-making and permitting is essential to counter ‘not-in-my-backyard’ attitudes, such as those evident in the Lyon-Turin rail project. Ineffective handling of local concerns in the early stages of this project led to significant delays. A broader, more comprehensive public consultation is needed to offset the growing resistance to large transport investment projects. Such efforts will also improve the project decision base and thus the implementation decisions. Participation is an ongoing process, which should start before the project decision is made and continue after the formal approval (permitting phase) of the project.

Differences in implementation of European law at national level can lead to significant delays in the signing of international agreements on procurement. Guidance on the applicability of the EU Public Procurement Directive to cross-border projects would be useful. In addition, the drafting of guidelines for international agreements - based on the European Directives for Procurement - would be valuable in limiting debates between Member States and the resulting delays.

The implementation of contractual regulations (whether obligatory or as an ethical code of good practice) combatting corruption and infiltration by organised crime in public procurement, is also useful in avoiding delays during the construction phase of cross-border projects.
2.1 PROJECT DESCRIPTION

The Fehmarn Belt Fixed Link aims to create a direct fixed link between the Danish islands of Lolland and Falster, part of the region of Zealand and the German federal state of Schleswig-Holstein, providing an alternative to the ferry between Rodby (Denmark) and Puttgarten on the Fehmarn Island (Germany). The central segment is the **18 km long Fehmarn Belt tunnel**, running between Rodbyhavn on Lolland and Puttgarden on Fehmarn, featuring two double-lane motorway tubes with an emergency lane and two rail tubes with electrified rail tracks. The project also includes improvements to related rail links in Denmark and Germany. It is expected to stimulate economic development in the Baltic Sea region of Denmark and Germany, with estimated passenger and freight traffic of 3.3 million vehicles and 30,000-35,000 trains a year, helping to relieve congestion on the Great Belt route across Denmark, and on the rail network in particular. Once in place, the Fehmarn Belt Fixed Link will reduce travel time between Copenhagen and Hamburg by approximately one hour, with travel times for freight transport reduced by two hours. In terms of road infrastructure, it can be seen as a missing link, although there are alternative road and ferry solutions. The Fehmarn Belt Fixed Link is designed to reduce travel time rather than adds necessary capacity on the road network, as well as solving some physical bottlenecks such as ‘missing filling stations’ (i.e. the inability to fill the ‘right’ type of fuel along the corridor).

The railway axis Fehmarn is an extension of the Oresund fixed link and the Nordic Triangle road and rail links, and is a key component in the main north-south route between central Europe and the Nordic countries.

The infrastructure is solely owned by the Danish State and realised by Femern A/S, a subsidiary of Sund & Baelt Holding A/S. The **state guarantee model** includes the establishment of a state-owned company responsible for the planning, design, funding, construction and operation of a major infrastructure project.

Construction costs will be user-financed according to the **Danish state guarantee model**, meaning that the company's revenues comprise user payment via tolls for passage across the fixed link. Toll setting and railway charges will primarily be driven by the need to ensure an appropriate repayment of the company's debt. Levels of the tolls and charges are most likely to be set by the Danish Minister for transport with recommendations from Femern A/S.

The total construction cost of the Fehmarn Belt connection is expected to be DKK 55.1 billion in 2015 prices (approx. EUR 5.4 billion), while the Construction Act includes an estimate of the total construction costs for the Danish landworks of DKK 9.5 billion in 2015 prices (approx. EUR 1.5 billion). EU funding in the amount of EUR 589 million was granted to Denmark. The project is expected to be paid in full after 36 years of operation. This includes the financing of the Danish railway facilities’ upgrade and expansion from Rødby to Ringsted.

2.2 TIMELINE – KEY MILESTONES

1992-2008: Early developments and preliminary studies

- In 1992, the Danish Transport Minister and his German counterpart agreed to initiate feasibility studies on a fixed link. These studies were carried out from 1995 to 1999.
- In 1999, the Danish and the German Ministries of Transport presented a feasibility study of eight different proposals for the technical design of a Fehmarn Belt link and the related costs of the project.
- In 2004, the Danish and German Ministers of Transport signed a **joint declaration**, stating

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their commitment to a fixed link across the Fehmarn Belt.

- In 2005, the Danish Prime Minister and the German Chancellor agreed on an initiative for the construction of a fixed link across the Fehmarn Belt, giving a mandate to the Transport Ministries in both countries to develop financing models.
- In 2007, the Danish and German Ministers for Transport signed a declaration of intent on establishing a fixed link across the Fehmarn Belt.
- In September 2008, the Danish and German Ministers for Transport signed the State Treaty on the establishment of a fixed link across the Fehmarn Belt between the Danish island of Lolland and the German island of Fehmarn.
- In December 2008, the EC allocated DKK 1.5 billion (EUR 5 million) to support the Fehmarn Belt project from 2007-2013 to undertake the necessary studies and preparations.

2009-2016: Planning of the works / preparatory studies

- In 2009 the Danish parliament adopted the planning legislation for the Fehmarn Belt link.
- In 2010 the Danish Parliament's Budget Committee extended the planning budget for the Fehmarn Belt Fixed Link from EUR 161 million to EUR 254 million.
- In February 2011 the Danish political parties supporting the project declared an immersed tunnel to be the preferred technical solution, based on the November 2010 recommendation from Femern A/S.
- In June 2011, Femern A/S’ recommendation to locate the production site for the tunnel elements in Rodbyhavn on the Danish side was accepted by the Danish government. The Budget Committee of the Danish Parliament again extended the planning budget for the Fehmarn Belt Fixed Link. Femern A/S started to prepare the tender process for the constructions, and to plan a Vessel Traffic Service (VTS) system to monitor shipping during the construction phase. The planning budget amounted to EUR 376 million.
- In 2012, Femern A/S initiated the pre-qualification process for contracting companies for the four main contracts, thereby initiating the tender process for the constructions.
- In May 2013, nine international construction consortia pre-qualified to bid on the four major construction contracts for the Fehmarn Belt tunnel.
- In June 2013, the Danish EIA report for the fixed link across the Fehmarn Belt was published, with a consultation period running from that date until 20 September 2013.
- In August 2013 the bidding process started.

- In October 2013, Femern A/S submitted an 11,000-page application for planning approval of the Fehmarn Belt tunnel in Germany to the German plan approval authority.
  In May 2014, the German approval authority initiated the public consultation for the application from Femern A/S. For one month, citizens and interest groups could access the documents and submit their suggestions and objections.
- In September 2014, seven major consortia were pre-qualified to tender for the Fehmarn Belt tunnel’s electrical and mechanical installations and for the installation of the electricity substation.
- In November 2014, the Construction Act for the Fehmarn Belt tunnel and the associated Danish road and rail connections was published for public consultation, together with an addendum to the EIA for the fixed link (coast-to-coast). The public consultation ended on 5 January 2015.

- In February 2015, Germany and Denmark submitted a joint application for EU grants for the construction phase of the Fehmarn Belt tunnel to the European Commission.
- In April 2015, the Danish Parliament adopted the proposed Construction Act for the fixed link across the Fehmarn Belt and the Danish landworks.

2016 – Current state of play

- Delays in regulatory approvals in Germany have delayed the likely completion of the project
from 2022 to 2028.

- On 29 February, Femern A/S submitted an update of the 11,000-page application for the plan approval in Germany to the independent approval authority in Kiel. The updated application replies to the about 3,000 objections and comments that has been put forward by the public, the authorities and organizations in 2014 and 2015.

- On 4 March 2016, the Danish political parties supporting the Fehmarn Belt link mandated Femern A/S to appoint the preferred bidders for the main tunnel contracts, intending to enter into conditional contracts by mid-May 2016.

- On 30 May 2016, Femern A/S signed conditional contracts with the two winning consortia for the four major civil works contracts. The four contracts cover dredging of a tunnel trench in the Fehmarnbelt, land reclamation of the coast of Lolland and Puttgarden, construction of temporary work harbours, building the tunnel element factory, immersion of tunnel elements to the seabed and construction of portals and ramps on the Danish and German side. Construction work can begin when the German construction permit is in place.

On 13 June 2016, Femern A/S and LBV Lübeck applied for approval of the updated project application. The new public hearing was open for objections from the general public from 12 July 2016 until 26 August 2016. Circa 12,000 objections were submitted within the deadline.

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<tr>
<th>Key project milestones</th>
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<th>Real or currently estimated planning</th>
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<tbody>
<tr>
<td>Feasibility studies on a fixed link (by Danish and German Transport Ministers)</td>
<td>1995-1999</td>
<td>1995-1999</td>
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<tr>
<td>State Treaty on the establishment of the Fehmarn Fixed Link (signed by Danish and German Transport Ministers)</td>
<td>2008</td>
<td>2008</td>
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<tr>
<td>Adoption of planning legislation by Danish parliament</td>
<td>2009</td>
<td>2009</td>
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<tr>
<td>Preparation of the tender process by Femern A/S</td>
<td>2011</td>
<td>2011</td>
</tr>
<tr>
<td>Publication Danish EIA report</td>
<td>2013</td>
<td>2013</td>
</tr>
<tr>
<td>Start bidding process</td>
<td>2013</td>
<td>2013</td>
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<tr>
<td>Submission application Plan Approval in Germany</td>
<td>2014</td>
<td>2014</td>
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<tr>
<td>Adoption Danish Construction Act (by Danish Parliament)</td>
<td>2015</td>
<td>2015</td>
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<tr>
<td>Plan Approval (Germany)</td>
<td>2015</td>
<td>2015</td>
</tr>
<tr>
<td>Start construction</td>
<td>2016</td>
<td>2016</td>
</tr>
<tr>
<td>Completion project</td>
<td>2022</td>
<td>2028</td>
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The major delaying factor was the delay in the regulatory approval in Germany. The procedure provides extensive public consultation and, taking the public opposition in Germany into account, the original planning of this cross-border planning seemed somewhat optimistic in retrospect.

2.3 ANALYSIS

The Fehmarn Belt Fixed Link is a prominent example of a challenging cross-border project.

The problems experienced, and their underlying causes, stem from delays in the authorisation procedure in Germany, both as a result of public opposition, and also effects of the interpretation of the Water Directive. The delays in the approval procedure on the German side are the main concern, as this cross-border project cannot start until approvals are granted on both sides. As is customary, works in Denmark were delayed pending the granting of the required approvals in Germany, where a lot of public opposition remains.

The project is subject to a extremely lengthy and complex planning and approval procedure. Both countries have their own legislative framework for permitting. While guidance documents were issued on foot of international (ESPOO) and EU legislation outlining how to deal with cross-border impacts,
these were not mentioned by either Member State during the interviews for this report.

The procedures in the two countries are markedly different, and have not been aligned for this project.

In Denmark, the approval process was reasonably smooth. The EIA of the Fehmarn Belt link was approved by the Danish parliament in the form of a Construction Act in April 2015. As part of the EIA process, the Ministry of Transport conducted a number of public consultations, with all stakeholders (the general public, the authorities, NGOs and companies) given the opportunity to give feedback on the EIA aspect. Questions and comments raised were answered in consultation reports prepared by the Ministry of Transport. Based on the EIA and these consultation reports, the Ministry of Transport drafted the Construction Act. An Implementation Report was also prepared, describing the implementation of the project in practice, including considerations made for nature during the construction and operational stages.

Approval on the German side has been delayed. These types of projects are usually approved in Germany through a regulatory approval process - including the technical project, alignment and environmental impacts - resulting in an overall building permit. Under German law, only a German authority can apply for project approval for motorways on German territory. Femern A/S therefore applied for the railway, while LBV Lübeck applied for the road section, an application running to some 10,000 pages, with more than 200 plans and drawings.

**Compared to Denmark, the procedure in Germany is longer, with numerous public consultations and hearings.** Public participation is equally important in Denmark and Germany and, while both comply with the EIA Directive and the Aarhus Convention, their processes differ. The Danish process ends with a Parliamentary decision of final approval, with the law resolving conflicts of interest. This process is known and has a controlled timeframe. Germany, by contrast, has a purely administrative procedure, meaning that one round of participation and approval may not be enough. The number of updates to the original application is – now so large that the German hearing authority has deemed it necessary to do a second participation round/hearing and a full update of documents, a procedure that started in 2016 will take another two years. The original timeline was approval in 2015, with construction to start in 2016. Now, however, the approval date is set for 2017, with construction to start in 2018. Stakeholders also highlight the likelihood of court cases leading to suspension of a decision, suggesting that completion of the project is likely to be delayed from 2022 to 2028.

**The consequences of new jurisprudence on permitting legislation and on permitting procedures cannot always be anticipated**, creating major obstacles in finishing a project on time and within the original budget. The stakeholders in this case fear that the Court of Justice of the European Union (CJEU) ruling (case C-461/13) on the Water Framework Directive (see box below) will affect this project. As a consequence of this court ruling, the stakeholders fear that the EIA procedures are likely to become more exhaustive, requiring more time and money on the part of the project developers. The second participation round in Germany will include a full 600-page report on the Water Framework Directive, compared with the original 60-page report.

Despite considerable delays to the project, the plan was on track to be approved in 2017, however, this jurisprudence will likely be delayed by two years, until 2019-2020. An additional problem is that the planning of the procurement procedures and contracts run in parallel with the plan approval. Project delays will also incur costs related to the delayed procurement and tendering processes, which will take two to three years. According to the stakeholders consulted, this legal unpredictability carries the risk of rendering bids invalid, which must be balanced with the need to retain contractors in order to not lose any further time.

*CJEU ruling of July 2015 on the interpretation of the Water Framework Directive (Case C-461/13)*

A request has been made for a preliminary ruling concerns the interpretation of Article 4(1)(a)(i) to
(iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (the Water Framework Directive) in proceedings between Bund für Umwelt und Naturschutz Deutschland eV (German Federation for the Environment and the Conservation of Nature) and Bundesrepublik Deutschland (the Federal Republic of Germany) concerning a scheme to deepen various parts of the River Weser in the north of Germany, intended to enable larger container vessels to call at the German ports of Bremerhaven, Brake and Bremen.

The CJEU had to decide on the meaning of the Directive, concluding on 1 July 2015 that its ultimate objective was to achieve ‘good status’ of all EU surface waters by 2015. The Court ruled that Article 4(1)(a)(i) to (iii) of Directive 2000/60 must be interpreted as meaning that the Member States are required — in the absence of a derogation — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water, or where it jeopardises the attainment of good surface water status, or of good ecological potential and good surface water chemical status by the date laid down by the Directive. In addition, the concept of ‘deterioration of the status’ (Article 4(1)(a)(i)) of a body of surface water must be interpreted as meaning that there is deterioration as soon as the status of at least one of the quality elements, within the meaning of Annex V to the Directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. Stemming from this judgment, the German court is now bound to interpret various development projects on the River Weser as causing deterioration, unless the derogation article is used.

This ruling is likely to have implications for any future deepening projects at EU Ports, as well as for other projects on water bodies, e.g. the Fehmarn Belt Fixed Link.

A second court case arose from a legal challenge, in 2015, to Femern’s proposed model for public financing of the planning, construction and operation of the project. Although the EC has confirmed that the plans comply with the European state aid rules, the European Court of Law in Luxembourg still received a complaint from one of the stakeholders about the Commission’s approval of public funding – see box below.

**Approval of public financing for the Fehmarn Belt Fixed Link**

Denmark’s proposed model for public financing of the planning, construction and operation of the Fehmarn Belt rail and road tunnel to Germany complies with EU state aid rules, the European Commission announced on 23 July 2015. The Commission decided that it did not need to ascertain whether public financing for project promoter Femern A/S constituted state aid within the meaning of EU rules, because this would in any case be permitted as supporting an important project of common European interest (PCI). Support for the road and rail connections at the Danish end of the 19 km tunnel would not involve state aid, as these would be an integral part of the transport network, and thus public financing would not distort competition or affect trade between Member States.

The European Court of Law in Luxembourg has, however, received a complaint from Stena Line in respect of the European Commission’s approval of public funding for the Fehmarn Belt Fixed Link between Denmark and Germany. The shipping company claimed that the decision is discriminatory and does not comply with EU state aid regulations. Stena Line’s complaint was based on a series of ‘obvious errors’ allegedly made by the EC with respect to the duration of, and need for, subsidies. Stena Line further stated that the decision would encourage the Fehmarn Belt Fixed Link operator to offer low prices and thereby distort competition.

The Fehmarn Belt Fixed Link case demonstrates some good practices in stakeholder communication – in the context of preparing for (coming) authorisation procedures - and procurement.

A key challenge in this project is to factor EU level benefits into national, regional and local decision-making and permitting, helping to alleviate ‘not-in-my-backyard’ attitudes. Concerns about local
impacts have been handled relatively well in the Fehmarn Belt Fixed Link project. The promoters invested heavily in stakeholder communication, engaging all interested parties early in the process, including holding open days for local stakeholders. The cost-benefit analysis included local benefits (jobs, economic activity), although not yet in terms of a consolidated description or evaluation. Compensatory measures were also factored in. A well-developed project website is publicly available, where Femern A/S has collected all of the material relating to the EIA approval in Denmark (http://vvmdocumentation.femern.com).

The political stakeholders involved believe that no cross-border coordination mechanism is necessary for procurement, as tendering is conducted under the European Public Procurement Directive. The Competitive Dialogue (created by the 2004 Public Procurement Directives as a more flexible solution for public authorities awarding contracts for complex infrastructure projects) procedure from the 2004 Sectors Directive was used. This procurement procedure allows for a higher degree of flexibility when it comes to aligning approval processes and procurement processes, including handling delays, as well as encouraging technically better bids and more competitive prices. No specific national procurement regulations apply to the procurement procedures in this case study. The project promoters used the European legislative procurement framework, together with FIDIC standards, and were satisfied with both.

Completion of the project is likely to be delayed from 2022 to 2028, due to delays in regulatory approval in Germany. Initially estimated at seven years, as of Spring 2016 it seems likely that the planning and preparation phase will take 9-11 years, after which time construction work can start.

A two to four year delay before construction starts amounts to a EUR 50 million cost, or more, to the client company.

2.4 CONCLUSIONS

Feedback from the project stakeholders suggested that the existing guidelines on managing and synchronising permitting procedures in a cross-border context (without violating the subsidiarity principle) – were insufficiently helpful for this type of project.

Extensive communication and engagement with all stakeholders early in the process is a key success measure for complex and challenging cross-border projects. Publicly available webpages, open days, etc. are excellent tools to involve local and national stakeholders and minimise public opposition.

The use of the European procurement legislation framework is recommended in this type of project, particularly in combination with tailored FIDIC standards, to avoid cross-border procurement issues.

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5 Some are proposed in the application document but are subject to the upcoming hearing therefore no specifics can be given.
3 CASE BRENNER BASE TUNNEL

Brenner Base Tunnel
3.1 PROJECT DESCRIPTION

The Brenner Base Tunnel (BBT) is an important missing link in the Scandinavia-Mediterranean TEN Corridor from Helsinki to Valletta, Malta. The EU is promoting the expansion of this transnational multimodal corridor as a high priority.

The BBT is one of two centrepieces (together with the Fehmarn Belt Fixed Link) of the Scandinavian-Mediterranean Corridor. A horizontal railway line running through the Alps between Tulfes/Innsbruck in Austria and Fortezza in Italy. The BBT ends in Innsbruck in the existing railway bypass tunnel, which ends in Tulfes. The BBT is intended primarily for freight transport, allowing a modal shift of traffic from road to rail. Passenger trains can also travel through the tunnel. The virtually horizontal tunnel will eradicate the difficulty of dealing with the steep slopes on the existing Brenner railway line, which is over 140 years old. The 64 km cross-border tunnel through the Alps will thus remove a major bottleneck for both freight and passenger transit between Austria and Italy.

The BBT is the main element of the new Brenner railway from Munich to Verona. It consists of two rail tunnels, each equipped with a single track, meaning that train traffic through the tubes is one-way. The distance between the tunnels is 70m for almost their entire extension. Near the portals, this distance decreases to approximately 4m. The two main tubes have an internal diameter of 8.1m, and are connected at regular 333 m intervals by cross tunnels which will serve as escape routes in emergency situations. An exploratory tunnel will be located 12m below the two main tunnels. This exploratory tunnel, with an inner diameter of approximately 5m, will be driven prior to the construction of the main tubes to provide information on the geological and hydrogeological composition of the rock, thereby minimising both construction costs and risks. The exploratory tunnel will be completed along the main tunnel’s length and, once the main tunnel is operational, will be used for drainage and service.

Four construction sites are currently in operation, two in Austria and two in Italy. The first phase (1999-2003) consisted of the preliminary project and assessment; in the second phase (2003-2010) the project was finalised and the EIA carried out; the second part of phase II (2007-2013) was the exploratory section; with the building phase starting in 2011. The construction work and the railway outfitting of the Brenner Base Tunnel should be completed by 2025. After that, there will be a year of test operations. The tunnel will become fully operational in December of 2026.

In 1999, the Austrian and Italian Ministers of Transport established a European Economic Interest Group (EEIG), known as BBT EEIG, to plan the project. On the 16th of December 2004 it became Galleria di Base del Brennero – Brenner Basistunnel BBT SE. This is a European public limited company (plc) for the construction of a railway tunnel between Austria and Italy. At the request of the Republics of Austria and Italy and the EU, BBT SE is planning and building the Brenner Base Tunnel.

The projected costs for the Brenner Base Tunnel are estimated at approx. 8.7 billion EUR (based on 2013 prices).

The BBT is being financed to a large extent by the European Union. Between 2015 and 2020, the EU will bear 50% of the costs for studies, planning and construction of the exploratory tunnel (approx. 303 million EUR). For the construction of both main tunnel tubes 40% are co-funded by the EU (almost EUR 880 mio). The remaining sum (about 60 % of total costs) is covered equally by the Italian and Austrian governments.

3.2 TIMELINE – KEY MILESTONES

1994 - 1999: Early developments
- In December 1994, at the European Council Meeting in Essen, the Brenner axis became No. 1 on the list of TEN-T priority projects.
- In 1996 planning began for the first construction phase of the new railway line in the Lower
Inn Valley. July 1996 saw Decision No. 1692/96/EG of the European Parliament, with a list of the 14 projects chosen by the European Council on December 9th and 10th in Essen: TEN – Axis Nr.1: High-velocity combined transport on the North-South Brenner axis from Munich to Verona.

April 1999 saw the Decision of the Austrian and Italian Ministers for Transportation concerning the establishment of a European Economic Interest Group (EEIG, EWIV, GEIE) to plan the BBT. In December 1999, BBT EEIG began the Planning Phase 1 for the tunnel.

1999-2003: Preliminary project and assessment

- On 12 September 2001, the White Book of the EC for TEN-Projects was published, with 14 priority projects, including the BBT.
- In April 2002, under Austrian railway law, the new railway line in the Lower Inn Valley - about 40 km between Kundl and Baumkirchen – was approved.
- In April 2003, there was a common declaration of the Austrian and Italian Ministers for Infrastructure and Transportation.
- September 2003 saw the Memorandum in Rome: Planning phase II for the BBT.

2004-2010: Final project

On 30 April 2004, the State Treaty – Vienna: Agreement between Austria and Italy to build the Brenner Base Tunnel was signed.

- 2004 also saw the shareholders’ agreement between Austria, the Austrian Land of Tyrol and RFI (Italy) and the establishment of the European Company Galleria di Base del Brennero - Brenner Basistunnel BBT SE from the Brenner Basistunnel EEIG (December 2004).
- In December 2004, the province of Bolzano (Alto Adige) and the Inter-Ministry committee for economic planning (CIPE I) approved the preliminary project and the environmental study.
- In March 2006, the Italian company Tunnel Ferroviario del Brennero – Finanziaria di Partecipazione (TFB) was set-up, which holds the Italian share of 50% of BBT SE.
- In May 2007, the Brenner Corridor Platform (BCP) was set-up, coordinated by Mr Van Miert of BBT SE, and including the appropriate Ministries of Germany, Austria, Italy, the regions of Bavaria, Tyrol, the provinces of Bolzano, Trentino and Verona and the three railway companies DB, ÖBB with BEG and RFI.
- On 19 February 2008, the EU reserved EUR 786 million for studies and works for the BBT.
- In February 2008, the final project plan and documentation was completed for the declaration of environmental compatibility. These were submitted in Austria on 18 March 2008 and in Italy on 31 March 2008.
- In May 2009, a Memorandum with Brenner Action Plan 2009-2022 was signed in Rome. This Memorandum of Understanding was developed by the Brenner Corridor Platform and includes 50 measures (each with a timeframe and and entity responsible) to pursue a modal shift from road to rail. The main aim of the platform is an integrated transport policy for the Brenner Corridor, including the implementation of measures that promote efficient use of the cross-border rail connection between Munich and Verona, enhance the necessary model shift and protect the alpine environment.

The following milestones were significant:

- In May 2009, the Austrian Parliament gave financial approval for the infrastructure programme, including the BBT.
- In June 2009, the Austrian Bundesrat gave financial Approval for the infrastructure programme, including the BBT.
- In June 2009, a framework agreement was established with seven universities.
- In July 2009, within the framework of the infrastructure programme, a contract to build the BBT was established between OBB-Infrastruktur AG and the Ministry for Infrastructure, Innovation and Technology (Austria).
- In July 2009, the Inter-Ministry Committee for Economic Planning (CIPE II) in Italy approved the project.
- In October 2009, the Mules access tunnel was completed.
In December 2009, Austria gave EIA approval for the BBT.
In November 2010, the Inter-Ministry Committee for Economic Planning (CIPE) in Italy approved financing for the BBT.

2007-2013: Exploratory section
In August 2007, construction began on the first section of the exploratory tunnel between Aica and Mules.
On 20 August 2008, mechanised excavation of the Aica exploratory tunnel began in Italy, over 10.5 km, with a double-shield tunnel boring machine (6.3 m in diameter).
July 2010: Start of construction on the Ahrental access tunnel (Austria) - 2.4 km, cross-section 120m², excavated by blasting.
April 2011: Start of excavation works on the Wolf I construction lot (Steinach am Brenner, Austria) - logistic tunnels Saxen tunnel and Padaster tunnel.
September 2011: Start of excavation of the Ampass access tunnel (Austria) - 1,350 meters in length, cross-section 35m², slope 10%, excavated by blasting.

2011-2026: Construction phase
On 18 April 2011, the most important decision for the BBT was taken, when Austria and Italy agreed a total project cost of EUR 7,460 million (costs as at 1 January 2010). This agreement paved the way for main construction works on the base tunnel, the so-called Phase III, to be carried out by the project promoter BBT SE.
In 2011, the building phase started.
In 2016, full construction of the main tunnels will begin, with an estimated finish date of 2025.
The tunnel will become fully operational in December of 2026.

<table>
<thead>
<tr>
<th>Key project milestones</th>
<th>Original planning/timing</th>
<th>Real or currently estimated planning</th>
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<tbody>
<tr>
<td>Technical and environmental studies</td>
<td>2004-2010</td>
<td>2004-2010</td>
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<tr>
<td>Procurement phase main tunnels</td>
<td>2015</td>
<td>2016</td>
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Whether the nine years, until the planned opening of the BBT, are sufficient to implementing all of the works to be completed on the access routes or not is largely a question of the funding available.

3.3 ANALYSIS

Although generally recognised as a good example of a cross-border infrastructure project, some barriers were encountered in its authorisation processes.

Funding was the main bottleneck in both Italy and Austria, given the economically difficult environment. In view of the serious budgetary limitations in both countries, progress was slower than planned. The impact of the economic and financial crisis led to budgetary adjustments, reducing the total investment from both countries by EUR 330 million. The bulk of the saving has been achieved by shifting activities from the period 2012-2016 to the period 2016-2025, with technical measures, such as optimised construction methods, providing the rest. Despite these austerity measures, the date of completion (2025) and the beginning of operations (2026) were confirmed by both governments.

Public opposition to the project has not been significant. Some associations asked for construction activities to stop in order to open a public debate (stating that many information meetings and presentations simply justified choices already made). In addition, a referendum on the future of the
line was proposed, but gained no political support. The meetings of Prati di Vizze (South Tyrol) and Trento (Trentino) can be considered a partial exception. This municipality was chosen as the location for a 3.7 km secondary tunnel to transport material, access the main tunnel and for a 500,000 m³ deposit. Citizens of Prati di Vizze were particularly critical of the original project and, after an official petition, an information meeting and vigorous protests, forced approval of a variation of the project in 2008, which saw the deposit moved from Prati di Vizze to Mules and Steinach. This event received little publicity but, in an August 2013 interview, the Italian Ministry of Infrastructure viewed it as a successful participatory outcome, ‘The method adopted for the BBT is excellent: involvement of the municipalities and population, quality of the project, collaboration between institutions’ (Source: An approach to manage conflicts in the construction of new transport infrastructures: the case of the Brenner HS/HC railway line).

As described below, cooperation among the key stakeholders’, and public engagement and communication, together with the procurement conditions, can be seen as good practices in this case.

The European coordinator set up the so-called Brenner Corridor Platform (BCP) in 2007. The three Member States (Austria, Germany and Italy), the five regions (Bavaria, Tirol, Alto Adige, Trento, and Verona), the railway and highway companies and the European Commission are represented in the BCP. It guarantees an integrated approach for the Brenner Corridor, including both road and rail, and going beyond the mere development of the infrastructure project to put in place a strong cooperation between all partners involved. This integrated approach offers a solution to the exponential increase of road traffic by reducing bottlenecks and congestion, while respecting environmental standards, such as air quality and noise levels. The Platform developed short, medium and long term proposals, ranging from infrastructure improvements, management of train slots, handling at terminals and interoperability issues, to policy proposals. The BCP operates as follows:

- Participation: The BCP has two plenary meetings each year, at which working groups (each of which meets throughout the year) present progress reports. The coordinator can invite other interested parties to the meetings as observers, for example EIB, business operators, the secretary of the Alpine Convention. Academics and consultants do not participate in the meetings unless there is a specific need, but they have performed several studies related to the corridor, and for BBT SE. Currently, business representatives (e.g. rail operators, intermodal/combined transport operators), citizens or environmental groups are not invited to participate.

- Accountability: The BCP is based on the Common Declaration of 2009. Representatives pay their own costs and no specific accountability is required.

- Powers: The BCP has no official power. While the development of the corridor is in the interest of the Commission, but there is no legal framework within which to demand action.

- Communication: Clear and coordinated communication is a key aspect of creating good, trusting working relationships among those working on the project.

In 2009, a Memorandum of Understanding was signed and the ‘Brenner Action Plan 2009-2022’ was developed by the BCP containing 50 measures to pursue a modal shift from road to rail. The BCP created 10 specific working groups to implement this Action Plan in an integrated way. The Autonomous Province of Bolzano and Province of Tyrol, the governing bodies of the territories involved in the project, support the project, which is a source of reassurance for the citizens of these regions. The Brenner Action Plan 2016, annexed to the new Memorandum of Understanding on the Brenner Corridor, was presented at the TEN-T Days in Rotterdam in June 2016.

The impact of management structure on corridor development

6 Transport Corridor Management Structure, VTT Technical Research Centre of Finland and UTH (University of Thessaly), 2014.
The BCP has considerable influence on the development of the Brenner Corridor. To-date, the Commission uses it as a tool to amplify the development of different sections and strategic initiatives, and when the tunnel is completed, it will have an impact on modality.

The BCP works well, allowing the relevant stakeholders to share and present their progress on the project. It also acts as a forum to share information and promote shared working.

The Memorandum of Understandings and the Action Plan are central to the success of the BCP, providing for concrete commitments, responsibilities and timetables to be agreed and signed. Success factors are the political and personal commitment of stakeholders, as well as the participation of key people from different areas and levels.

In the future, care should be taken to maintain the enthusiasm of BCP participants, to avoid a decline over time. Currently, the management structure is under review, with the aim of clustering the ten working groups into six. Administrative and professional support would help to organise meetings and monitor the work of the working groups. Currently, stakeholders work for the BCP in addition to their daily duties, creating resource constraints, despite high levels of commitment and motivation. A permanent secretariat would improve communication and increase the awareness and development of the BCP.

From the earliest phases (preliminary planning), public involvement and communication were key aspects of the realisation of the BBT project. The following actions supported engagement with the public:

- Organisation of information-oriented and topic-specific evenings and meetings.
- Set-up of information points.
- Organisation of events.
- Close contact with the media.
- Participation in conferences, fairs and events to reach the widest possible number.
- Constant responding, with provable data and facts.
- Monographs several times a year.
- Weekly tours of the construction sites.
- Consistency of behaviours and actions with commitments made.
- Regular visits from the Coordinator and all stakeholders, including the local mayors along the Brenner Corridor.

A European Company (a type of limited company) was set up within the EU, having a single, trans-national establishment charter and single, trans-national management protocols. On 16 December 2004, the governments of Italy and Austria decided to establish the Galleria di base del Brennero Brenner Basistunnel - BBT SE as such a European Company. Procurement and construction framework conditions were followed throughout the project, according to the legal European framework (see box below).

- 2011 – 06/2015 Italian Procurement law.
- June 2015 – 2026:
  - Procurement law: Italian law to be applied to works carried out in Italy.
  - Austrian law to be applied to works carried out in Austria.
- June 2015 – 2026: for works to be carried out in both countries as a part of the same contract, the Procurement law applicable to the headquarters of the company shall be used. With headquarters in Bolzano, Italian law will therefore be applied.

European Directives on procurement and the BBT

Directive 2004/17/EC of 30 April 2004 does not include any regulations governing cross-border projects. Therefore, BBT SE’s shareholders decided to proceed as follows:

Shareholder agreement Article 4.3 - BBT SE, as the contracting authority, will tender and
contract for all further services concerning engineering, construction and any other services required for the construction of the Brenner Base Tunnel, as prescribed by the tender law applicable to the company’s headquarters, which is located in Bolzano’.

Directive 2014/25/EU of 28 February 2014 - Article 57, §5:
‘Where several contracting entities from different Member States have set up a joint entity, including European Groupings of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council or other entities established under Union law, the participating contracting entities shall, by a decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following Member States:
- The national provisions of the Member State where the joint entity has its registered office;
- The national provisions of the Member State where the joint entity is carrying out its activities.’

These new provisions on cross-border procurement made the following approach taken by BBT SE possible:

Shareholder agreement Article 4.3, amended on June 16th 2015:
‘BBT SE, as the contracting authority, will tender and contract for all further services concerning engineering, construction and any other services required for the construction of the Brenner Base Tunnel, as prescribed by the tender laws applicable in the countries in which the works shall be carried out.
For works to be carried out in both countries as part of the same contract, the tender law applicable to the headquarters of the company shall be used; said headquarters are located in Bolzano, as prescribed by the State Treaty mentioned in the premises’.

BBT SE was very proactive in using this new provision, adopting it before the Directive had been transposed in either Member State, and applying the more stringent (Italian) rules for activities carried out in both Austria and Italy under the same contract.

The following good practices in procurement can be identified:
- Specifying which legal regulations are mandatory for each of the two countries.
- Using the most stringent criteria to select contractors, with technical-economic and ethical criteria.
- Defining a tender regulations’ model and a model contract agreed by both countries (for example via a declaration from the IGC), and ensuring that these conform to the pertinent European Directives, including the regulations mentioned above.
- Including the option to formulate the contract documentation in English, allowing for the materials to be equally accessible to each side.
- Providing for recourse to international arbitration to solve controversies concerning project execution.

According to a TEN-T investment study carried out in 2014, the financial investment costs for the BBT project were occasionally reviewed and adjusted\(^7\). The two most recent and major revisions took place in 2006 and 2010 (exact amount unknown). Institutional and financing problems have delayed the planning and exploration process. Whether the nine years until the planned opening of the BBT are sufficient to implement all works on the access routes is largely a question of available funding.

3.4 CONCLUSIONS

The decision-making process make all relevant information on the project phases publicly available in order to encourage local stakeholder involvement and minimise opposition. The integration of

\(^7\)http://www.europarl.europa.eu/studies.
different points of view early in the process develops common ground and shared decisions, increasing support for the project and contributing to quality assurance and smoother implementation. From an economic perspective, this reduces both the cost and the timeframe involved.
4 CASE RAIL BALTICA (INCLUDING THE WARSAW-BIALYSTOK LINK)
4.1 PROJECT DESCRIPTION

4.1.1 Rail Baltica

Rail Baltica, part of the North Sea-Baltic Core Network Corridor, is a strategic rail project linking five EU Member States, Poland, Lithuania, Latvia, Estonia and Finland. It is the only rail connection between the three Baltic States through Poland to the rest of the EU. To the north, Helsinki is connected by ferry services across the Gulf of Finland which can form a ‘bridge’ to the countries of the Nordic Triangle (PP12). This route indirectly includes Finland, as Finnish and Estonian partners are investigating the idea of building an underwater tunnel connecting Tallinn and Helsinki by train.

Historically, transportation in the Baltic countries has been linked on an east-west axis. Most rail freight traffic originates from Russia, with rail organisations in all three Baltic countries largely servicing that market. The Baltic rail system, however, is incompatible with mainland European standards, as rail transport services use a 1520mm gauge. There is a consensus within the EU that the three Baltic countries should be fully integrated into the wider European rail transport system.

The length of the current track is approximately 1,200 km by the most direct existing route from Tallinn to Warsaw. A variety of track and operating systems are in use: single and double track, electrified and non-electrified (of which single track non-electrified is the most common system). The line passes through a variety of terrains, from urban areas such as the cities of Bialystok, Kaunas and Riga, to rural areas such as the Podlaskie region of northeast Poland and southern Lithuania, and northern Latvia and the south of Estonia. ‘Rail Baltica’ also connects three major Baltic seaports: Helsinki, Tallinn and Riga and has a short rail connection to a fourth – Klaipeda.

This project encompasses a new railway track with European standard width (1435mm) to provide fast, environmentally friendly rail transport traffic between the Baltic States and the rest of Europe. The route spans Tallinn-Pärnu-Riga-Panevezys-Kaunas to the Lithuanian-Polish border, including a connection from Kaunas to Vilnius. The railway is intended for three types of transportation: high-speed trains running between the Baltic States, freight trains and national connections between newly built stations.

The Rail Baltica project in the Baltic States has two stages:

- The first stage focused on upgrades of the existing 1520mm gauge lines and included a 1435mm gauge single track line from the Polish border to Kaunas, Lithuania. This line was built alongside the existing 1520 mm gauge line, and was completed in October 2015 at a cost of EUR 380 million.
- The second stage consists of building of a new European standard width (1435 mm) railway line along the alignment defined in the 2011 AECOM feasibility study. The study phase is still ongoing, with a cost-benefit analysis of the global project along the entire track to be completed by the end of 2016. Construction is due to begin in 2018, with an estimated cost of EUR 3.68 billion.
- It has been agreed that a connection from Kaunas to Vilnius will be added to the North-South axis.

In 2014 the Rail Baltica Joint Venture of the three Baltic States, called RB Rail SA, was founded. Its principal activities are designing and building the railway route of Rail Baltica (second stage), and marketing the line internationally.

Overall, the Rail Baltica budget in the Baltic States is around EUR 5.9 billion, with EU support of up to 85%.
4.1.2 Warsaw-Bialystok link

The railway section Warsaw-Bialystok - situated in the Mazowieckie region of eastern Poland - is part of Rail Baltica (and thus part of the North Sea-Baltic Corridor). The upgrade of this section is part of a major modernisation programme, boosting rail capacity and the provision of sustainable transport. The main goals for the modernisation of the Polish element of Rail Baltica include the adjustment of the rail infrastructure to the regulation of Directive 2008/57/EC on the interoperability of the rail system within the Community, improving the line capacity and connections between international traffic, increasing the efficiency of traffic control systems, upgrading environmental protections for the railway line, increasing the safety of dangerous freight transport, increasing the maximum speed in some sections, and building two new level crossings.

The project comprises the modernisation of two sections of the E75 railway line: (1) the Warsaw Rembertów - Zielonka - Tłuszcz (Sadowne) section (66.5 km), and (2) the Sadowne - Białystok section (106.7 km). The ongoing modernisation project includes the construction of two new tracks at section Zielonka - Wołomin Śloneczna (intended for suburban traffic) and the modernisation of existing railway lines. Second stage modernisation (2016-2020) includes the rebuilding of mainline tracks, railway stations provided with full equipment and new engineered structures, modernisation of level crossings and railway traffic control systems, etc. Building permits are expected to be granted this year for the Sadowne – Czyżew section. For the Czyżew - Białystok section, a decision on environmental conditions will only be granted after a nature inventory later in 2016.

The total project value is EUR 644.4 million, of which EUR 491 million is EU-funded.

Figure 1 - Rail Warsaw-Bialystok

4.2 TIMELINE OF KEY MILESTONES

4.2.1 Rail Baltica

2003
- In October 2003 the project Rail Baltica was included in the list of the priority projects in the proposal submitted to the European Council by the EC.
- In April 2003 the Rail Baltica International coordination group agreed to apply to two EU
funds for further development of Rail Baltica:
- Interreg IIIB – for regional development
- The Cohesion fund – to research infrastructure development, with Interreg IIIB project results to be used in the analysis of revenues and expenses.

2005
- In March 2005, the EC launched a tender for the Cohesion fund Rail Baltica project pre-feasibility study.

2006
- 2006 saw EU negotiations on the financing of the project, with the Coordinator encouraging the partner countries to negotiate cross-border agreements - or Memoranda of Understanding (MoU) - for the three borders concerned. These agreements would facilitate the allocation of TEN-T funds for border section development. During 2006-2007 agreements have been made between Poland and Lithuania, Lithuania and Latvia, Latvia and Estonia.

2007
- By the end of July 2007, proposals for funding of six projects under the TEN-T (2007-2013) were submitted Estonia, Latvia and Lithuania, consisting of one works proposal and one study proposal from each country. The three works projects cover the reconstruction of the three cross-border sections (the upgrade of existing lines as part of Rail Baltica I were not included). The three proposals for study projects covered investigating the construction of a new European standard gauge line on the north/south axis from Tallinn to the Lithuanian/Polish border.

2010
- In April 2010, the Transport Ministries of the three Baltic States initiated a Feasibility Study for the European gauge Rail Baltica from Tallinn to the border of Lithuania and Poland.
- In June 2010, the Ministries of Poland, Lithuania, Latvia, Estonia and Finland signed the Rail Baltica MoU, in which they committed to support the overall development of Rail Baltica.

2011
- On 10 November 2011, at a meeting in Tallinn, the Prime Minister’s Council of the Baltic Council of Ministers issued a Joint Statement welcoming the Commission’s inclusion of the Rail Baltic corridor Tallinn- Pärnu-Riga-Kaunas-Warsaw in the pre-identified projects’ list of the Core Network. The Prime Ministers:
  - Declared the importance of completing the preparatory phases and starting the construction of the new Rail Baltic standard gauge (1435mm) railway line during the next EU Financial Framework 2014-2020.
  - Agreed that a Joint Venture would be established between Estonia, Latvia and Lithuania by the end of 2012 at the latest.
  - Agreed to start spatial and regional planning. To this end, they tasked their respective national authorities with preparing and implementing the planning, including adjustments to routing solutions in order to ensure real connections between the key nodes and efficient use of both the new and the existing transport infrastructure.
  - Agreed that the EU financing for the project should be allocated outside of the national cohesion fund envelopes, with EU co-financing of around 85%.
  - Invited Poland to partner the full implementation of the new Rail Baltic corridor.
  - Reaffirmed the intention to finish construction works and start preparations to operate interstate passenger trains on the existing railway infrastructure by 2016.

2012 - 2025
- In 2012, following the Declaration of Ministers, each country appointed representatives to a special Task Force to oversee the project and to establish a Joint Venture.
In October 2014, a Joint Venture was set up. This constituted political agreement to move ahead with the project to build the new line.

In 2014, detailed technical studies were undertaken, including an EIA and economic calculations.

On 5 December 2014, the Prime Minister’s Council of the Baltic Council of Ministers issued a Joint Statement reiterated the importance of implementing the Rail Baltic/Rail Baltica as fast conventional double track 1435 mm gauge electrified railway line with the maximum design speed of 240km/h on the Route from Tallinn through Pärnu-Riga-Panevezys-Kaunas to Lithuanian-Polish border as proposed by AECOM study with a connection of Vilnius-Kaunas as part of the Route.

On 16 October 2015, the 1435mm line constructed during the first stage of Rail Baltica officially opened. This first section is a 1435 mm gauge single track line from the Polish border to Kaunas, which has been built alongside the existing 1520 mm gauge line from the former break of gauge at Šeštokai, which has also been upgraded. The overall cost of this part was EUR 380 million. On 28 October 2014, the three Baltic States signed an agreement, founding the Rail Baltic Joint Venture of the three Baltic States, ‘RB Rail’. The venture is responsible for designing and building the railway route and overseeing its international marketing.

In 2017, land acquisition is scheduled to begin.

In 2018, the technical design will be completed and the construction process will start.

In 2025, the construction of the fast conventional double track 1435mm gauge electrified railway line Tallinn-Pärnu-Riga-Panevezys-Kaunas-LT/PL border with a connection of Vilnius-Kaunas, is planned to be finished. By 2030, an estimated two million passengers and nine million tons of cargo will be transported along the line.

The existing political differences remain a cause for concern, increasing the risk of delays. As the project is in its starting phase, many technical, political, and financial barriers still remain to be overcome, making it unclear whether the nine years until the planned opening are sufficient or not.

### 4.2.2 Warsaw-Bialystok link

**2001**

In 2001, the project began as an ISPA preparatory project.

**2006**

In 2006, as part of the ISPA project, agreement no FS 2002/PL/16/P/PA/008-01 Technical assistance in preparing project ‘Modernisation of rail Line E 75, section Warszawa – Białystok – Sokółka’ was set up (EUR 955,360).

**2007-2012**

In 2009 and 2011 EIA Decisions on the Warszawa - Sadowne section were issued, as a result of changes both to the project and to Polish regulations.

**2015**

In 2015, works finished on the Warsaw Rembertów-Zielonka-Tłuszcz (Sadowne) section and
started on the Sadowne-Bialystok section.

2016-2020

By 2020, works will be completed on the Sadowne-Bialystok section.

4.3 ANALYSIS

4.3.1 Rail Baltica

The project began in the early 2000s and experienced a number of barriers, particularly as a result of differences in the three Member States’ economic, environmental, regulatory, technical and political processes, which considerably delayed authorisations for the project.

Government debt in the Baltic States was an important economic constraint, exerting pressure on decisions about the necessary minimum of 15% co-financing by each of the Baltic State authorities. Further risks stemmed from the different currencies used by each of the Baltic States at the start of the project. In January 2011 Estonia joined the Euro zone, with Latvia and Lithuania joining in 2015. (Source Rail Baltica, AECOM, 2011).

Environmental constraints have impacted the process in four key areas: noise, emissions, protected territories and sustainability targets. As the route of the railway line lies in ecologically valuable areas, a detailed EIA was necessary, together with the participation of environmental organisations. This offset delays relating to environmental opposition.

The key regulatory constraints that continue to impact Rail Baltica are the bureaucracy of planning at national, regional and municipal levels, the process of land expropriation, and setting tariffs for freight and passenger service. (Source: Rail Baltica, AECOM, 2011):

- The time taken to complete the planning process is different in all three countries but in the worst case could take over seven years. The designation of a project as one of ‘national interest’, used in some European countries to fast-track the planning process, does not exist in the Baltics.
- The process of land expropriation can only be started once the plans justifying the need for the land have been approved. Each country has a well-defined expropriation process and while there is no overall defined timeframe, in Estonia the process can take between two and two-and-a-half years.

A key aim of the project is the elimination of technical barriers, including the construction of a standard gauge line. The strong transport and economic links between the Baltic States, Finland, Russia and other former Soviet republics, previously added weight to the maintenance of the Russian track gauge.

Political barriers to the development of transport infrastructure on the North-South axis in the Baltic States arise from differences between EU level transport policy aims and those of the Baltic States. The European preference for a balanced transport system of south-north and east-west axes is in contrast to the historical priority given in the Baltic States to national networks and west-east transport links. The individual states, too, have different transport policy objectives. Some examples of the difficult political process are the following:

- Rail Baltica is a complex and politically sensitive project, taking several years to engage the partner countries and to negotiate its future implementation. The Joint Venture was established only after lengthy discussions.
- The three governments have had great difficulty in reaching a consensus on the project, particularly after Lithuania reversed its decision to exclude Vilnius from the route.

Delays resulting from the inclusion of Vilnius in the network

Discussions on the preferred route continued until the middle of 2013, when the (previous)
The Lithuanian government announced that it wanted to include Vilnius in the project with a 100 km branch from Kaunas, reversing its earlier decision to exclude the capital. Identifying a solution to include Vilnius created a significant delay, with the Estonian government expressing concern that the change would jeopardise EU funding for the project. As a compromise, it suggested that Vilnius be added in a future phase, a proposal rejected by the Lithuanians.

Lithuania’s Deputy Minister for Transport, Mr Arijandas Šliupas, claimed that the Vilnius link could be vital to the business case for the overall project. ‘Vilnius plays a major role in closing the gap between the figures in the Aecom study and the figures that are required to reach the minimum level of viability’. Šliupas stressed the inclusion of Vilnius, asking that the Lithuanian government be given the time to study the conclusions of the initial Aecom report before committing to the branch. ‘The study only gave us a conceptual line for the route and stated that further cost-benefit analysis was needed to define the precise route’, he said. ‘This is the stage where all major elements have to be considered and included to ensure Rail Baltica is economically viable. We also have to ensure we are in line with the EU Roadmap to a Single European Transport Area, approved in 2011, which clearly states that the core network must ensure efficient multimodal links between EU capitals. The previous analysis was perhaps too general and too early to really consider the value of the Vilnius link.’ He went on to say that, ‘The implementation of this project very much depends on the level of funding the CEF can provide. We will have to consider in the national contribution to the project that there will be non-eligible costs, which might come to a significant amount, and we will need to budget for these. The joint venture company will answer a lot of these questions as it clarifies the scope of the project.’

A joint agreement was eventually reached, with Vilnius to be connected by a 1435mm line to the Rail Baltic north/south axis at Kaunas, thereby ensuring that all Baltic capitals and Warsaw are connected in the same network, in line with the Shareholder Agreement of the Joint Venture RB Rail AS.

- The Joint Venture agreement required significant discussion and negotiation, particularly with respect to the ‘boundaries’ of this partnership, i.e. the limits of responsibility of the joint venture.

Discussions also centred on contracts issues, such as responsibility for procurement for the project.

The organisation set up to plan and implement the project, RB Rail AS, demonstrates good practice in this case. Estonia, Latvia and Lithuania each established national Holding Companies which are Shareholders in the Joint Venture, RB Rail AS. The three countries will each hold a 33.3% share in the new company, with each State providing RB Rail with EUR 650,000 in start-up capital. To support the share-holding Member States, the Joint Venture is fully responsible for coordination, implementation and facilitation of the Rail Baltic project.

The Joint Venture provides an opportunity for centralised procurement. This process is underway and is carried out by the Joint Venture in line with EU Procurement regulations.

As the project is in its starting phase, no specific delays in permitting procedures or cost over-runs have yet been encountered. The contracting scheme was signed by all partners on 6–7 October 2016, but major decisions about contracts are still yet to be made and the project is falling behind schedule. The main reason for this is the inability of the 3 countries to pool resources. In a meeting on 7 September, the 3 states agreed on the further procurement model and the responsibilities in the

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2 The Baltic states decided to divide all the procurements into three groups – procurements organized by the joint venture only, consolidated procurements implemented by the joint venture, and procurements implemented by national companies under the joint venture’s supervision.
implementation of the Rail Baltica project. This should be a turning point in cooperation among the Baltic states to continue working on the project.

4.3.2 Warsaw-Bialystok link

The Warsaw-Bialystok project also experienced some **barriers in the authorisation processes**. Opposition from protesters, together with bidders’ appeals, delayed the tender procedures.

Obtaining a final decision on environmental conditions for the Czyżew – Bialystok section was also a source of difficulty, as the proposed route passes through a protected Natura 2000 area. A detailed assessment was necessary, along with the participation of environmental organisations in the procedure. In attempts to balance transport policy goals with sustainable development, environmental issues are increasingly important in transport investment projects. The Baltic area, and the north-eastern part of Poland, in particular, is an environmentally sensitive area, making it a key issue in the development of TEN-T corridors in the Baltic area. Risks include:

- Refusal to grant complete building permits.
- Delays in obtaining a location decision and/or an environmental decision.
- Increased costs arising from differences between the planned programme of works and the demands of local authorities.

4.4 CONCLUSIONS

Realisation of the Rail Baltica project depends on many factors. The major problem is divergence of infrastructure priority objectives between the Member States involved, as the national transport interests and strategies do not always match, even if the basic principles of comprehensive, multilodal, integrated economic and regional policies are shared. Ministries of Transport often favour domestic transport markets and the needs of the national key players.

Addressing these differences through the establishment of the Joint Venture, Rail Baltica SA is an important step. Existing political differences remain a cause for concern, increasing the risk of delays, and offering the opportunity for EU initiatives and instruments to overcome barriers at local and state level.

Finally, large parts of the project area are situated in protected natural areas, creating potential environmental conflicts. As environmental issues are closely related to social factors, comprehensive and early public involvement is necessary to ensure the success of the project.
5 CASE SEINE – SCHELDT

Seine - Scheldt
5.1 PROJECT DESCRIPTION

The ‘Seine-Scheldt link’ - the Seine-Scheldt inland waterway network and cross-border section between Compiègne and Ghent - will connect the Seine basin with the Scheldt basin. A new canal will be constructed between Compiègne and Cambrai on French territory, together with navigability improvements between Deûlémont and Ghent (mainly in Flanders, Belgium) allowing class Vb on the waterway.

The Global Project is the development of the Seine-Scheldt network, of which a key project is Priority Project 30, inland waterway Seine–Scheldt, as listed in Decision 661/2010/EU of the European Parliament and of the Council.

The Seine-Scheldt link is a European priority project which consists of the construction of a wide-gauge inland waterway link between France, Belgium and the Netherlands in order to provide an operational link between the seaports and inland ports of northwest France and Europe. The project is located in the heart of the North Sea Mediterranean Corridor and directly connected to three other Core Network Corridors.

The Seine-Scheldt waterway is a key project for the implementation of the North Sea-Mediterranean multimodal corridor (TEN-T programme). In a joint declaration between the EC, the Walloon region, Flanders, the Netherlands, and France on 17 October 2013 in Tallinn, the partners committed to boosting strategic waterway projects by strengthening the existing coordination mechanisms for the implementation of the inland waterway sections. They agreed to maximise the co-funding opportunities offered until 2020 by the Connecting Europe Facility (CEF), fully integrating these projects with those for other modes of transport in order to fully develop the multimodal aspect of the corridor. The Seine-Scheldt waterway has been identified as one of the five priority high European added-value projects in the frame of CEF. It will allow the concentration of freight in push-tows carrying up to 4,400 tonnes, while, at the same time, providing high-capacity access to the northern seaports and a catchment of more than 60 million people.

The main works of the Seine–Scheldt project are the construction of a new canal, Seine–Nord Europe, in France and the improvement of the waterway network between Paris and Ghent. In Flanders (Belgium) several construction works have been carried out since 2007, mostly in the northern part of the project, i.e. on the Ghent Circular Canal. The project will not only help to alleviate serious road congestion which affects the north-south economic axis, but will also open up a new European freight corridor between Le Havre, Paris, Dunkirk, Antwerp, Liège and Rotterdam/Amsterdam.

- In Belgium, the upgrading of the Seine-Scheldt connection to Class Vb will take place along two main axes: (1) Class Vb21 via the Borderlys and the Lys River between the French border and the town of Deinze, the diverting canal of the Lys, the canal from Ghent to Ostend and the Ring Canal around Ghent as far as the canal from Ghent to Terneuzen; and (2) Class Va via the Upper Scheldt from the French border with Wallonia, the connection to the Ring Canal around Ghent and the Upper Sea Scheldt to Antwerp. Some bridges on the axes will require elevation and the locks will have to be modified.
- In France, the main waterway bottlenecks are related to the gauge of the connections between the three basins of the Seine, the Scheldt and the Rhône. The most advanced project is the Seine-Scheldt, with its main component, the Canal Seine-Nord-Europe.

The project investments for the Seine-Scheldt inland waterway network cross-border section between

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10 New maritime lock in Terneuzen: the canal between Ghent and Terneuzen is a major shipping connection for both maritime and inland navigation. The canal, with an overall length of 32 km, has 15.4 km on Belgian territory and 16.6 km in the Netherlands. The lock compound in Terneuzen is experiencing a capacity problem, and this proposed Action concerns the studies for the construction, management and maintenance of a new maritime lock there. The Flanders (BE) and Dutch governments signed an agreement relating to this in March 2012.
Compiègne and Ghent aim to eliminate the main bottlenecks, and concern the following three sections (cf. Project 2007-EU-30010-P):

- Condé-Pommeroeul to Sambre (BE42).
- Upper Scheldt (Upper-Seascheldt and Southern Ghent Ring Canal BE47).

Total project costs covered by this Decision are EUR 503.5 million, of which the EU contribution is EUR 176.5 million.

**Figure - Seine-Scheldt network (Project 2007-EU-30010-P is shown in brown)**

The **scope of this case study focuses on two sub-projects**: (1) Seine-Nord Europe Canal in France and the Lys River, and (2) Upper Scheldt River projects in Flanders.

### 5.2 TIMELINE – KEY MILESTONES

1. **France : Seine-Nord Europe Canal**

#### 2003 – 2009: Early developments and preparatory studies

- Since 2003, the French Inter-Ministerial Regional Planning and Development Committee (CIADT) has listed the project as a priority project, with France, Flanders and Wallonia
working in close collaboration.
- In 2004, the project was listed as a priority by European TEN-T.
- In 2007, France, Flanders and the Walloon Region submitted a joint request for an EC grant. EUR 420 million was allocated to Seine-Scheldt by the EU (TEN-T 2007-2013). The PPP Contract scheme was selected and summary design approval (preliminary design) granted.
- 2008 saw the signature of agricultural protocols for land reserves, Public Utility declaration, the start of archaeological operations and signing of the agreements for land acquisition. A decision was also taken to develop the platforms in separate contracts, coordinated by the PPP.
- In 2009, the Call for Tender was launched (PPP contract), bids were submitted (Vinci Concessions and Bouygues TP) and the Seine-Scheldt Intergovernmental Commission (IGC) was set up between the three governments to facilitate the preparation and implementation of the project.

2010 – 2016: Start of the works

- In 2010, the Seine-Scheldt European Economic Interest Grouping (EEIG) was established between VNF, SPW and W&Z to coordinate project finances and research and procedures, and to harmonise pricing conditions on the cross-border section and the traffic management systems. The EEIG was also to oversee the start of the preliminary works.
- In 2011 the PPP procedure was initiated.
- In 2012, as a consequence of an important budget over-run and the economic crisis, the PPP was suspended. The economic situation led to highly elevated costs for the private contractors. The change of the French Government (2012) and the associated changes in political priorities, together led to the suspension of the ongoing PPP procedure.
- Between 2012 and 2014 the project was re-engineered to a 32 km long section, leading to a 10% reduction of the capital cost and 20% reduction of the operating costs.
- In 2013 the government decided to undertake the project as a public works’ owned project, including the creation of a dedicated ‘Project Company’ comprising the French State, VNF and local authorities participating in the financing of the Seine-Nord Europe canal.
- In 2013, the TEN-T Programme for the 2014-2020 period was established, succeeding the former programme. The revised (extended) Belgian project and the revised project Seine-Nord Europe Canal were granted the maximum CEF co-financing: 50% EU co-financing for studies, 40% for cross-border inland waterway works.
- June 2014-February 2018 sees the European procurement process for awarding of Technical Assistance contracts for the programme, design, construction and commissioning phases of the project.
- In June 2015 the contract for the works was awarded to the European group SETEC (FR)/Royal Haskoning (NL), with the aim of awarding the Engineers contract on the first section in early 2016.
- In July 2015, the EC decided to finance EUR 980 million for Seine-Scheldt, for the 2014-2020 financing period, with a level of 50% financing for the studies and 40% financing for the works, the larger part for Seine-Nord Europe.
- At the end of 2015 there was a public enquiry on the re-engineered section, following a local consultation in 2014-2015.

(2) Flanders (Lys River and Upper Scheldt River projects)

1996-2012: Early developments and preparatory studies

- In 1996, a cost-efficiency analysis of infrastructure works on Lys and Upper Scheldt – established a preferred route on the Lys River with a Vb capacity of 4,500 tonnes.
- In 2005, the Intergovernmental Committee (IGC) Seine-Scheldt was established. Negotiations/agreements took place on common aspects, such as characteristics of the links, modalities for implementation, operational aspects.
- In 2006, the Flemish Government issued a decision on the integrated plan for inland
waterway works between the French border and the access to the Scheldt-Rhine delta (locks, bridges, river profile, platforms, ecological river works).

- In 2007, the Flemish Government issued a decision on the implementation in the period 2009-2016, application for financing by the EC (TEN-T), common implementation by France, Flanders, the Walloon Region (and the Netherlands).
- 2008 saw a further Decision of the Flemish Government for establishing an Intergovernmental Commission, a Seine-Scheldt European Economic Interest Grouping (EEIG) between VNF, SPW and W&Z and signing of the agreement on the financial plan of the application for financing by the EC (TEN-T). The project was also allocated project financing by the EU (TEN-T 2007-2013), with 20% financing for Flanders.
- In September 2009, the EEIG (France-Walloon Region-Flanders) was established.
- In 2010, an EIA of the Deepening and local widening of the rivers Lys and Common Lys, Lys Diversion Canal was undertaken. Also in 2010 was the Decision of the Flemish Government 17 December 2010 - Mandate to The Flemish Waterways and Sea Canal Agency for Coordination of an Integrated Plan Seine-Scheldt. A Steering Committee was set-up, together with Administration Nature and Forest (500 ha waterborne terrestrial nature) and Flemish Land Agency (Agricultural Impact Report and Landbank), as was a Consultative Group.

2013-2025: start of the works
- In 2013 works started at Wervik to widen and deepen the River Lys (Flemish side).
- 2015-2016: Design of recalibration works and new bridge at River Lys at Menen (different alternatives considered in coordination with VNF, city of Halluin...).
- 2017: Start of major works for recalibration of inland waterway River Lys.
- 2018: Works planned.
- 2023-2025: Operational project phase.

<table>
<thead>
<tr>
<th>Key project milestones</th>
<th>Original planning/timing</th>
<th>Real or currently estimated planning</th>
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<tbody>
<tr>
<td>Seine-Nord Canal France</td>
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<tr>
<td>Detailed design</td>
<td>2012-2013</td>
<td>2015-2018</td>
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<tr>
<td>Construction phase</td>
<td>2009-2015</td>
<td>2018-2023</td>
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<tr>
<th>Flanders: Lys River and Upper Scheldt River projects</th>
<th>Original planning/timing</th>
<th>Real or currently estimated planning</th>
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</thead>
<tbody>
<tr>
<td>SEA</td>
<td>2008</td>
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<tr>
<td>EIA</td>
<td>2009</td>
<td>2010</td>
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<tr>
<td>Construction phase (recalibration of waterway/inland navigation)</td>
<td>2011-2016</td>
<td>2018-2024</td>
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<tr>
<td>Construction phase (river restoration)</td>
<td>2011-2016</td>
<td>until 2027</td>
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The start of the construction phase of the Seine-Nord Canal France has been delayed by 8-9 years, mainly due to changes in the project concept (budget) and changes to procedures. Given the scale and the type of works taking place (water works), the project is relatively vulnerable to contingencies which could cause delay (archaeology, hydro-geology, and civil works, etc…).

The planning of the recalibration works of the Lys River is realistic, although the EIA/permit procedure in France has yet to be completed. Changes resulting from the procedure, where they occur, could possibly result in project changes and the resumption of procedures in Flanders.
5.3 ANALYSIS

In both projects a number of issues emerged.

**Common Lys River project (cross-border FR/BE).**

Cross-border projects experience additional complexity from differences in organisation, time schedules for procedures and languages among the countries concerned. Cross-border waterborne projects are, generally, more complex than road and rail projects. Waterways such as the Seine-Scheldt are often multi-purpose, with functions beyond transport. Complementary functions that can experience problems due to changes in the physical infrastructure are: water supply, water management (groundwater regulation function, protection against floods), biodiversity, recreation and tourism. This increases the number of stakeholders and the likelihood of conflicting interests.

National boundaries follow river courses, meaning that the cross-border environmental impacts of water rehabilitation works occur along the whole length of the common border. Different procedures between the countries can trigger additional complexity. In the Common Lys River project, different procedures and phasing of EIA and permitting in France (where EIA follows the design) and Flanders (where design follows EIA) created a considerable gap between authorisations in both countries. In Flanders, the EIA and Water System Impact assessment is carried out at the start of the detailed design process (end of pre-design phase). In France the (detailed) EIA is carried out at the end of the design process and integrated into the public consultation file (‘dossier d’enquête publique’ - Procedure of Public Consultation, France, Decree of 21 September 1977)\(^{11}\). As part of this procedure, project drawings, the EIA, safety studies and other information related to regulations, are introduced at the start of consultations with the public, with authorities and institutions (a procedure taking six-and-a-half to seven months). For authorisation of infrastructure changes to border rivers between two countries, this could represent a large difference in the time schedule for implementation between the two countries (time necessary for detailed design, EIA, public enquiry, decision). In the specific case of the Common River Lys between France and Flanders (section between border and Menen), the time gap between authorisations within the two countries was up to three years. In Flanders, an SEA was carried out and approved in 2007-2008 for the Seine-Scheldt project. This SEA covered the overall project works for recalibration of the River Lys, based on a predesign study. Following the more detailed design, from 2009 onwards, an EIA and several Exemptions from EIA have taken place, related to project works in different sections or infrastructures.

Additional complexity arising from different procedures in both countries can be seen in the following:

- EIAs in both countries contain common information (description of the actual situation, impact assessments, cumulative impacts, etc.). A time gap between procedures and the drafting of documents in both countries means that one country can delay the procedure in the other.
- Mitigation measures need to be coordinated cross-border. Mitigating measures that arise from an EIA in one country can affect environmental impacts in the other country. In Flanders, the mitigations measures proposed in the EIA only become final when decisions have been taken by the permitting authorities.
- Due to the time gap between procedures, public consultations on project activities in one country can go ahead (even cross-border), some years before they start in the other country.

\(^{11}\) For the development of large infrastructure projects (like the Seine-Nord Europe), the EIA is integrated into the public consultation file (preliminary design) before the public utility declaration is decreed.
When both countries designate a common contractor (which may be desirable for water rehabilitation works on both sides of a river section), the time gap between authorisations in both countries means that the timing of works is determined by the last country to issue permits.

The responsibility for the river recalibration works in most of the river sections (on both sides of the river bed) rests with the Belgian Government. The responsibility for the bank protection works on the French bank rests with the French Government (Agreement between the French Republic and the Kingdom of Belgium, 3 February 1982). This means that authorisations will be required in both countries before the works in a river section can go ahead.

The responsibility for the river recalibration works on the Common Lys River is assigned to one of the three partners (Flanders, Walloon Region, France), who each have responsibility for one of the three river sections. Each partner is responsible for the design of works at both sides of the river bed and the bank protection works at both sides. Costs are equally divided between both countries, with the exception of expropriations, mitigation measures imposed by the countries or regions, compensations, earthworks of polluted soils, etc. (Agreement between the French Republic and the Kingdom of Belgium, 3 February 1982). Design works are delegated to the leading partner, while the SEA/EIA and permitting application—which are strongly interrelated with these design documents—are implemented according to regulations in the separate cross-border countries. The French authorities applied one comprehensive EIA for their Deûle and Common Lys river projects, which can be considered to have delayed the project. Works in a river section are integrated into one tender, which is the responsibility of the leading partner for that river section. Again, this means that permits and authorisations in both countries must be obtained before the works can go ahead. Another example of the complexity of coordination of permitting procedures is shown in the subproject of the bridge on the Lys River at Wervik. For the river section Wervik-Menen (which is the responsibility of Flanders) a building permit was obtained based on a predesign study of 2003. A public consultation file was then obtained in France in 2006 for heightening the bridge at Wervik. Due to project changes (necessity of a new bridge adjacent to the existing bridge instead of upgrading the existing bridge in order to offset expected traffic problems), new permits had to be granted. After changes in the national legislation on permitting in France, an EIA for the Lys River works as a whole has now started. The French authorisation procedures (permitting and EIA) for the river recalibration works in the Common Lys River sections, are still ongoing, with the works to heighten the bridge at Wervik on hold until the French EIA is finished and a new permit granted.

Between 2008 and 2015, several agreements were reached between Belgium and France on EIA and the different design status of the works at the time of preparing the permitting applications. These agreements resulted in a complex and time-consuming coordination process. While, in general, the country with the longest permitting procedure will determine the overall timing, the planning process also had to anticipate any opportunities for:

- Undertaking processes in parallel, where possible.
- Synchronising process steps.

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12 The convention on improvement of the River Lys (1982) is dated and should be reviewed. The Common River Lys between Deûlémont and Menin is subject to a Convention (3 February 1982) between France and Belgium concerning improvement of the River Lys. Works for improving the river should always be taken in collaboration between the two countries. Each country is responsible for river works in well-defined river sections (river section crossing of Wervik-Flanders – dredging and quays at both sides of the river). The Convention (1982) should be reviewed, as the agreement was made in the context of a canal gabarit of 1350 tonnes, instead of the actual 4500 tonnes.
Stakeholders also highlighted additional complexities in the planning and implementation of this waterborne infrastructure:

- Regular budgetary reviews and additional studies can increase costs and delays, e.g. archaeological studies (heritage value of locks on the River Lys). The cost of the archaeological studies required for the building permit reached EUR 4 million, compared with the budget for the works of EUR 10 million. The archaeological study took two years, and were unpredictable (as were issues like heavy soil pollution). Although not a key factor in this case, the financing for these unexpected project investments can be onerous and unbalance the preliminary project cost-benefit results.

- The rehabilitation plan of the Border Lys River between Wervik and Deinze (2008) contains important works for natural rehabilitation of the river borders. In total 500 ha of new wet nature area will be created. The nature development was part of the plan from the beginning, as it was studied in the 2008 SEA. The Landbank set up in the framework of the project cannot, however, offer sufficient compensation area to the farmers, whose protests have delayed the execution of the nature development works. A proposal to postpone the development of 200 ha of nature development area until a later planning stage was not accepted by the nature organisations. Although in the early stages of the project, the river restoration works (wet terrestrial nature development of 500 ha in the agricultural-intensive region of Wervik-Deinze) gained broad acceptance for the project, they are now heavily opposed by the agricultural sector.

The management structure of the Seine-Scheldt project consists of:

- An IGC, which supervises all matters concerning the construction and operation of the Seine-Scheldt project, on behalf of the three governments involved. It coordinates discussions between the public services of the three governments and has a permanent surveillance and control function (in terms of implementation, financing, operating conditions).

- The EEIG, which is responsible for developing proposals on for example harmonising transport tariffs, coordination of studies, environmental procedures and works, communication with the EC, etc.

- The design studies and works are coordinated at the level of the individual countries or regions (France: VNF, Wallonia: SPW, Flanders: W&Z).

The current project management structure for carrying out the design and permitting applications is, arguably, suboptimal. In view of the highly interdependent procedural steps in the cross-border countries (design, public and stakeholder consulting, mitigation measures, permitting, budgeting of design and procedural activities, control of works, etc.) and the large complexity of environmental implications, a ‘dedicated project design team’, consisting of task force experts from each the Member States working in one location, is necessary. The operational and spatial distribution of the project team resources has resulted in coordinating activities that are too ‘ad hoc’. As each important adjustment step in the project progression must go through budgetary approval by each Member State or regional authority, valuable project time gets lost unnecessarily.

The issue of state aid was also raised. The main activities of W&Z are non-profitmaking. CEF-financing (directly managed by the EC) is not considered as state aid, while ERDF is, and should be notified as such to the EC. The decision period of one year is long, in project terms. Stakeholders stated that a parallel procedure for approval of financing (ERDF) and state aid notification/decision would be more efficient and should be investigated.

**Seine-Nord Europe Project (F)**

One main cause of delay in this project was the suspension of the ongoing PPP-procedure and the
project re-engineering between 2012 and 2015. This delayed the project time schedule by at least two-three years. In addition to the the project budget over-run (caused by high elevated costs for private contractors, as a result of the economic crisis), the change of French Government in 2012 led to suspension of the PPP-procedure. This demonstrates the vulnerability of such projects to changes in political priorities.

This case has highlighted the differences between juridical instruments such as a ‘Treaty’ (Seine-Scheldt Terneuzen Flanders-the Netherlands) and a ‘Cooperation Committee’ (Seine-Scheldt Lys Flanders-France). A Treaty may be a better instrument for cross-border cooperation in large transport projects, as it protects them from changes in political priorities. A ‘Treaty’ also addresses significant issues of rights and obligations of the parties, the adoption of general rules, and achieving targets and objectives. Treaty signatures are usually sealed and they normally require ratification. Treaties are executed through official legal channels that commence with negotiations, before the treaty is signed by authorised signatories and then endorsed by the president of a State or his/her representative. Finally, the parties exchange instruments of ratification after approval by the respective legislative (regulatory) authorities, rendering it ready for implementation. Its creation of binding obligations between nations makes it very suitable for these types of strategic projects. ‘Cooperation Agreements’, by contrast, are less formal and deal with a narrower range of subject matter than treaties. They are typically used for instruments of a technical or administrative character, which are signed by the representatives of government departments but are not subject to ratification.

A good example of the simplification of authorisation procedures is the integrated procedure in place in several Member States. Its objective is to synchronise reviews in order to have a concurrent review. It would have, therefore, relevant gains in time allocations, as well as more coordinated permit reviews by different authorities.

In the context of modernisation of the environmental legislation and simplification of administrative procedures, several Member States have introduced a streamlined review process or unique procedure. Here, certain procedures are combined, with some of the required authorisations being integrated. In France, a pilot experiment has been implemented (Ordonnance n° 2014-619 du 12 juin 2014 relative à l'expérimentation d'une autorisation unique pour les installations, ouvrages, travaux et activités soumis à autorisation au titre de l'article L. 214-3 du code de l'environnement). The objective is to facilitate the coordination of reviews and authorisations, allowing them to be agreed and realised more efficiently, or in parallel. This ‘streamlined’ authorisation procedure often relates to decisions on water legislation (WFD), protection of Natura 2000 sites and species, legislation on forests, etc. The streamlined or coordinated review process ideally leads to one environmental analysis that satisfies the needs of all agencies with a role in proposing or approving a project.

In the specific case of the Project Seine-Nord Europe, a thorough process of stakeholder involvement was implemented by the project promoters in order to create and maintain their support. All stakeholders, whether directly or indirectly involved, were consulted. A Consultation Committee was established in October 2004. Originally, 215 institutions were involved, of which a large proportion were farmers. By the end of this involvement process, several years later, more than 1100 institutions were involved. The project promoters paid special attention to the nature and complexity of information, ensuring that it was adapted according to the knowledge and interests of the relevant stakeholders. They were also careful to respond to specific complaints with information on the mitigation measures. Project promoters engaged in active communication (with stakeholders and reviewing authorities), creating opportunities for concerns and issues to be raised early in the review process, when solutions could be identified. Common checkpoints in synchronisation were: scoping procedures, purpose and needs of the project, alternative screening (identification of a reasonable range of alternatives), draft EIA, and compensatory mitigation.

Large river systems, such as the Seine-Scheldt, are highly complex, multidimensional, dynamic ecosystems and thus are much more than just longitudinal channel networks. Understanding their high ecological complexity requires comprehensive observations and management, a holistic approach that
A similar programmatic approach could be followed for frequent and recurring activities (such as maintenance dredging and knowledge of environmental impacts) that require permits.

TEN-E Projects of Common Interest (PCIs) benefit from accelerated permit granting procedures (e.g. through a binding three-and-a-half-year time limit). According to the stakeholders consulted in the framework of this project, it would be advantageous to introduce a similar fast-track procedure for TEN-T projects.

Design-Build-(Maintain-Operate) is generally considered a good PPP procurement instrument for large infrastructure works, encouraging the use of innovative solutions in the project design. For the case of the Canal Seine-North Europe, the economic crisis led to highly elevated costs for the private contractors, which, together with the 2012 change of government in France, resulted in the suspension of the ongoing PPP procedure.

Although the PPP procedure was suspended at an early stage in the Seine-Scheldt project, attention should still be paid to an important disadvantage of design-build. From the point of view of permitting and regulatory procedures, Design-Build is not a particularly effective method. It works best when the contractor is given maximum freedom to innovate, however, this is at odds with the certainty required for permitting conditions. Using the Design-Build method for these types of large-scale projects poses a planning risk. As final permit acquisition only occurs after the contract has been awarded to the Design-Build Contractor (permit applications are based on its final design), this creates uncertainty and the possibility of delays in permitting or due to contract renegotiations. Since the Design-Build Contractor is assigned permitting and mitigation/compensation responsibilities, this concern and uncertainty of permit acquisition will be shifted to the post-procurement phase. In the opinion of one of the stakeholders, time delays for contract negotiations and review of permits after the contracting of large infrastructure works, can take two to three years. However, in general, faster execution of works through PPP contracting makes up part of this lost time.

5.4 CONCLUSIONS

Different procedures and phasing of EIA and permitting in France and Flanders (design following EIA in France, versus EIA following design in Flanders) cause a time gap in authorisations for the Lys River project between the two countries. Given the complexity of waterway systems, an upfront integrated planning approach and anticipating river data gathering and management would improve efficiency. Running processes in parallel and synchronising process steps is also necessary.

Cross-border countries using permitting procedures with different phasing of EIA, public consultation, decisions on mitigation measures, and decisions on budgetary reviews of the project design and works, need very accurate planning. Here, again, parallel processes and synchronised process steps would dramatically increase efficiency. A ‘dedicated project design team’, consisting of task force experts from each of the Member States involved, all working in the same location, would overcome these challenges. The lack of this type of dedicated resource can be identified as a weakness of the project management structure of the Common Lys River project.

The ‘unique procedure’ which exists in several EU Member States is a good means of simplifying
authorisation procedures. This type of synchronised review process ideally leads to one environmental analysis that satisfies the needs of all agencies with a role in proposing or approving a project.

There are differences between juridical instruments such as a ‘Treaty’ (Seine-Scheldt Terneuzen Flanders-The Netherlands) and a ‘Cooperation Committee’ (Seine-Scheldt Lys Flanders-France). The binding nature of a treaty is probably more suited to these types of significant cross-border projects.

The decision on state aid after notification for examination creates budgetary uncertainty, often for several months. Stakeholders suggest that a parallel procedure for financing (ERDF) and state aid notifications/decisions, would greatly reduce this uncertainty.
CASE DANUBE – COMMON SECTION BULGARIA-ROMANIA

Danube - Common section Bulgaria-Romania
6.1 PROJECT DESCRIPTION

The common Bulgarian-Romanian section of the Danube River is 471 km long. This section of the river is one of the most well-preserved natural sectors and is characterised by riverbed width, shallows, numerous islands, and intensive morphological processes. Characteristics for the common sector are:

- Frequently shifting riverbed with little predictability.
- Hazardous ‘banks’ underneath the water level, at times rendering river navigation impossible due to sand and sediments pushed by the river.
- Direct influence of the Iron Gates I and II on water quantities and the annual volume of sediment discharge in the upper Bulgarian-Romanian sector.
- Increased erosion and negative effects on the banks and riverbed due to reduced water flow and decreases in suspended sediments.
- Frequent fairway alteration due to the great changes of river sediments in shoal sections and the critically low water levels in 2011.
- Considerable seasonal water level variation (about eight metres).

The Danube River in Romania and Bulgaria is an important connection between the Black Sea and western countries on the Danube and the Rhine. In the summer–autumn period, however, the water flow decreases considerably in this river section, rendering navigation difficult. In the main branch of the Danube, the minimum depth for navigation is not met everywhere, resulting in dangerous navigational conditions and economic uncertainty about this transport route. The reasons for these differences relate mainly to morphological and hydrological phenomena. The project for improvement of navigation conditions on the Bulgarian – Romanian common sector of the Danube is part of a wider Danube navigability project to improve the connection between the Black Sea and western countries on the Danube and Rhine rivers. This project aims to improve the navigability of the Danube river in response to the needs of the national transport policy of Romania and other countries, as well as the countries’ international commitments.

The Lower Danube is a very complex river sector due to hydrological and geomorphological parameters. It is also an environmentally sensitive area, supporting many Natura 2000 sites. The navigation conditions on the river are very dynamic.

Several projects and actions have been – and are - dedicated to improving navigability of the Danube, and more specifically to the common Bulgarian-Romanian section of the Danube (which is a TEN-T core network project on the Rhine-Danube Corridor):

- A feasibility study was carried out in 2007-2011, but the environmental approval was never granted.
- A gap analysis was carried out in 2013 and the ToR for the Fast Danube project were prepared.
- The Fast Danube project (2015-2018) is still ongoing.

In 2007-2011 a feasibility study was carried out (at a cost of EUR 2.58 million from ISPA and state budget). The project Rehabilitation and improvement of navigation conditions (river training works) on the common Bulgarian-Romanian section of the Danube was carried out as a common Romanian-Bulgarian feasibility study project, with about 38 bottlenecks identified in this section\(^{13}\). Water and land measurements were carried out during the feasibility study on the entire sector, as well as water analysis based on mathematic modelling. All critical points were analysed, with measures proposed to offset the negative effects in each case. A technical draft feasibility report was finalised in September

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\(^{13}\) River training works are those constructed to train the river, with the objective of guiding and confining the flow of a river channel in a defined course and controlling and regulating the river bed configuration for effective and safe movement of floods.

46
2008, outlining 38 critical sections, of which 29 required training works and/or dredging in order to improve navigation conditions. The final technical feasibility report was drafted in 2009. On the basis of this report the Romanian and Bulgarian competent authorities were to decide on the technical variant of the project. The overall feasibility study was to be completed in 2011. Neither country, however, initiated procedures for obtaining environmental permits or launched their planning and execution phase. (See the analysis chapter for further discussion.)

In 2007, a commitment structure European Grouping of Territorial Cooperation (EGTC) was established, intended as a single point at which to prepare and implement the project and to operate the maintenance dredging works afterwards. In practice, nothing came of the EGTC until 2013, when Bulgaria renewed its interest in this approach.

A **gap analysis** was carried out by JASPERS in 2013. The feasibility study - including both its technical/engineering and economic analysis – was screened by JASPERS, which examined the current study to establish if it was fit for purpose. The study was thoroughly reviewed in terms of:

- Analysis of the existing situation, problem definition, objective setting.
- Definition, analysis and comparison of the project alternatives, including modelling.
- Demand (traffic), economic and financial analysis.
- Providing the information required for the Appropriate Assessment (AA) and the EIA.

The competent authorities in Bulgaria, Romania, the EC (DG Environment), etc. were consulted as part of this analysis. The project implementation options (e.g. separate detailed design/construction versus design & build contract) were reviewed and an analysis of institutional/project management options was carried out, including the option of EGTC.

Terms of References (ToR) for gap filling services were subsequently prepared and contracted by the Romanian government. A funding application to CEF was prepared in 2014 and the ‘Fast Danube’ project was launched. The CEF Action **Fast Danube** (Ref. 2014-EU-TMC-0297-S) 2014 aims to accelerate the removal of an existing bottleneck along this cross-border section of the Danube by identifying the works needed to achieve stable navigation capacity all year round. It is part of a Global Danube Fairway Project to implement the Fairway Rehabilitation and Maintenance Danube Master Plan. This Fairway Maintenance Master Plan is drawn up as a supporting document to the meeting of the Transport Ministers of the Member States on the banks of the Danube. It highlights the national needs and short-term measures to effectively harmonise the waterway infrastructure parameters along the entire Danube and its navigable tributaries. The Fairway Project also provides for yearly dredging interventions. The CEF Action consists of four activities, from the completion of the EIA and building permits’ documentation to the drafting of the tender designs for future works. The CEF Action is a precondition for the implementation of any physical interventions to improve the navigability of the Bulgarian-Romanian Danube common section.

To-date, the Fast Danube project progress is as follows:

- The project officially started in November 2014.
- The public procurement procedures for the technical services (feasibility study, EIA, AA, permits) were launched. The offers received will be evaluated in April 2016.
- In the period mid 2016 - mid 2018 these studies will be carried out before environmental approvals are granted by the Romanian Water administration and the Bulgarian Waterway Agency.
- In December 2018, the studies of the Fast Danube project should be finalised, with the technical design and engineering works due to start in 2019.

The total budget for the Fast Danube project is EUR 5.2 million

- Approximately 99% from the Romanian Water administration (of which 85% is financed by CEF/INEA and 15% by the Romanian government).
- The remaining 1% (or EUR 30,000) from the Bulgarian Waterway Agency (of which 85% is financed by CEF/INEA and 15% by the Bulgarian government).
6.2 TIMELINE – KEY MILESTONES

2007-2011: Feasibility study
- In 2007, the Romanian Ministry of Transport contracted technical assistance for the preparation of a feasibility study. This study defined and analysed six alternatives for the improvement of navigation conditions.
- In November 2011 the final draft of the feasibility study report was completed, and the ‘optimised alternative’ was selected at the recommendation of the consultant. However, uncertainties remained in respect of the AA conclusions. No Environment Agreement was reached in Romania and Bulgaria, as the environmental authorities in both countries considered the report on impact on the Natura 2000 sites incomplete. The proposed solutions therefore needed to be reviewed.

2013: GAP analysis
- In July 2013 JASPERS carried out a gap analysis, reviewing the AA, EIA, feasibility study and CBA. They consulted with the competent authorities in Bulgaria, Romania, the EC (DG ENV), etc., reviewed the project implementation options and analysed the institutional/project management options, including the opportunities for the EGTC.
- In 2013-2014, ToR for gap filling services were prepared and contracted by Romania. The AA, EIA, CBA, and feasibility study were revised, and the the selection of the preferred alternative was reconfirmed.

2014-2018: CEF Action Fast Danube
- In 2014, a funding application was prepared. The CEF Action ‘Fast Danube’ (2014-EU-TMC-0297-S) aims to accelerate the removal of an existing bottleneck along this cross-border section of the Danube by identifying the works necessary to achieve stable navigation capacity all year round.
- In October 2014, the final version of the ToR/Technical specifications was drafted.
- On 19 November 2014 the tender documentation was published.
- In July 2015 the funding application was approved.
- By 2018, all studies within the ‘Fast Danube’ project will be completed.

<table>
<thead>
<tr>
<th>Key project milestones</th>
<th>Original planning/timing</th>
<th>Real or currently estimated planning</th>
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<tbody>
<tr>
<td>Feasibility study “Rehabilitation and improvement of navigation conditions on the common Bulgarian-Romanian section of the Danube”</td>
<td>2007-2011</td>
<td>2007-2011</td>
</tr>
<tr>
<td>Start Public procurement procedures</td>
<td>2011</td>
<td>2014</td>
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<tr>
<td>Evaluation bids</td>
<td>2013</td>
<td>2016</td>
</tr>
<tr>
<td>Environmental impact assessments (EIA, AA)</td>
<td>2013</td>
<td>2016-2018</td>
</tr>
<tr>
<td>GAP analysis (screening feasibility study) by JASPERS</td>
<td>2013</td>
<td>2013</td>
</tr>
<tr>
<td>Launch of the CEF Action “Fast Danube” (completion of the Environmental Impact Assessment and building permits documentation to the drafting of the tender designs for future works)</td>
<td>2014</td>
<td>2014</td>
</tr>
<tr>
<td>Obtainment Environmental permits/approvals</td>
<td>2014</td>
<td>2018</td>
</tr>
<tr>
<td>Start planning phase</td>
<td>2014</td>
<td>2018</td>
</tr>
<tr>
<td>Start execution phase</td>
<td>2015</td>
<td>2020</td>
</tr>
</tbody>
</table>

It does not seem to entirely unusual that a project concerning a cross-border Danube section - involving two newer EU countries and which is a natural reserve with sensitive and valuable natural areas which are subject to more stringent laws and regulations - faces some challenges regarding procedures and authorizations. The current planning, envisaged in the Fast Danube project, seems to be realistic and feasible if the required procedures are met - including stakeholder consultations.
6.3 ANALYSIS

Two main issues complicate projects on the common Bulgarian-Romanian section of the Danube:

- The Danube is a natural reserve, making the environmental aspect particularly important. Sensitive and valuable natural areas are subject to more stringent laws and regulations. Projects in or near such areas must consider the impact of stricter legislation on their timing and planning.

- As a cross-border section, two countries are involved, adding complexity to the project. The legislation and requirements for permitting are different in both countries, as are their administrative systems.

The report of the 2007-2011 feasibility study was not mature enough, at the time, to deliver the results envisaged (i.e. obtaining environmental permits to launch the planning and execution phase). Subsequent analysis showed that, during the project preparation, insufficient consideration was given to the complexity and cross-border aspects of this major project. The project experienced substantial delays and many issues:

- There was considerable discussion with nature conservation NGOs about the impact of the works on Natura 2000 sites. Some of the stakeholders interviewed here believed that the Romanian authority underestimated the impact of the project on habitats and species protected by EU legislation, e.g. the Danube as the migration route of the sturgeon towards the Black Sea.

- This is a cross-border project, with transboundary effects. The Romanian authority, however, launched the EIA (and other) studies by itself. The initial EIA was carried out in accordance with Romanian national law. Again, the stakeholders stated that there was insufficient EIA-expertise available in the department at that time, leading to the underestimation of environmental issues. The EIA and AA were later upgraded by a Bulgarian consultancy, in accordance with the environmental procedures in the Bulgarian legislation. The final environmental studies budget totalled the cost level of all other feasibility studies.

- While the Bulgarian Waterway Agency was represented in the Steering Group for the project, the Bulgarian environmental authority was not, although it needed to approve the EIA. Not all stakeholders that should have been involved were represented in the Steering Group, which damaged consultation and the flow of information.

- Three versions of an EIA were drafted during the project. A first EIA was drafted in English and then translated into Romanian. Bulgaria and Romania have different requirements (e.g. in Bulgaria the non-technical summary is included in the EIA report, while in Romania it is not included there).

- At the beginning of the project, the EC organised a consultation round with NGOs on the initial EIA. This was well received by the majority of the NGO’s, who took a positive view of their involvement at the early stages of the project. Later, when the project stalled, a consultation was held with the local representatives of international Romanian and Bulgarian NGOs. Stakeholders said the meeting took the form of an expert panel, focusing on information exchange rather than real consultation.

- Initially there was no budget for site visits, although a local consultancy carried out some site visits at a later stage of the project. Stakeholders deemed this too late to collect data for the AA.

- Some stakeholders interviewed believed that the project was, in fact, more of a 'plan'. They claimed that the study should have been carried out through an SEA rather than an EIA with a building permit immediately pending.

The final feasibility study report was completed in February 2011, while the draft EIA and draft AA report were issued in September 2011. The feasibility study defined and analysed six options to improve navigation. The preferred option, the ‘Optimised Alternative’, was selected in 2011, on the recommendation of the feasibility study but without taking into account the AA conclusions. Both the Romanian and the Bulgarian authorities declined the application for consent because the impacts on
the Natura 2000 sites were unacceptable.

The documentation finalised in 2011 was subjected to an external review to identify gaps and make recommendations for the implementation of the Project. The gap analysis found that the Preferred Project Design must be developed as part of a procedure where the assessment of impacts on the Natura 2000 sites is conducted in conjunction with the Project Design. This procedure should document the means by which impacts on Natura 2000 sites will be avoided, minimised and/or mitigated. It must be developed in collaboration with the relevant nature protection authorities in Romania and Bulgaria, in order to ensure the input of appropriate knowledge to the Preferred Design.

The gap analysis also stressed that substantial work must be undertaken in order to establish the Preferred Project Design and to provide the required documentation for the different design options examined. This work must be based on a critical sector approach, to balance the technical possibilities for improving navigational needs of the river against the requirements for protecting Natura 2000 sites, as well as considerations of costs.

The CEF Action Fast Danube (2014-EU-TMC-0297-S) was launched in November 2014 to accelerate the removal of an existing bottleneck along this cross-border section of the Danube by identifying the works needed to achieve stable navigation capacity all year round.

In the context of this Action, measures have been taken to streamline the project process and avoid making the same mistakes.

This CEF project is a common undertaking for both the Bulgarian and Romanian governments. The Romanian Waterway administration coordinates the project and is responsible for the tendering etc., in close cooperation with the Bulgarian Waterway Agency.

Obtaining environmental approval remains the main risk. In view of this, Romania is to develop a procedure to streamline the environmental approval procedure of both Bulgarian and Romanian administrations, a considerable challenge given the differences in their national legislation.

In the framework of the Fast Danube project, specific actions aim to smooth project progress:

- A risk assessment was carried out at the start of the project to anticipate possible problems later on. When the project evolves further and the identified risks arise, the usefulness of this assessment will become clearer.
- A proper coordination body was set up: a steering committee at which the Romanian and Bulgarian Ministries of Transport are represented, together with the Romanian and Bulgarian Ministries of Environment and Nature, the Romanian Ministry of EU Funding, and the Bulgarian and Romanian port administrations.
- An advisory body was also created, in which a variety of stakeholders (e.g. NGOs) are represented.
- Accurate mathematic models (e.g. sediment information and hydrologic parameters) were developed to collect the required information for the AA.
- There is a lot of political support for the project at all levels.
- Careful attention is being paid to extensive communication, e.g.:
  - At the start of the project the local and regional authorities were consulted, with surveys used to collect as much useful and correct information as possible in order to find an optimal technical solution that is also environmentally friendly.
  - Workshops were organised with local stakeholders to explain the objectives of the project. These stakeholders will also be involved later, when they will be informed about the solutions and results in all phases.

In the next phase of the study, these practices and actions will be assessed for their merit as good practices.

Other key issues were also raised by the stakeholders interviewed in the scope of this case:
The main challenge is to **set up and maintain a ‘long-term structure’ – with a mandate in both Bulgaria and Romania** - as a stable basis to develop and carry out the project at all stages (preparation, procurement, construction, maintenance). Coordination is crucial in projects where constructions are built on the basis of two contracts and procurement procedures, and the creation of such a structure could have facilitated preparation and implementation of the project.

Commitment of funding is crucial, with ongoing allocations required by both countries for maintenance dredging works on a large scale (estimated at approx. EUR 5 million/country/year). These post-construction dredging works are necessary to ensure that navigability projects are sustainable in the longer term while taking environmental issues into consideration. No such commitments currently exist.

The duration of the planning and preparation phase was initially estimated at four-five years (2007-2011). As of Spring 2016, preparations are still ongoing. All studies within the project Fast Danube should be finished in 2018, with works to start after that.

### 6.4 CONCLUSIONS

A project needs to be mature enough before implementation, in order to avoid loss of initiative and stalling.

Project preparation and planning need to take account of the complexity and the cross-border aspects of major projects, particularly its impact on the timing of authorisation procedures within the applicable nature legislation.

Continuous – and cross-border – engagement, communication and cooperation with stakeholders is of the utmost importance from the earliest stages of the project.

Setting up a solid cross-border project organisation would greatly facilitate project progress. For this project, the main challenge is to set up and maintain a ‘long term structure’ – with a mandate in both Bulgaria and Romania – as a stable basis to prepare, develop and carry out the project in all of its stages.
7 CASE LIQUIFIED NATURAL GAS (LNG) TERMINAL IN RUSE (DANUBE)
7.1 PROJECT DESCRIPTION

The LNG terminal pilot deployment in Ruse is one of the outputs of the CEF sponsored ‘LNG Masterplan for Rhine-Main-Danube’ (2013-2015).

The LNG Masterplan for Rhine/Meuse-Main-Danube project functions as a cooperation platform for authorities and industry stakeholders. It is coordinated by Pro Danube Management and the Port of Rotterdam Authority and brings together 33 project partners from 12 European Member States and one associated partner from Switzerland. The project is co-financed by the EU (TEN-T), receiving a grant of more than EUR 24 million. The activities are carried out in clearly defined areas. Framework and market analyses examine the current LNG implementation, regional markets’ situation, LNG sourcing scenarios and identification of pioneer customers. Existing and emerging technical concepts for LNG engines, tanks and equipment are reviewed, and various operational concepts for LNG bunkering, (un)loading and other safety related topics are also being developed. As part of the regulatory framework activity, the project contributes to modifications of necessary regulations to enable LNG on inland waterways. New vessel and terminal concepts are in development, with some being implemented as pilot deployments. Finally, the knowledge gained from the project will assist in creating a comprehensive strategy for the deployment of LNG as fuel and cargo. In the future, Bio-LNG and liquefaction of stranded conventional gas fields will contribute to a balanced and secure supply.

The deployment of the LNG terminal Ruse in Bulgaria as part of this LNG Masterplan brings the first permanent LNG supply to the Danube region. Due to the lack of nearby LNG import terminals, more complex supply chains are needed, resulting in higher costs and smaller market potential. Various sourcing options were analysed, including routes from North-Western Europe, the Black Sea/Eastern Mediterranean and from the Caspian region. LNG can be transported by (i) trucks, which is already being done but is costly and environmentally critical over long distances, (ii) inland vessels, but regulatory framework needs to be finalised and sufficient base load of LNG demand generated, or by (iii) rail, which is economically and ecologically better than road transport, although adequate terminal infrastructure is lacking.

The project in Ruse developed in response to the enlarging LNG market in the world, requiring the opening of big terminals to third parties, and the need for diversification of the gas supply in Bulgaria. The project began with the intention of refuelling the Danube ships with cleaner fuel. Then, later, it became clear that shore terminals could be very useful for supplying the hinterland with LNG, which would require a good gas distribution network. The main elements of the project were:

1. Planning the size of the terminal.
2. Evaluating the best equipment for the terminal.
3. Negotiating with equipment suppliers.
4. Preparation of the idea and technical project plan.
5. Receiving all necessary permissions.
7. Construction, commissioning and start-up.
8. Establishing a sustainable supply chain.

This case covers a pilot deployment of an LNG terminal in the port of Ruse in Bulgaria. The terminal includes a bunker station for inland vessels and truck loading, storage for LNG, a peak shaving unit, a truck fuelling station and a pontoon for future fuelling of inland vessels. This is the first LNG terminal in the Danube region, with a capacity of 1,000 m³ (4 tanks of 250m³). The terminal is situated at km 485 of the Danube.

The conceptual & preliminary design, together with planning permission, was ready in 2014, as was the detailed Site Development Plan & HAZID. The civil works started in February 2015 and the pilot deployment was due in October 2015. After a delay, it is now expected to be ready in April 2016.
The total duration of the project (from its conception to the construction of the terminal and the evaluation of the equipment) is four years.

The total cost of the project is estimated at EUR 2.7 million, of which 50% is financed by EU grant aid and 50% is financed by the project promoter.

Due to the difficulties in sourcing LNG in the Danube region, the project promoter will ship in some initial volumes in LNG ISO containers via the Bulgarian seaport Burgas. The LNG containers will then be transported to Ruse by LNG fuelled trucks, creating a unique multimodal LNG supply chain.

7.2 TIMELINE – KEY MILESTONES

2012: LNG Masterplan
- In 2012 the LNG Masterplan for Rhine-Main-Danube was launched, including the pilot deployment of the LNG terminal in the port of Ruse in Bulgaria.

2013-2014: preparation pilot project LNG terminal
- In December 2013, after complex negotiations, the planned LNG terminal and facilities received positive statements from the authorities responsible for Natura 2000 sites and Water Management in Ruse and Sofia.

2015-2016: Construction Terminal
- Civil works began in February 2015.
- In 2015, changes in the national legislation led to the postponement of the final civil construction permit, which was issued in September 2015. Pilot deployment was expected in October 2015 but was delayed until April 2016.

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<tr>
<th>Key project milestones</th>
<th>Original planning/timing</th>
<th>Real or currently estimated planning</th>
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<tr>
<td>LNG Masterplan (framework LNG Terminal Ruse)</td>
<td>2012</td>
<td>2012</td>
</tr>
<tr>
<td>Positive statements from the involved authorities (environmental permit, fire safety, water and technical permissions)</td>
<td>2013</td>
<td>2013</td>
</tr>
<tr>
<td>Start civil works terminal</td>
<td>2015</td>
<td>2015</td>
</tr>
<tr>
<td>Completion civil works terminal</td>
<td>2015</td>
<td>2016</td>
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<tr>
<td>Pilot deployment</td>
<td>2015</td>
<td>2016</td>
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The delays in this case were minor. Changes in the national legislation (2015), leading to the postponement of the final civil construction permit, were inevitable. The project progress seemed to be realistic and achievable.

7.3 ANALYSIS

The project experienced some difficulties in the permitting process.

The permitting procedure started with a negotiation phase with the national authorities. Firstly, a ‘preparatory document’ was drafted by the project promoter, specifying the project idea. The national authorities took one month to evaluate the document. The project promoter then prepared the SEVESO paper for the relevant national authority/administration, in order to gain a SEVESO approval. Following this, the project promoter prepared a document describing the technical phase of the project, e.g. the standards they would use to build the terminal (see below). This document was sent to all relevant national administrations in Sofia (i.e. fire safety administration, environmental administration, water (supply) administration, technical supervising agency, and SEVESO
administration) for approval. With little direct contact between these different national administrations, the project promoter facilitated contact between them in the context of this project, thereby avoiding possible delays. Once all of these administrations had approved this document and granted environmental, water, technical and fire safety permissions, the project promoter applied to the local authority for a building permit. Building and exploiting the terminal requires a complex permit, and obtaining permission and approval from the authorities took most of the planned time.

There is no national Bulgarian legislation regulating LNG terminals, and the national Bulgarian administration is in favour of centralising the entire authorisation process for such projects. Initially, the project promoter discussed the project with the local water authority with a view to starting the authorisation process at that level. As there is no specific legislative framework in place in Bulgaria, the national Ministries were responsible for all authorisations, e.g. environmental permit, fire safety permit, etc., with no decisions delegated to local level. This barrier was somewhat offset by the strength of local support for the project, with local authorities seeing the benefits of increased new business and turnover for the region. When interviewed, the project promoter stated his belief that centralisation slows down permitting procedures and hinders the development of this type of infrastructure. Authorisation procedures, he believed, would be easier at local level, which is closer to business. A case can also be made, however, for a centralised permitting procedure for projects of this type. This case required several authorisations, which usually require specialist knowledge more likely to be found within a centralised authority. If local authorities were to be made responsible for issuing permits, they would require support from the national authorities in the form of training and assistance (either regularly or on request), guidance for issuing and handling permits, preparing standardised permitting formats and enabling networking and cooperation amongst regional/local authorities.

While there is EU legislation and standards for LNG terminals, these are not yet implemented and applicable in Bulgaria (they are likely to come into effect in April 2016). To avoid a delay in waiting for implementation of the EU legislation, the project promoter instead was guided by American standards, which feature clear descriptions of terminal building, and Italian guidelines. Foreign suppliers provided their assistance in sourcing useful guidelines and standards used in other countries. The preliminary authorisation phase of the project took one year, because of the missing Bulgarian legislative framework.

The project promoter in this case has a lot of experience with LPG and CNG infrastructures. The legal authorisation framework for LPG and CNG infrastructures is – in contrast to the lack of legal framework for LNG – established and well developed in Bulgaria. The local authorities are involved and, according to stakeholders, the process is smooth, without undue loss of time or money.

Bulgaria does not have a very well developed gas distribution network for LNG or LPG, and the project promoter wants to develop the LNG bunkering in the country and its supply on the lower Danube, as well as increasing the use of environmentally friendly fuels. The existing fleet is old, however, creating a gap between the possibilities afforded by the LNG terminal and the reality of the existing fleet. The economic crisis, together with insufficient financial means/funding prevent the Bulgarian government from undertaking initiatives to encourage expansion or retrofitting of the existing vessels.

According to the stakeholders interviewed, the Bulgarian (and Romanian) government seems to favour road transport (trucks). This creates a barrier for the project, making it difficult to switch mode to inland water transport.

Binding terms and deadlines in the permitting and administrative procedures are not respected by national administrations. This is the result of a high workload (because of the centralisation of all the permitting procedures) and also a halt on the issuing of permits one month either side of an election).

Some of the stakeholders consider EU environmental legislation to be too complex and lacking clarity.
They point to the lack of knowledge in some countries, which creates legal uncertainty, and has a negative impact on infrastructure projects.

Situating the permitting authority at regional or local level has advantages and disadvantages. It is not easy for local authorities to deal with new types of projects - e.g. LNG terminals in inland ports - as they are not always familiar with European legislation, or lack understanding of its application in practice. For this reason, the Action Plan paid close attention to this issue in its guidelines and recommendations: e.g. striving for maximum harmonisation so that not every local authority (which are mostly responsible for permitting) has to ‘reinvent the wheel’, e.g. establishing safety distance measures. Fully harmonised EU regulations are not possible because the local contexts in which local authorities operate are too diverse. Only information and guidelines are of real practical use.

The project promoter reported that a Bulgarian investment company, InvestBulgaria Agency (IBA) can issue certificates to speed up investment projects\(^\text{14}\). IBA is a government institution providing information, contacts and project management support to potential investors. Its services include administrative support with permits, and the project promoter in this case stated that he would consider obtaining such a certificate should he undertake another project of this type.

The project ‘LNG Masterplan Rhine-Main-Danube’ was officially closed on 31 December 2015. The Masterplan included a list of 83 actions and measures proposed by the consortium. Some of these specifically address the regulatory and permitting issues that create barriers.

A detailed breakdown and description of these measures and actions is provided in the chapter ‘Actions catalogue with measures’ of the ‘LNG Implementation Strategy & Recommendations’ of December 2015. The consortium has taken steps to implement these actions and measures.

<table>
<thead>
<tr>
<th>LNG Masterplan Rhine-Main-Danube</th>
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<tbody>
<tr>
<td>The LNG Masterplan Rhine-Mail-Danube contains a list of 83 actions and measures, some of which specifically address:</td>
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<tr>
<td>1. The regulatory framework / ‘Governance and legislation’, e.g.:</td>
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<tr>
<td>5. Harmonise port regulations at European level:</td>
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<tr>
<td>o Provide guidelines at European level for LNG-related port operations in inland ports.</td>
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<tr>
<td>o Align port regulations for LNG bunkering with relevant (policy) regulations.</td>
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<tr>
<td>6. Provide guidelines for more harmonised spatial planning of LNG bunker operations in inland/maritime ports:</td>
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<tr>
<td>o Develop harmonised guidelines for land use planning for all bunker scenarios.</td>
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<tr>
<td>o Include external safety conditions and nautical conditions in spatial planning processes for LNG bunker locations.</td>
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<tr>
<td>o Include LNG bunker suitability map in port by-laws.</td>
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<tr>
<td>7. Clarify and harmonise risk assessment.</td>
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<tr>
<td>8. Support the industry to set rules and standards for LNG bunker stations and vessels:</td>
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<tr>
<td>o Provide a European best practice guideline for permission of onshore/floating LNG bunker facilities.</td>
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<td>o Provide European regulation for construction and operation of LNG bunker pontoons.</td>
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<tr>
<td>o Provide European regulation for construction and operation of LNG bunker vessel.</td>
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<tr>
<td>o Develop cross-national guidelines for permission/accreditation of LNG bunker vessel operators.</td>
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<tr>
<td>9. Ensure safe and efficient LNG bunkering and (un-)loading:</td>
</tr>
<tr>
<td>o Elaborate harmonised bunkering standards and checklists for all bunker scenarios</td>
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10. Improve emergency response knowledge of local authorities.

2. ...  
3. ‘Awareness’:
   1. Increase awareness of the socio-economic and environmental benefits of LNG:  
      o Define and execute public information campaigns on socio-economic and environmental benefits of LNG.  
   2. Inform on safety requirements and standards for LNG infrastructure and operations:  
      o Create and regularly update knowledge base and disseminate to relevant stakeholders.  
      o Foster exchange of real-life experiences.  
   3. Ensure implementation of Action Plan of LNG Masterplan:  
      o Create an organisational structure to coordinate the implementation of LNG Masterplan and implement measures.

The completion of the project was slightly delayed from 2015 to 2016. While the duration of the planning and preparation phase was initially estimated at two years, changes in the national legislation in 2015 led to the postponement of the final civil construction permit until the end of September 2015.

7.4 CONCLUSIONS

The transposition of EU LNG legislation into national law is necessary to provide a legal framework for these types of projects and to facilitate the permitting phase of LNG terminal projects.

The use of foreign standards can provide benchmarks where a national legal framework is lacking.

A ‘Masterplan’ can be a good framework to facilitate new types of infrastructure projects such as inland port LNG terminals.

According to the project promoter, local authorities should have more responsibility for permitting. In view of its location in harbour, regional and local authorities become important partners during the implementation of the project, particularly given the lack of interest from the public. However, for large scale river infrastructure works, much depends on the resources, capacities and experiences available at regional/local level in dealing with issues of stakeholder involvement, large scale public consultation, etc. Authorisation processes usually require specialist knowledge, which is more commonly found in centralised procedures managed by a centralised authority. If local authorities are to be made responsible for issuing permits, they should be supported to do so by the national authorities.

Binding terms and deadlines in the permitting and administrative procedures should be respected by national administrations.

Where available, the use of project support from national government-supported investment companies should be encouraged and facilitated for project promoters.
Road Brno-Vienna
8.1 PROJECT DESCRIPTION

This road project concerns the upgrading of the cross-border section AT/CZ (A5/R52) Wien-Brno to an express road in order to alleviate a bottleneck in the cross-border section between Austria and the Czech Republic (A5/R52) Wien-Brno. The Brno-Vienna motorway proposes to connect the south Moravian capital Brno (in the Czech Republic) and the Austrian capital Vienna, by construction and upgrading of the existing R52 in the Czech Republic and the A5 motorway in Austria. The distance between the two regions is approximately 110 km.

The Brno-Vienna motorway is part of the TEN-T (Baltic Adriatic Corridor) priority project (PP) N° 25 Motorway axis Gdansk–Brno/Bratislava-Vienna. PP25 involves four Member States: Poland, the Czech Republic, Austria and Slovakia. Its western branch passes through Brno, the second largest city of the Czech Republic, on its way to Vienna (950 km), while its eastern branch passes through Zilina, site of Slovakia’s automotive production, to the country’s capital Bratislava (890 km). It involves the construction of a new two-lane motorway in both directions. The motorway projects are included in the respective national development plans of the four Member States. Works have already started on most sections and some subsections in all four countries are already complete.

According to a 2009 treaty between the Czech Republic and Austria, the connection Brno-Vienna is to be completed as an expressway and continuous connection between Brno and the Austrian A5 North Autobahn at Drasenhofen, leading to Vienna. Works entail the construction of the R52 expressway in the Czech Republic (to be extended to four lanes) and the A5 motorway in Austria, and their connection at the state borders (Mikulov in the Czech Republic and Drasenhofen in Austria).

In the Czech Republic, the route south of Brno to Pohorelice is complete. The remaining section, from Pohorelice to the border in Mikulov, crosses an environmentally sensitive area, making construction unlikely to start for some time. No planned end date has been communicated for the works. The R52 has not been funded by the EU Cohesion Fund 2014-2020.

The existing R52 expressway currently goes from Modrice, about 7 km south of Brno, to Pohorelice (a section of 19 km). From Pohorelice, ordinary road n° 52 runs further south to the border with Austria at Mikulov (a section of 22.5 km). This road will be upgraded.

Given the uncertainties associated with the R52, the Austrian Government has outlined a phased project implementation for the A5 Nord Schrick-Drasenhofen-Border between Austria and the Czech Republic. In the first phase, the section Drasenhofen-Border will only be completed as a two-lane road by the existing route, with an upgrade to motorway by 2018.

The R52 section via Mikulov was included in the Breclavsko regional land use plan adopted by the South Moravian Regional Assembly in 2009. However, the planned motorway route via Mikulov runs through Natura 2000 sites and nature reserve area. Environmental NGOs and municipal authorities have built up serious resistance to the projects, both politically and legally. The public (affected groups, individuals and NGOs) participated in most of the EIA permit proceedings, appealing against the EIA and subsequent decisions. They claim that an alternative route could use the existing D2 Highway from Brno to Bratislava via Breclav and then continue to Reinthal in Austria (an extra 15 km).

On the Austrian side, the route will connect to the A5 near Drasenhofen, running via Poysbrunn and Schrick to Vienna (section Poysbrunn-Border: 16 km; section Schrick-Poysbrunn under construction: 25 km).

The project budget is as follows:

- A5 Construction Schrick-Poysbrunn (EU ID AT303), 25 km, 2x2 lanes: EUR 324 million.
A5 Construction Poysbrunn-Border AT/CZ 1st Part Drasenhofen bypass (EU ID AT307), 5 km, 2x1 lanes: EUR 54.5 million.

A5 Construction Poysbrunn-Border AT/CZ 2nd Part Poysbrunn-Drasenhofen section (EU ID AT308), 9 km, 2x2 lanes: EUR 91 million.

R52 Construction Pohorelice-Mikulov: project costs unknown with routing uncertain following appeals against the EIA.

8.2 TIMELINE – KEY MILESTONES

1999-2015: Early developments and preparatory studies
Negotiations between a Czech-Austrian group of experts in the Czech town of Valtice on the route.

- In 2001, a common decision (Czech Republic-Austria) was taken on the project, with an international study for route R52 / A5 prepared by the Austrian side.
- The initial study proposed five possible routes. This was reduced to three and agreement was reached on expressway R52 in section Pohorelice – Mikulov. The ‘Breclav alternative’ was rejected.
- In 2002, the Austrian act was updated and the route of the A5 motorway specified as route Grossebersdorf-Wolkersdorf-state border Drasenhofen.
- In 2005 both countries signed a Memorandum on cooperation during preparations and construction of the connection between the Austrian A5 motorway with the Czech expressway R52 on the Czech-Austrian state border.
- In May 2005 the Czech Ministry of Environment approved the EIA opinion for the R52.
- In 2006, the route of expressway R52 was included in the Zoning Development Policy (Land Use Plan) of the Czech Republic, by a governmental decision.

Environmental concerns were raised by NGOs in both countries, due to the crossing of a Natura 2000 area in the Czech Republic. Legal action was taken by NGOs against the Brno-Vienna motorway through Mikolov/Drasenhofen on the basis of a lack of alternatives considered, lack of cumulative environmental impact assessment (slicing of EIA proceedings), the use of incorrect data, and lack of transboundary assessment.

- In November 2006 construction of the R52 corridor was included the Zoning Development Policy of the Czech Republic. The SEA procedure was carried out after the issuing of the EIA opinion for R52. The plan was approved, but later annulled by the courts.

- Between 2006-2007, the Austrian EIA Proceeding took place of the Road A5 Nord-Autobahn-Sehrick-Drasenhofen (both road sections were assessed as a single project: Sehrick-Poysbrunn 25 km and Poysbrunn-Drasenhof 9 km.
- Transboundary procedure (Convention Espoo).

For the purposes of development consent procedures, the R52 (whose whole length is 22.5 km) was divided into three sections. In May 2007 (almost two years after submitting the positive EIA statement) the development consent procedure for the first section (Pohorelice-Ivan) began. Following objections by various citizen groups and municipalities against the alignment with the Drasenhofen/Mikulov border crossing point, the Czech Minister of Transport asked the Austrian Ministry of Transport to instead consider a border crossing at Breclav/Reintal. A new version of the Czech Government Transport Programme (Operational Programme Transport (OPT) 2007-2013) indicated that the R52 would not be funded until 2013, with no EU funding expected for this road.

- In 2009, an intergovernmental agreement was signed between the Czech Republic and Austria to connect expressway R52 to motorway A5 Nordautobahn at Mikulov/Drasenhofen. The agreement gave a completion date of 2014.
Czech ecologists, however, still insisted on the alternative eastern route, connecting Brno and Vienna via Breclav (Czech Republic). In November 2009, the **Supreme Czech Administrative Court** ruled against a Regional Land Use Plan that included the proposed route of the R52 highway.

Also in 2009, the **EIA of the section Schrick-Poysbrunn was authorised**, first instance decision in November 2009 (Federal Minister for Transport, innovation and Technology BMVIT-312.505/0007-II/ST-ALG/2009).

In December 2009, the two countries made a **joint declaration in the European Parliament** on the European and common regional importance of the motorway axis Gdansk-Brno-Vienna (TEN-T project n° 25).

In 2010-2011, the representatives of the South Moravian Region decided on the **Regional Zone Plan of the South Moravian Region**, stating: *the Regional Zone Plan of the South Moravian Region laid down details on the corridor of capacity road R52 Pohorelice - Mikulov - Drasenhofen / Austria (E461), as defined in the 2008 Zoning Development Policy of the Czech Republic, by defining the D65 corridor of the four-lane expressway R52 Pohorelice - Mikulov - border CR / Austria including parallel supporting roads to ensure direct service in the areas concerned (civil structure with public benefit).*

During a 2010 Austrian evaluation of major infrastructure projects, it became clear that the Czech Republic could not execute the project by 2015. To avoid high investment costs without the guarantee of a ‘motorway’ connection at the Czech border, a two-step strategy was developed in Austria.

- **A5 North A**: EIA/road approval for Schrick-Poysbrunn (new motorway, four lanes, villages bypassed).
- **A5 North B**: phase 1: Drasenhofen bypass, 5 km, 2x1 lanes.
- **A5 North B**: phase 2: Poysbrunn-Drasenhofen (15 km stretch of road, 2x2 lanes including Drasenhofen bypass and upgrading 2 km of existing road trajectory north of Drasenhofen to the border).

The construction of the **A5 from Schrick to the Border AT/CZ** was confirmed in the National Interurban Road Program 2012-2017.

In 2012, a **Supreme Court judgment** repealed the Regional Zone Plan of the South Moravian Region (essential for the construction of all sections with the exception of the Mikulov bypass). It was confirmed by the Supreme Administrative Court’s decision that the construction of R52 is being prepared in contradiction with the law, by neglecting to make a strategic assessment of alternative routings for the road between Brno and Vienna. The EIA procedure has only be made for the single corridor Pohořelice - Mikulov/Drasenhofen. The court also confirmed that the proposed R52 corridor as a quality road connection with Austria complied with the Zoning Development Policy (judgment 1 Ao 7/2011).

On 12 June 2013, the Czech government approved the **Transport Policy of the Czech Republic 2014-2020**, its fundamental conceptual document for the transport sector in the Czech Republic. A positive **SEA statement** had earlier been issued on this policy on 13 March 2013.

From 2013 to 2015, **Project EIA and Permit Proceedings took place in Austria** for the A5 Nord Poysbrunn-Border AT/CZ Phase 1 (for the phased project approach, a new EIA was necessary: due to the new project characteristics other environmental impacts would occur due to different traffic intensities e.g.). In April 2015, EIA and Permit approval was granted for A5 Nord Poysbrunn-Border AT/CZ.

From 2014-2016, the **Regional Zone Plan** of the South Moravian Region is being updated. 2016-2017 will see the **A5 Construction Schrick-Poysbrunn**.

Between 2016 and 2018, A5 Construction Drasenhofen by-pass (A5 Nord Poysbrunn-Border AT/CZ Phase 1) will take place.
The actual planning is realistic, but the implementation, of a number of road sections, depends upon the approval of the updated Regional Zone Plan of the South Moravian Region (expected sometime in 2016).

### 8.3 ANALYSIS

The project has been delayed by four years, based on the project finish date of 2014 given at the beginning of the development consent procedure in 2007. This delay stemmed from unresolved environmental problems on the Czech site and legal appeals in both countries. The actual planning for the A5 Drasenhofen by-pass gives a completion date of 2018, while no actual planning is in place for the Czech site. These delays have created economic uncertainty and driven up financing and construction costs.

Despite agreement from both governments on the motorway route in the 2009 Treaty, and the completion of construction on several road sections, the project remains uncertain. This has led the the Austrian Government to develop a phased project implementation for the A5, of which a phased A5 without any connection to the Czech border at Mikulov, is under construction.

There has been a lack of appropriate and coordinated planning of the project in both Member States. Deficiencies in project promotion are numerous and conflict with the EU guidelines for TEN-T development, the EIA Directive (alternatives and transboundary assessment) and the EU Habitats and Birds Directives (alternatives)\(^{15}\).

- The early phase of strategic project planning was not conducted on a sound basis. The 1999 negotiations that selected the border crossing at Mikulov did not use objective criteria for optimal network design and assessment of alternatives. No conclusive evidence for the necessity and financial feasibility of the project (and its alternatives) has been produced, and doubts about the financial feasibility of the project remain. Expert studies commissioned by the Czech Roads and Motorways Directorate in 2006 and 2008 confirmed that the Brno-Vienna connection has insufficient traffic intensity to be economically viable in any of the proposed variants. Despite this lack of evidence, construction was planned, apparently due to

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\(^{15}\) REGULATION (EU) No 1315/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (22). Projects of common interest for which Union funding is sought should be the subject of a socio-economic cost-benefit analysis based on a recognised methodology, taking into account the relevant social, economic, climate-related and environmental benefits and costs. The analysis of climate-related and environmental costs and benefits should be based on the environmental impact assessment carried out pursuant to Directive 2011/92/EU of the European Parliament and of the Council (1).
the lobbying of land owners around the planned construction site. Prime minister at that time stated in the Czech parliament in June 2009: ‘A decision on the motorway you are asking about was taken by the government on the 9th of June this year after very complicated negotiations. At the end, both lobby groups will be satisfied. First, the one which has bought land under Mikulov as well as the second that bought land under Breclav.’

- The Czech Supreme Audit Office has strongly questioned the proceedings that promoted the project, given the lack of evidence of economic feasibility. The environmental impact of the plan was not assessed in a SEA procedure pursuant to the SEA Directive. In the Czech Republic, the EIA final opinion was issued prior to approval of the land use plan. Although not directly breaching the EC law, this confuses the logical order of the SEA and EIA procedures\(^\text{16}\). In Austria, no SEA took place, and there has been a lack of EIA for real route alternatives, despite the fact that such alternatives exist and the chosen option will generate excessive traffic in a Natura 2000 and Unesco World Heritage Site. An alternative to the Drasenhofen/Mikulov border crossing is Reintal/Breclav, using the existing D2 motorway and building a link to the Austrian border near Breclav.

- Both Member States need to coordinate their planning and assess the alternatives for connecting the A5 motorway to the Czech Republic. The current approach of slicing the EIA and permit proceedings into several sections contradicts the EIA Directive.

**Environmental concerns were raised by NGOs** in both the Czech Republic and Austria, as the planned route crosses a Natura 2000 site in the Czech Republic (Special Protection Area Pálava and Nové Mlyny (Bird Habitat Areas and Nature Reserve) and priority Site of Community Interest (pSCI) Pálava-Podluzí) which could be threatened by the construction of the R52 motorway between Pohorelice and Mikulov. NGOs appealed against the permits for the A5 (AT) as well as the R52 (CZ), citing the splitting up of the EIA and permits in different road sections, lack of assessment of route alternatives, lack of trans-border assessment and conflicts with the Birds and Habitat Directives. Despite public consultation, an EIA appeal and a nature protection appeal have been submitted to the Commission.

A major complaint against the EIA permit for the A5 Northern National Highway project in Austria is based on (*Justice and Environment*, 2013) ‘salami-slicing’, whereby the construction of the A5 was planned in three sections, each of which underwent a separate EIA procedure (contrary to the EIA Directive requirement to carry out EIA for the whole project). The EIA proceedings were carried out on one section of the A5 Northern National Highway, so the assessments of harmful air pollutants, emissions etc.referred only to territorial limited effects of the whole project.

Other complaints are based on:

- **Climate Change** considerations have not been adequately assessed within the EIA, with no serious evaluation of alternatives. The first instance authority did not adequately evaluate the likely impacts of the project on climate, providing only superficial and inconsistent assessments like ‘climate change effects remain low’ or ‘limited climatic impacts are restricted to the area around the traces’.

- **Effective access to justice.** The Austrian EIA Act provides for a different procedure for high-speed railway lines and motorways. Under this procedure, appeals go to the Administrative Court, which acts according to different procedural rules than the Independent Environmental Tribunal (the second instance for all other EIA procedures). Lodging a complaint with the Administrative Court does not guarantee suspension of works, as was the case here (cp. VwGH 08.06.2010, 2010/06/0001 – 11).

- Since approval of the ‘EIA opinion’ in 2005, administrative procedures for the required permits for the R52 road have started. However, apart from three decisions on exceptions from

\(^{16}\) The routing plan was approved before the SEA Directive entered in force in 2011.
conditions for protected species (one later cancelled by the courts), no valid permit has been issued. In the meantime, two regional and two local land use plans in which the R52 road had been included, have been annulled by the courts (Justice and Environment, 2013).

Complaints against the permits for the R52 (Pohorelice-Mikulov) high-speed road project in the Czech Republic are based on (Justice and Environment, 2013):

- **Failure to assess all aspects of the project, especially its indirect effects (Article 3 of the EIA Directive) and cumulative impacts.** The impact of the road construction and resulting traffic on the overburdened area southwest of Brno has not been assessed, nor have the impacts of the project been assessed in combination with the impacts of the other traffic structures (high-speed road R43 and extension of the D1 motorway). Heavier traffic interference on the Lednice-Valtice UNESCO cultural heritage area as a result of building R52 has not been considered. This is contrary to Articles 3(5) and Annex IV of the EIA Directive, under which the assessment must identify, describe and assess in an appropriate manner, both the direct and indirect effects of a project on human beings, fauna, flora, soil, water, etc.

- **Failure to assess alternatives (Article 5(1) and 5(3) of the EIA Directive).** In the EIA process, while partial 'sub-variants' (all in Pohorelice-Mikulov corridor) have been assessed, there was no assessment of a real alternative for a highway type connection between Brno and Vienna. This is contrary to Article 5, paragraphs 1 and 3 and point 2 Annex IV of the EIA Directive (especially in relation with interference with Natura 2000 areas).

- **No trans-border assessment (Article 7 of the EIA Directive).** As the R52 forms part of the Brno-Vienna connection, the project must have, in the sense of Article 7 paragraph 1 of the Directive, a significant effect on the environment of a neighbouring Member State – Austria. The Czech Ministry of Environment, however, did not carry out a trans-border assessment and did not comply with the requirements of the EIA Directive on trans-border projects (e.g. Article 7, §3 and §4).

- **‘Salami-slicing’ of the project.** For the purposes of development consent procedures, the R52 (its whole length is 22.5 km) was divided into three sections. The practice of ‘salami-slicing’ aims to get development consent for less problematic sections of the project (and begin construction work), thereby securing consent for the more problematic section.

- **Conflict with the Birds Directive and Habitats Directive.** No real alternatives for a highway type connection between Brno and Vienna were assessed in the EIA process for R52. This is significant, given that the R52 would affect SCI Musovský luh and the bird habitat areas of Pálava and Nové Mlyny. Non-assessment of the alternatives represents a breach of Article 6 paragraphs 2, 3 and 4 of the Habitats Directive and Article 4 §4 of the Birds Directive, under which a project with negative implications for Natura 2000 sites can only be carried out in the absence of alternative solutions with less of an impact on these sites.

- **Non-cohesion of SEA and EIA processes and conflict with the SEA Directive.** The construction of the R52 corridor was included in the land use plan for the Breclav region, approved in November 2006 and later annulled by court. By issuing the EIA opinion for R52 before the land use plan was approved, the Ministry of Environment undermined the logical order of these two procedures, with the result that real alternatives for a highway connecting Vienna and Brno were not assessed in any of these plans. In the SEA procedure, the authorities argued that the ‘positive’ EIA opinion removed the need to assess alternatives.

**Legal decisions** on the permit proceedings for the project have revealed structural flaws, finding that several key areas of EIA received insufficient attention. The inadequacies were most marked in the evaluation of key impacts, consideration of alternatives, and public consultation.

The project is a typical example of earlier ‘decided policy options’ (whereby the route was included in the regional land use plan at the start of the TEN-T project) being used in permitting procedures,
while legal procedures have meanwhile undergone changes. The plan was not subject to an SEA, as it became legally binding before the SEA Directive (Directive 2011/42/EC) entered into force. This meant that the ‘decided-policy’ was investigated at project level (EIA), but alternative solutions that would now be assessed at a more strategic level, were possibly neglected.

The EIA process for the R52 section formally started before the accession of the Czech Republic to the EU, with the ‘announcement of the project’ on 29 January 2003 and accession of the Czech Republic to the EU on 1 May 2004). Decisions on routing and selection of alternatives were made even earlier than that. Court appeals against the decisions are based, therefore, on the SEA and EIA Directives and the Birds and Habitats Directive, which apply to the project. Given that the EIA started before accession to the EU, the routing alternatives for the project should have been assessed by both countries in the 2005 EIA 2005 and the conclusions on the best possible routing incorporated into the 2006 land use plan.

From a technical point of view, the project development has been relatively successful, albeit with some lessons to learn. There is a particular need for early and transparent public participation, assessment of alternatives and a clear project definition prior to the project decision. A technical guideline, including detailed examples of good coordination and integration practices for design and assessments of cross-border river works, would be very useful for projects of this type.

Development consent procedures for main road projects are fundamentally different in the Czech Republic and Austria. In the Czech Republic the development consent procedure consists of four main steps: EIA final statement - land use permit - building permit - final operation approval. By contrast, in Austria, no SEA-procedure applies to Federal Roads, and the detailed project design is followed by the EIA road approval. For this project, therefore, there was no SEA procedure nor any assessment of economic needs and alternatives to the A5 Motorway. While the procedure was completely in line with both EU and national legislation, it contributed to problems later in the process.

The construction permitting procedure for Federal Roads has, as a consolidated development consent procedure, proven very successful in Austria. The major advantage is the consolidation of permit proceedings where the applicant submits to one overall proceeding for an EIA permit comprising all relevant project permits. This is efficient for all parties. The First Part of the concentrated Approval Procedure (for which the competent authority is the Federal Minister for Transport, Innovation and Technology (Article 24(1) and 2 of the EIA Act)) comprises environmental compatibility under the EIA Act, specification of the alignment under the Federal Roads Act, approval of forest related work under the Forest Act, approval under the Road Tunnel Safety Act, and approval under the Water Act. The Second Part of the Concentrated Approval Procedure (Provincial Government) comprises approval under the Nature Conservation Act, approval for secondary road crossing under the Provincial Road Acts, and additional permissions required by regional law.

The scope of cross-border cooperation between neighbouring countries goes beyond agreeing threshold criteria and the point at which the road will cross the border. It should be viewed as a cooperative venture, specified in terms of intended recipients, timeliness, frequency, content, format and delivery. Formal supporting agreements, regular reviewing, coordination of procedural steps, de-briefing, and exchange visits are important in smooth implementation of projects.

There were difficulties with the transboundary assessment (EIA). The Vienna-Brno highway has two national parts, each of which has a significant effect on the environment of both Member states. According to Article 7 of the EIA Directive and the Espoo Convention, each of these parts should have been subject to a trans-border assessment. This requirement, however, was not fulfilled. In the Czech case, no such assessment was required of the project promoter, despite the fact that, in the initial (screening) stage of the EIA procedure, the Austrian Ministry indicated its willingness to participate, and Austrian administrative bodies, municipalities, and NGOs all sent their comments. On
the Austrian side, only one of six EIA permit proceedings, dealing with the section of the project closest to the border, was officially reported to the Czech Republic, at which point the Czech Ministry expressed its wish to participate. Austria sent the project documentation to the Czech Republic, but only in German, thus the project was not presented to the public in the Czech Republic, as required by Article 7(3) of the EIA Directive (Justice & Environment, 2006).

**In completing transboundary assessments in cross-border Member States, translation of official documents is complex, open to legal uncertainty (quality of translations) and costly, according to the project promoter.** In practice, EIA reports are often a few hundred to a thousand pages, or more.

In addition to deficiencies in the strategic project assessment, management of the project (transboundary assessment, translations, public involvement), would have been more efficient if a cross-border company (EEIG or similar) had been established. The **cross-border coordination** in this case was implemented through ‘bilateral working groups’ that met and informed each other on a regular basis.

**Problems with procurement - tendering procedures**

In Austria, for sections of the A5 North project a ‘Functional Tender’ procurement was originally applied. This is a type of PPP-procedure for complete project realisation (design-build-maintenance), based on a functional specification of measures describing the objectives and performance of the project, as well as the technical, organisational, financial and legal framework conditions. In order to take advantage of the creativity and technical experience of the applicants, no fixed solutions for the implementation are given. **This procedure received insufficient interest from applicants and was abandoned**, most likely because of the high financial risks for contractors.

**Good practices** in the project were:

- EIA permit proceedings for Federal Road projects are more consolidated in Austria than in other EU countries. The Austrian EIA Act (*Umweltverträglichkeitsprüfungsgesetz*, UVP-G) is at the same time both the environmental and construction permitting procedure. It determines in its Article 3 that all acts that contain conditions for the permitting of a project must be applied and decided on during the single EIA proceeding (*consolidated development consent procedure*). The outcome is thus one single permit decision covering all relevant permitting issues for a specific project, including the construction permit. Construction activities may therefore begin immediately after it has been issued. This construction permitting procedure has proved very successful in Austria and is very well received by all stakeholders, particularly for its efficiency. These concentrated permit proceedings are an example of good practice. Even with this time-saving procedure, the approval process for large infrastructure projects in Austria is still considered too long by the project promoter, due to the complexity of procedures and legal uncertainty. In the specific case of the A5 North, the EIA permitting procedure took five years. The change in the procedure (to phased project A5 North A and B), in response to the procedural situation in the Czech Republic, took an additional two years.

- In Austria, provincial authorities, or districts, were **involved at an early stage of the EIA**.

**8.4 CONCLUSIONS**

Transport planning should be based on objective criteria of goal setting, optimal network design and planning assessment. These aspects were seriously neglected in the strategic phase of this project. Early planning, in order to avoid vague project motivations, should include cost-benefit estimations and assessments of alternatives. The use of harmonised standard models and methods for strategic assessment of transport plans should become a condition for co-funding of TEN-T projects.

Projects can be very sensitive to rapidly changing policy and planning contexts. Here, a lack of stable
and consolidated legislation (new relevant legislation came into force after the plan started, changing policy context after the accession of the Czech Republic to the EU) created legal uncertainty. The project is a typical example of earlier ‘decided-policy options’ (where the routing was included in the regional land use plan at the start of the TEN-T project) being used permitting procedures, despite legal procedures having undergone changes. The project promoter should have been given the opportunity to conduct an assessment of routing alternatives as part of the EIA (2005), before the chosen routing was included in the land use plan, especially taking into account the growing public opposition at that time. Projects that are introduced for TEN-T co-funding should show proof of maturity in clear goal-setting and preliminary scoping of alternatives.

Public consultation should invite comments from interested parties before formal plans are finalised, as well as throughout the process. This would improve decisions and broaden the range of possible alternatives. A further problem here was the lack of scoping/assessment of potential impacts of alternative routings on protected areas (Natura 2000, Unesco World Heritage sites) in the early planning phase.
9.1 PROJECT DESCRIPTION

Port 2000 is an expansion project for Le Havre Port, integrated into a Natura 2000 estuary. It is a core network project on the TEN-T Atlantic corridor.

The main focus of this case study is the TEN-T project 2012-FR-91069-P, related to the connection of the multimodal terminal:

- To the port rail network, and thus to the national rail network, by electrified rail link, accepting trains of up to 1,000 metres in length.
- To the large gauge waterway system by a quay capable of simultaneously berthing two pushed convoys 200m long (5,000 tonnes).

This project, which started in 2013, was funded by the TEN-T programme 2007-2013, and is part of a global project to develop a multimodal platform - industrial collection/distribution system - for the port of Le Havre, designed to develop the performance of mass overland transport modes of containers in order to increase their modal share and expand the hinterland of the port. The multimodal project, which covers an area of 60 hectares, will increase the productivity of the transport chain for rail and waterway modes in Le Havre 17.

The total budget for the project (development of the whole multimodal platform) was EUR 137 million. The TEN-T subsidies (10% of EUR 24 million) were only used for a part of the project, namely the railway and inland waterways’ connections. This TEN-T project was completed in April 2015. The connections will not be fully operational until Spring 2016 due to organisation problems with the IT system.

In addition, the case study also refers to, where relevant to understand the context, past infrastructure developments in the port of Le Havre, and in particular the construction of Port 2000. Port 2000 was built in two phases (2002-2006 for the main works and 2007-2011 where three additional terminals were built. See timeline below). The first phase of the works received €49.5 million in European funding, mostly from the ERDF (47 million), complemented by TEN-T (€2.5 million) and Life-Nature (€0.5 million) funding. In addition, the EIB granted €140 million to the project 18. The construction of Port 2000 has essentially been covered in this case studies as regards the compensation measures taken in the Natura 2000 area.

9.2 TIMELINE – KEY MILESTONES

1995
- The French President called the extension of the shipping capacities of the Port of Le Havre for container traffic a Project of major public interest.

2002-2005
- In January 2002, dredging and dike construction works started and were completed mid-2005. The principal works included dredging approximately 50 million m³ of gravel and sand, and the realisation of 10 km of dikes, including two caissons on both sides of the entrance of the new port. A global sediment management plan, including beneficial use of dredged materials, was applied to the project.

2006

18 European Commission, Press release IP/06/405, Community aid for Le Havre port modernisation, 30 March 2006.
In 2006, a new basin called Port 2000 was opened, making Le Havre the first French port for containers. The first berths have an allowable draught for vessels of 14.5m in all tidal conditions and back-up areas with an average depth of 500m.

2007

In the summer of 2007, the second phase of Port 2000 started, with the construction of 2,100m of additional quay. These were handed over in 2011, giving Port 2000 three terminals:

- The Terminal de France, operating since 2006, now equipped with three berths totalling 1,050m of quay.
- The Terminal Porte Océane (TPO) operating since late 2007, equipped with two 350m berths or 700m of quay in total.
- The TNMSC terminal, operating since 2012, equipped with four berths i.e. 1,400m of quay.

2008-2009

In early 2008 the French government announced a stimulus package to improve the performance and competitiveness of major French ports and allow them to take advantage of the significant development in international sea trade. A wide consultation then took place between the Government and all trade unions and professional organisations.

On 4 July 2008 a law was adopted, under which several decrees were issued on 9 October 2008. The Grands Ports Maritimes (Major Seaports) then replaced the Ports Autonomes (Independent Port Authorities).

In early 2009 the governance of the port authority was radically modernised to better meet the challenges of large ports. A Supervisory Board, Port Development Board and Management Board were created, with responsibility for strategic projects and setting priorities for the years to come.

Traffic from Port 2000 is hindered by the lack of a direct waterway link between the basin and the canal of Tancarville North of the port. Connections from the port to the canal and the Seine were carried either by sea (North and South routes) on specially designed inland waterway vessels which can navigate on the sea over short distances, or with the help of a rail shuttle. A multimodal terminal is required, which will also be able to improve railway connectivity to Port 2000.

In 2012, the TEN-T project - concerning the rail and river connections for the Havre multimodal platform was established.

In March 2013 the project started on time and was expected to reach its objectives and results as planned.

<table>
<thead>
<tr>
<th>Key project milestones</th>
<th>Original planning/timing</th>
<th>Real or currently estimated planning</th>
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<tbody>
<tr>
<td>Start planning Port 2000</td>
<td>1994</td>
<td>1994</td>
</tr>
<tr>
<td>Condemnation by ECJ for insufficient habitat protection</td>
<td>1996</td>
<td>-</td>
</tr>
<tr>
<td>End of construction Port 2000</td>
<td>2000</td>
<td>2005</td>
</tr>
<tr>
<td>Launch TEN-T project “Development multi-modal platform (rail and river connections)”</td>
<td>2012</td>
<td>2012</td>
</tr>
<tr>
<td>Start TEN-T project</td>
<td>2013</td>
<td>2013</td>
</tr>
<tr>
<td>Completion TEN-T project</td>
<td>2015</td>
<td>2015</td>
</tr>
<tr>
<td>Operationalization connections TEN-T project</td>
<td>2016</td>
<td>2016</td>
</tr>
</tbody>
</table>

The planning of the specific TEN-T project was realistic. The delays arising at that time and from that dispute do not seem abnormal, considering the long-running dispute between the EC and France, on the obligation to designate large parts of the Seine estuary as SPA lying behind the planning of the
Port 2000 project at Le Havre in the mouth of the Seine estuary. Nowadays, these issues can be better taken into account in the planning.

9.3 ANALYSIS

Obstacles encountered during the realisation phase of the TEN-T Corridor project Port 2000 are described below.

The permitting phase lasted longer than expected because:

- All of the works (total multimodal platform and connection works) were permitted at the same time, which took nine months longer than originally expected.
- The site is situated next to a Natura 2000 area. Although a comprehensive impact assessment was completed, the Port was asked by the French authority to improve the impact assessment study for protected species and Natura 2000 aspects to ensure there would be no negative impact on the natural reserve.

Behind the planning of Port 2000 lies a long-running dispute between EC and France on the obligation to designate large parts of the Seine estuary as a Special Protection Area (SPA)\(^\text{19}\). The EC considered France to have reserved too large an area for future industrial development and not enough for conservation purposes. In spite of a significant extension of the SPA of 17,320 ha in 1997, France was mandated by the CJEU to present better propositions in March 1999. The Court concluded that, particularly with respect to the extension of the port of Le Havre, France had given too much weight to economic aspects and too little to other considerations. The port impact on the estuary is undoubtedly significant. During the development of the project, the impact of the new port infrastructures led to the adoption of environmental compensatory measures under the Birds and Habitats Directives - due largely to the pressure from NGOs and the EC - including ecological options and engineering operations such as the construction of artificial islands for birds and marine mammals, the preservation of an important biodiversity site and the restoration of mud-flats.

This case shows the impact of the lack of early environmental planning on the delivery of infrastructure projects. Reference should be made here to the historical background to the lack of protection of the Seine Estuary. The Port of Le Havre is situated on the mouth of the Seine estuary. Plans for massive port expansion started in 1994, including the compensation measure of identifying a large new SPA. This did not, however, compensate for the valuable habitat zones that would disappear due to the port developments. The plan also failed to propose adequate measures to protect species in the Natura 2000 area. The scheme was therefore rejected by the Commission. French authorities subsequently decided to develop an integral ecological management plan for the estuary, resulting in the development of compensatory measures under Article 6(4) of the Habitats Directive. An agreement was concluded with the EC on the ideal site for the birds, together with its preservation and protection through legal measures. Restoration measures for the estuary are now under the supervision of a Scientific Committee.

The port had to assess the impact on the species protected by the Natura 2000 site. The evolution of these species, however, were also dependent on external factors (especially for migrating species) and the port found it difficult to define appropriate compensatory measures that would have sufficient influence.

Key success factors in this TEN-T project Le Havre Port 2000 were:

The Port did not submit its proposal for CEF support until after it had received permission for the project (including stakeholder consultations). It therefore scored well on the criterion

\(^{19}\) SPAs are sites established throughout the EU under the Birds Directive. These sites are part of the Natura 2000 network and provide conservation measures for European species and habitats of particular importance.
maturity and no court cases or claims took place.

Before and during the TEN-T procedure, the project promoter maintained regular contact with the EC (DG Move, DG Environment and INEA) in order to stay informed and better understand the requirements, as well as to directly report problems. Participating in TEN-T days and consulting the information documents from DG Move and INEA were viewed as very useful.

The Port undertook a survey of EU legislation in order to avoid conflicts between national and EU legislation. This allowed the Port to follow EU legislative procedure and anticipate upcoming legislation. While the French government has not yet transposed all EU law on the Marine Environment into national legislation, the Port of Le Havre is obtaining more information to be prepared.

In early 2009, a new governance structure - the Supervisory Board, the Port Development Board, and the Management Board – was created. This ensured a continuous focus on economic, commercial and environmental goals. The Development Board is a new body comprising all the economic, social and collective actors, including territorial authorities and approved environmental protection associations, who are consulted on strategic and structural projects.

The Port Authority has made efforts to build a permanent dialogue with EU services. Two people are designated liaisons with the different EU authorities. The Port Authorities within the Seine regions (Rouen, Le Havre and Paris) are also represented in Brussels to strengthen the relationships with the EU institutions. The Port Authority is convinced that permanent dialogue facilitates the implementation of the project.

Stakeholder consultation and involvement was handled well in this case. In the reports submitted to DG Environment - in the context of the environmental assessment - the Port Authority described stakeholder meetings and input, thereby creating an official report of every meeting with stakeholders. The port also finds open or informal discussions with representatives of different associations very useful. The creation of the Development Board helped with stakeholder consultations, as NGOs and different representatives of port activities are also members of that Board.

The EU Maritime Spatial Planning (MSP) Directive
In July 2014, the EU adopted the Maritime Spatial Planning Directive, which then came into force in September 2014. It created the world's first legal requirement for countries to create transparent planning-at-sea systems and to cooperate with their neighbours to make that happen. EU countries are now required to transpose the Directive into national legislation and appoint competent authorities by 2016. The implementation of MSP in Member States' jurisdictional waters must be achieved by March 2021.

The Directive focuses on four objectives linked to the legal bases (environment, fisheries, maritime transport and energy). Member States can add additional sectors. This ensures that all activities are equally covered and that all stakeholders' interests are considered. The Directive does not impose planning details or management objectives, which should be decided by Member States. However, it requires that MSP is implemented in all EU waters and facilitates cross-border cooperation. This will be achieved through common minimum requirements and timeframes.

The duration of the planning and preparation phase of the TEN-T project - concerning the rail and river connections for the Havre multimodal platform - was initially estimated at two years. The TEN-T project was completed in April 2015, nearly one year later than expected. The project preparation studies of the TEN-T project were carried out in-house and did not affect the global project budget.
9.4 CONCLUSIONS

This development of Port 2000 demonstrates the importance of having an early public debate and multidisciplinary studies, but also the substantial aspects of complying with the Birds and Habitats Directives in the early phase and having a sound environmental management and planning of these areas.

Regular contact with the funding entities of the EC, in order to gather information and better understand requirements, can facilitate the project process. This proved an advantage in this TEN-T project, as did proactively examining the existing applicable legislations and monitoring new upcoming legislations, to anticipate legal issues and changes.

As evidenced here, the creation of a project-specific and well-functioning governance structure by the project promoter is invaluable for successful project set-up and follow-up.
CASE WESER RIVER, INCLUDING BREMEN AND BREMERHAVEN PORT ACCESSES, AND ELBE RIVER, INCLUDING HAMBURG PORT ACCESS
10.1 PROJECT DESCRIPTION

Permits are required for several of the actions and projects related to the deepening of the Weser and Elbe Rivers and the hinterland connections and expansions of the ports of Hamburg and Bremen-Bremerhaven – both core network projects on the North-Sea Baltic, Scandinavian and Orient East-Med Corridors.

The main project for the Port of Hamburg is the deepening of the Elbe, launched in 2002 and still ongoing. The growth plans for the port are constrained by a scarcity of land, requiring ongoing discussions about land use. The Port of Hamburg has many (potential) projects in the pipeline (e.g. the construction of two new terminals, replacement bridges, railway projects, investments in inland waterway hinterland connections).

The Weser deepening project started in 2000. It was given highest priority in the national transport development plan in 2003, and granted permission with the right of immediate dredging from 2011. To-date, 16 years after the project started, court proceedings are ongoing before the Federal Court of Justice and the CJEU.

In the Bremen port area more specifically, TEN-T co-funded infrastructure projects are also ongoing:
- Investment in a new working vessel.
- One railway project to upgrade the rail terminal in Bremerhaven, with extension and electrification of railway tracks at Kaiserhafen.

The Elbe River is one of the major waterways in Europe, with its lowermost part, the Lower Elbe, of particular economic importance. Hamburg is the biggest metropolitan area along the river and its port is the second biggest in Europe, the 14th biggest worldwide. The port of Hamburg is more than 100 km away from the mouth of the Elbe River into the North Sea, with the increasing amount and size of ships destined for Hamburg putting pressure on the river. Several artificial deepening steps have been undertaken, with another planned in 2002. It was, however, temporarily stopped after opposition by nature conservation associations.

The Weser River has been deepened several times. The increased flow velocity and tidal range, however, eroded the riverbed, requiring regulation by artificial weirs and dykes. Since then, both the Lower Weser from Bremen to Bremerhaven, and the river mouth to the North Sea, the so called Outer Weser, have been dredged several times to improve navigability. Currently, another deepening, an ‘adaptation of the Weser channel to developments in shipping traffic’ is planned (WSV 2011), although this has been challenged before the Federal Administrative Court on the grounds of the environmental consequences of dredging and an altered flow regime. The case has been referred to the CJEU to interpret the Water Framework Directive.

10.2 TIMELINE – KEY MILESTONES

2000 - 2002
- In 2000, the decision was taken to deepen the Weser River.
- In 2002, the decision was taken to deepen the Elbe River.

2015 - 2016
- The CJEU decision in case C-461/13 in 2015 could hinder expansion at the German ports of Bremen and Hamburg.
- As of 2016, neither deepening project has started.
The originally planned deepening (early 2000s) of the Weser and Elbe were not unrealistic, especially when the previous deepening actions are taken into account. It is indeed likely that the work will start only after 2018.

### 10.3 ANALYSIS

Stakeholders involved in port infrastructure projects in Germany reported struggling with the large number of (environmental) regulations that sees different local and regional environmental authorisations required. According to these stakeholders, European environmental regulations, particularly the WFD, are considered difficult to comply with when designing and implementing an infrastructure project.

The deepening of the Elbe project demonstrates the biggest concern of the Hamburg Port Authority with regard to authorisation procedures and processes for its infrastructure projects.

The Elbe has been deepened eight times before, with this planned deepening being discussed for more than 10 years. Stakeholders reported that the documents required for the former deepening actions counted only a few hundred pages, while planning of port infrastructures now requires documents (for EU and national agencies) of up to several thousand pages. This higher administrative burden – reflecting the increasing demands of environmental legislation and new environmental standards - increases the planning costs for promoters.

This case highlights the challenges arising from the EU legislation and its implementation at national level. A legal case is pending, having been brought before the Federal Administrative Court in Leipzig and the CJEU case C-461/13. The 2012 approval/planning decision of the city of Hamburg has been challenged by environmental organisations/NGOs, who argue that any detrimental change to a body of water, even without a change of status class, constitutes deterioration (i.e. the status quo theory) and

<table>
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<tr>
<th>Key project milestones</th>
<th>Original planning/timing</th>
<th>Real or currently estimated planning</th>
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<tbody>
<tr>
<td>Launch “Weser deepening project”</td>
<td>2000</td>
<td>2000</td>
</tr>
<tr>
<td>Status of “Highest priority in national transport development plan”</td>
<td>2003</td>
<td>2003</td>
</tr>
<tr>
<td>Permission immediate dredging for further deepening</td>
<td>2007-2009</td>
<td>2011</td>
</tr>
<tr>
<td>Court proceedings initiated against the Plan Approval notice - German Federal Administrative Court</td>
<td>2012</td>
<td>-</td>
</tr>
<tr>
<td>CJEU decision in case C-461/13</td>
<td>2014</td>
<td>2015-2016</td>
</tr>
<tr>
<td>Start dredging works</td>
<td>2016</td>
<td>2018 (or later)</td>
</tr>
<tr>
<td>Launch “Elbe deepening project” - application for further adaptation of the “Lower and Outer Elbe shipping Channel”</td>
<td>2002</td>
<td>2002</td>
</tr>
<tr>
<td>A set of feasibility studies (technical feasibility, environmental risk study, economic CBA)</td>
<td>2003-2004</td>
<td>2003-2004</td>
</tr>
<tr>
<td>Preliminary consent (German Federal Government) to the Development Plan</td>
<td>2004</td>
<td>2004</td>
</tr>
<tr>
<td>Start preparation Plan approval procedure / EIA</td>
<td>2006</td>
<td>2006</td>
</tr>
<tr>
<td>Objections in the framework of the Plan Approval/EIA</td>
<td>2007</td>
<td>2007-2010</td>
</tr>
<tr>
<td>German State Lower Saxony approval deepening Elbe river</td>
<td>2008</td>
<td>2012</td>
</tr>
<tr>
<td>Court proceedings initiated against the Plan Approval Notice - German Federal Administrative Court</td>
<td>2012</td>
<td>-</td>
</tr>
<tr>
<td>Ruling German Federal Administrative Court against the deepening of the Elbe (suspension of the deepening plans)</td>
<td>2013</td>
<td>2014</td>
</tr>
<tr>
<td>CJEU decision in case C-461/13 (cf. Weser river)</td>
<td>2014</td>
<td>2015-2016</td>
</tr>
<tr>
<td>Start dredging works</td>
<td>2016</td>
<td>2018 (or later)</td>
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that the WFD obligations were not taken into account.

The port authorities emphasise that they do not have problems with the legislation itself, and that they consider compliance and solutions that are satisfactory to stakeholders to be very important. They state that an uncertain and unclear legal framework makes the design and implementation of projects difficult, with long legal procedures and delays seeming inevitable.

In 2002, when the decision was taken to deepen the Elbe, the economy was booming and it was hard to predict that ships entering the port would become so huge in five years. On the other hand, the economic crisis of 2007-2008 was not predicted, nor was the EU Russian embargo. Now, there are some signs that ships will become smaller again. With these fast changing trends and economic landscapes in the port sector, planning and implementation of projects must be able to react quickly to these changes. Responses are made difficult by the legal uncertainty created by the planning procedures of (port) infrastructure projects in Germany. This is also the case for the Weser River, whose project started in 2000. Despite being the highest priority in the national transport development plan in 2003 and receiving permission with the right of immediate dredging from 2011, it is as yet the subject of legal cases before the Federal Court of Justice and the CJEU. The Port Authority highlights that the ship dimensions for the Weser project was an 8,000 TEU container carrier. Now, however, 20,000 TEU carriers are the new market standard.

Stakeholders also drew attention to the legal uncertainty and delays associated with the WFD for important oil and gas, coal, petrochemical and renewable energy projects. In Germany, the right to legal action for environmental institutions (among others) creates considerable difficulties and delays for project promoters.

The (permitting processes of the) deepening projects of the Elbe River and the Weser River may be further delayed by a CJEU ruling of July 2015 (see box below). The consequences of this ongoing legal dispute will be are unclear; as new CJEU rulings become part of the regulatory framework, the planning procedures must take into account the changing regulatory framework, again leading to delays and increased costs.

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**CJEU decision in case C-461/13 – impact of dredging the Elbe River and Weser River**

*The German ports of Hamburg and Bremen wanted to dredge rivers to make it easier for new large container ships to reach them, in response to intense competition from the ports of Rotterdam and Antwerp. Ports have argued that dredging is in the public good as it creates jobs and greater economic activity in their cities. But German environmental protection association BUND complained that a project to dredge the River Weser in Bremen would cause excessive damage to water quality and marine life.*

*The Federal Administrative Court in Leipzig adjourned the proceedings by the BUND and NABU environmental associations against the plan approval for dredging the lower and outer stretches of the River Elbe until the CJEU in Luxembourg reached a decision on the interpretation of the Water Framework Directive.*

*The 7th division of the Federal Administrative Court, which is responsible for waterways law, ruled against the expansion of the River Weser under the Water Framework Directive after objections from environmental associations. With its decision of 11 July 2013 (BVerwG 7 A 20.11), the Federal Administrative Court presented the CJEU with a range of questions concerning the Water Framework Directive’s so-called prevention of deterioration and requirement for improvement (cf. press release No. 47/2013 from 11 July 2013; EuGH C-461/13).*  

*The CJEU’s decision is prejudicial to the proceedings on the dredging of the River Elbe because the referred questions can also be raised here. The referred questions’ relevance to the decision is still*
valid as a result of the first supplementary resolution passed on 1 October 2013. In the supplementary resolutions, the respondents have supplemented the plan approval dated 23 April 2012 with the authorisation of a precautionary exception to the management objectives for the bodies of water affected. The ‘review of assistance’ employed is not sound, however, as the criteria applied to evaluate the supposed deterioration in the state of the water are not sufficiently defined in the supplementary resolution, nor is its factually reinforced meaning presented in a comprehensible manner.

A five-day hearing took place in July 2014, at which the German Federal Waterways Engineering and Research Institute’s expert opinion was presented in respect of the plan’s effects on tide levels, flow and sedimentation rates, traffic requirements and the review of alternatives, as well as the extent to which protected animal and plant species (e.g. Elbe water dropwort, twaite shad, maraena whitfish, red knot) may be affected. The 7th division also deliberated on the other points of conflict. According to its preliminary assessment, the plan approval is, indeed, burdened by various shortcomings as regards its EIA Directive and Habitats Directive assessments. These shortcomings can be addressed, however, and will not lead to the revocation of plan approval, either individually or as a whole.

The Court ruled in favour of the NGO, clarifying several definitions with respect to what constitutes deterioration within the meaning and purpose of the WFD.

The main conclusions of the Court were:

- Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Directive.

- The concept of ‘deterioration of the status’ of a body of surface water in Article 4(1)(a)(i) of Directive 2000/60 must be interpreted as meaning that there is deterioration as soon as the status of at least one of the quality elements, within the meaning of Annex V to the Directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned, within the meaning of that Annex, is already in the lowest class, any deterioration of that element constitutes a ‘deterioration of the status’ of a body of surface water, within the meaning of Article 4(1)(a)(i).

The CJEU ruled, in July 2015, that damage to water quality must be considered when authorities approve river dredging to expand ports. This could hinder expansion at the German ports of Bremen and Hamburg. A key driver of the adverse CJEU decision was an overly conservative interpretation of the WFD and the use of derogations. The EU’s highest tribunal raised the standards for the approval of port dredging projects which could harm marine life, saying more consideration must be given to the potential damage to water quality and marine life.

German courts must now make a decision on dredging project applications using the new judgment.

The European Court of Auditors (ECA) believes that there is a lack of ‘port planning’ (i.e. the planning of which goods are to be transported/imported through which ports) in Germany, and it is in favour of a redirection of goods to other foreign EU ports. However, not all ports support obligatory port planning, believing that it will hinder competition between ports. Chinese importers, for example, may choose Rotterdam instead of German ports. Germany refuses any artificial redirection of goods, believing that market forces are the adequate correctives for market failures.

While state aid is not a particular issue in this case, there is an intense discussion around state aid in ports. Currently, every single project needs to be notified, which takes time and money. The website of DG Com shows about 50 different case-by-case decisions on the port sector for many different
countries, with no estimated time of decisions. Given the complexity of the notification process, almost all European port authorities or other entities responsible for ports seek support from consultants for the notification process and communication with national and EU representatives and institutions. A normal project may incur costs of at least EUR 100,000 for this practice. On the basis of the ports’ own experiences, notifications take a minimum of six months. Stakeholders are in favour of clear rules/guidelines to help them through this process.

No State aid guidelines for ports exist. An EU study ‘State Aids to EU ports’ - was published in December 2011 with the following recommendations:
- There are problems with the existing rules for the review of state aid for the infrastructure and/or superstructure of European seaports.
- The rules require review, or a set of guidelines in order to be adequate.

The ports’ stakeholders stated the lack of guidelines results in everything being notified, in order to be certain of compliance with state aid rules. ESPO supports the request for more clarity on state aid to port infrastructure, stating the need for:
- A pragmatic, predictable and stable environment for port authorities allowing them to develop, together with all parties involved (public authorities, private investors, etc.), a long-term strategy for port investments, thus limiting the legal uncertainty that might result from the case-by-case approach of the Commission.
- Reduced administrative burden and shorter timeframes.

The EC proposed issuing a set of state aid guidelines more than 10 years ago, however the considerable differences between European ports and port systems (e.g. public ports in France and Italy; private ports in the UK, etc.) meant that these were never created20.

**Frequent changes to procurement rules** is not necessarily a problem. According to the port stakeholders, the problem is that procurement decisions are often not accepted by the market players, with the custom developing of the second best bidder challenging the decision of the contracting authority. This problem may, in some cases, be solved through negotiations and subcontractor arrangements, in itself a resource-intensive practice. Another issue is the discussion of the port package concerning procurement: the EC does not decide what must be built by private or public sector.

Port stakeholders reported that the experiences from the WFD show that all potential uncertainties in the application of the **Maritime Spatial Planning Directive** must be avoided. One such issue is the underwater noise from ships, with stakeholders stating their belief that future regulations should not impair international and short sea shipping. Shipping lines can and should adapt to new regulations but market conditions need to allow investments.

The duration of the planning and preparation phase of the last deepening project of the Elbe was initially estimated at eight years. The decision was taken in 2002 and, as of 2016, the project has not yet started, meaning a preparation time of at least 14 years. The Port of Hamburg reported that it is difficult to calculate the increase in planning costs, although it can be assumed that these costs have increased as the project duration has increased.

The duration of the planning and preparation phase of the Weser adjustment project was initially estimated at five to seven years. The project preparations started in 2000 and continue to-date, 16 years later. There was no fixed or calculated project planning budget, as much of the necessary work was done by public servants from the Water and Shipping Directorate. Many consultants were brought

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20 It will be difficult to find a one-size-fits-all approach. There is a difference between ports and airports (cf. the Court judgment in the Leipzig-Halle airport case where it was decided that ‘the construction of airport infrastructure is an economic activity and that public funding of infrastructure necessary for the operation of the airport alleviates the costs that the airport operator would normally have to bear and therefore constitutes State aid.’

in for specific topics like morphology, hydrology, bird species, fishes, reptiles, butterflies, soils, salt concentration, tidal currents, economic issues, etc., with the numbers increasing as the work grew. Expensive lawyers were necessary at later stages of the project. Currently, all of the consultants are once again working on actualisations of their studies or on in-depth analysis of specific issues. The Port of Bremen estimates the overall planning costs to-date at EUR 3 million at least.

10.4 CONCLUSIONS

The WFD brings specific constraints and adds costs to dredging projects. A recent CJEU ruling on the deepening of the River Weser in Germany determined that the concept of ‘deterioration of the status’ of a body of surface water in Article 4(1)(a)(i) of Directive 2000/60 must be interpreted as meaning that there is deterioration as soon as the status of at least one of the quality elements, within the meaning of Annex V to the Directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned, within the meaning of that Annex, is already in the lowest class, any deterioration of that element constitutes a ‘deterioration of the status’ of a body of surface water, within the meaning of Article 4(1)(a)(i). Damage to water status must be considered when authorities want to approve river dredging to expand ports or upgrade navigability of rivers, which could hinder expansion at ports or rivers\(^{21}\).

The effects of this legislation can delay project approval and increase costs through additional impact assessments. Of particular concern is the fact that impact assessment for ecological effects in marine waters may be very difficult, given the dynamic environment. The assessment in estuaries and the marine environment is complex, which should not necessarily be a reason to block decisions, but which could lead to further delays in the approval process.

The ECA’s opinion on the lack of port planning in Germany could be investigated in more detail in the light of this study. Since not all ports are in favour of introducing obligatory port planning - because they fear losing their competitiveness – further investigation is required, as is consultation with the stakeholders concerned.

This case also demonstrates the need for port specific guidelines on state aid for financing port infrastructure.

\(^{21}\) Projects can go ahead only when there is an exemption that allows deterioration - provided certain conditions are met, i.e. the project serving a legitimate public interest such as ports and navigation.
Cross-border section Trieste-Divaca-Koper
11.1 PROJECT DESCRIPTION

The cross-border railway line **Trieste (IT) – Divaca (SI)** is one of the missing links on the Mediterranean Corridor (3,000 km), comprising a rail axis running from Lyon, France to the Hungarian-Ukrainian border. It passes through four Member States, France, Italy, Slovenia and Hungary. The section is 100% non-compliant with regard to the Trieste-Divaca maximum axle load. The project is part of the Baltic-Adriatic corridor.

The existing interconnection between Italy and Slovenia is a dual-track rail line though Bivio d’Aurisina (on the Venice-Trieste line) - Villa Opicina (connected with a secondary line to Trieste Campo Marzio)-Sezana-Divaca (along the Koper-Ljubljana line). The total length of this connection between Bivio d’Aurisina and Divača is around 34 km.

- On the Italian side, the interconnection between Italy and Slovenia is a double track electrified rail line (15 km) with a maximum gradient of 15% and maximum speed of 80 km/h.
- On the Slovenian side, the 19 km long line Villa Opicina-Sezana-Divaca (along the Koper – Ljubljana line) is a double track electrified rail line, with speed limits of 75 km/h at the cross-border section (*Baltic-Adriatic Core Network Corridor Study. Draft Final Report November 2014*).

The project development envisaged a new line. At a regional level, the project is very significant, as this new line will help to relieve road freight traffic congestion through the Alpine region.

The railway line aims to capture a significant part of the traffic through Adriatic ports, namely Trieste and Koper. On the European scale, the new line will interconnect the freight traffic originating in Portugal and Spain with that of Central and Eastern Europe, thus increasing the potential for economic growth.

![Figure 2 - Figure: Railway section Trieste (IT) - Divača (SI); [Villa Opicina (IT)-Sezana (SI)] (Source: LeighFisher Based on TENtec)](image)

Slovenia is also planning the construction of a new railway line between its cargo port Koper and Divača. The implementation of the new **Koper-Divača** line is important to Slovenia in view of

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22 Currently there are no passenger train services operated on the Italian side between Bivio d’Aurisina and Villa Opicina. The line is used by freight trains (between 15 and 20 trains daily, according to an EU SETA study).
international railway freight transport, linking the cargo port of Koper with the hinterland. Slovenia believes its sole sea port in Koper should not only be connected with the east, as envisaged by new TEN-T plans, but also with Central Europe. The modernisation of the existing rail track Koper-Divača is in the implementation phase, with works now finished. Project documentation and studies have been prepared for a second track, to be funded from the TEN-T budget. The new railway is believed necessary to maximise the transport capacity of the railway line from Koper to the junction in Divača, to increase reliability of the railway, to increase traffic safety and to shorten travel times. The standards for the core network are expected to be implemented by 2030.

11.2 TIMELINE – KEY MILESTONES

Trieste-Divacca section

2007-2016: Early developments and ongoing preparatory studies

- In 2007, at the initiative of the TEN-T Coordinator, an Intergovernmental Commission (IGC) was set up between Italy and Slovenia for the Trieste-Divacca section.
- On 17 July 2007, Italy and Slovenia signed a ‘protocol of agreement’ on the cross-border section between Trieste and Divaca, with work scheduled to begin in 2013.
- On 30 August 2008, the TEN-T project 2007-EU-06030-S Cross-border Railway Line Trieste/Divacca. Started. The project had a budget of EUR 101 million for a feasibility study, preliminary design, project management and coordination by EEIG, and definitive design, of which the EU contributed EUR 51 million. The project end date was stated as 31 August 2013.
- The Central European Initiative (CEI) financed a Strategic Study for the Development of Pan-European Corridor 5 (Priority Project No 6). The Study evaluates the economic, social and environmental impacts of PP6, paying specific attention to a proposed new rail link between Trieste and Divacca. The Study concluded that the social, economic and environmental benefits would significantly exceed the risks and negative impacts.
- Between 2009 and 2011, two alternative solutions (Coastal and Upper Corridor) were assessed. Several years of studies and discussions were required before a routing was agreed.
- In 2010, France, Italy, Slovenia and Hungary signed a Memorandum of Understanding (MoU) at the TEN-T Days 2010, reiterating their commitment to the completion of PP6. In 2010, the Mid-Term Review (MTR) concluded that the action could not be achieved by December 2013, indicating 31 August 2015 as a more realistic end date.
- In 2011, the issue of the alignment of the routing was finally resolved. Beneficiaries (Italy and Slovenia) agreed on a new alignment, the so-called Upper Corridor alignment (Aurisina/Nabrezina - Villa Opicina/Opcine – Divaca - Sezana) known as the ‘high corridor’. The preliminary design for the high corridor would be developed by the new project promoter.
- In 2013, delays in the project led the Commission to revise its earlier decision to allocate nearly EUR 51 million to studies relating to the project A revised figure of EU funding of EUR 34.6 million was made available for studies until the end of 2015.
- In May 2012, a European Economic Interest Group (EEIG) was set-up for the Trieste-Divacca corridor.
- In June 2012, the National Spatial Plan of Slovenia was started.
- July 2012 saw the First Modification of the EU Co-Funding Project. Project activities were delayed due to uncertainties on the alignment and unsatisfactory cooperation between Italy and Slovenia, requiring revision of the project schedule. Both countries presented updated implementing plan, with the following activities due by the end of December 2015:
  - Feasibility study of the high corridor required additional activity for implementation.
  - Preliminary design.
  - Project management and coordination by the EEIG required additional activity for its implementation.

83
Final design.
- On 1 October 2012, the EEIG was set up with project management and supervision tasks, closing out the issues of its statutes and financial contributions which had prevented it from operating up to that point.
- In October 2012, the Preliminary Design tender was launched in Slovenia.
- In October 2012, the TEN-T action was officially modified, with the project scope and TEN-T support reduced from EUR 101.4 million to EUR 68 million.
- In May 2013 the EEIG was set up.
- In October 2013 the contract for preliminary design documentation in Slovenia was signed.
- During 2013 and 2014 the TEN-T Action was further delayed by difficulties in setting up the EEIG and getting the required approvals and permits from the local authorities. It became clear that only the feasibility study (Activity 1) and the preliminary study (Activity 2) could be fully completed within the eligibility period.
- In 2014, the results of a new transport forecast carried out by the Italian Infrastructure Manager (RFI) and adopted by the Italian-Slovenian IGC, it became clear that there was insufficient transport volume to build a new line. The coordinator of the Action (EEIG Trieste-Divaca) decided:
  - To further postpone the preparation of the Definitive Design as the current traffic scenarios would justify the construction of a new fast railway line only after 2050.
  - To proceed with a study to evaluate different scenarios for upgrading the existing line to comply with TEN-T interoperability requirements and standards.
- In May 2014, a request for a second modification was submitted. The request covered the change of scope of Activity 4, with the suppression of the Definitive Design and its replacement with a Study to evaluate different scenarios for upgrading the existing Trieste-Divaca line. The Study would pave the way for the compliance of the existing line with the compulsory TEN-T interoperability requirements and standards. The cost of the Action was reduced from EUR 69.25 million to EUR 10.39 million, with the corresponding EU contribution reduced from EUR 34.6 million to EUR 5.2 million.
- In August 2015 the Slovenian National Spatial Plan proposal was completed and submitted in October 2015.
- In October 2015, preliminary Italian and Slovenian designs were completed.
- By the end of 2015, the study of different scenarios for upgrading the existing line was completed and is now awaiting approval. With no further financing for the EEIG, it is proposed to be dismantled.

Divaca—Koper section

1996-2016: Early developments and ongoing preparatory studies
- In 1996 the Austria Rail Engineering GmbH and SZ-Projektivno podjetje conducted an eligibility study for the Ministry of Transport and Communications, which found that the capacity of the Divaca-Koper single-track line should be increased.
- In 2005 Slovenia adopted the Decree on the National Site Plan for the second track of the single-track line on the Divaca-Koper section.
- In 2007, the Amendment of the Slovenian Decree on the National Site Plan changed from a single-track to a double-track line.
- In 2010, Italy withdrew its intention to link the second track with the port of Trieste.
- In 2014, the Slovenian Environment Agency issued a partial environmental consent.
- In 2014 Slovenia issued the Decree Amending the Decree on the National Site Plan for the Second Track of the Divaca-Koper Railway Line. The Slovenian Environment Agency issued a supplementary decision to the environmental consent, thus covering the whole route of the
new line.

2015

- In January 2015, the project design for a building permit for the construction of the entire second track on the Divaca-Koper line was submitted to the Slovenian Ministry of the Environment and Spatial Planning.
- In 2015, Slovenia adopted several decisions on future activities in respect of the implementation and financing of the project of the second track between Divaca and Koper.
- In February 2015 the Slovenian Ministry of Infrastructure submitted two applications for European co-funding to implement projects on the Divaca-Koper section.
- Slovenia appointed an inter-ministerial working group to prepare a set of public-private partnership (PPP) forms for the construction of the new rail link between Divaca and Koper.
- Also in 2015, the Slovenian Ministry of Infrastructure obtained a building permit for the construction of 1.2 km of the second track of the Divaca-Koper line, functioning as the main track of the Koper freight station.
- In 2016 Slovenia adopted several decisions on future activities in respect of the implementation and financing of the project of the second track between Divaca and Koper.

The current planning for the construction of the new second railway track, between Divača–Koper, is realistic.

11.3 ANALYSIS

The Trieste-Divaca project has fallen considerably behind schedule, as the works were originally scheduled to begin in 2013. The delay in 2011 (compared to the timing agreed between Italy and Slovenia in October 2010) was further exacerbated by the lack of cooperation between the two countries following the de facto resignation of the former Slovenian Government in September 2011. The Executive Design was, at that time, announced to start after 2015. However, in 2015, a study was carried out of different scenarios for upgrading the existing line instead of building a new line. This study was validated by the EEIG and is waiting approval in 2016. Compared to the original planned works start date, therefore, the project is four to five years behind schedule.

Three key causes of delay in the project execution could be detected:

- Uncertainties on the demand/market forecast and economic feasibility.
Uncertainties on the alignment. The public consultation showed negative outcomes in the region Friuli-Venezia-Giulia (IT) particularly in view of the geological and environmental impacts problems in the karst region, which could inflate the construction costs.

Unsatisfactory cooperation between Italy and Slovenia. Nonetheless, the project is included in both governments’ infrastructure plans.

The key factor in this delay is the **uncertainty about the demand/market forecast and economic feasibility.** A number of railway sections in Trieste-Divaca border region are characterised by capacity issues related to the mix between passenger and freight trains (Mediterranean Core Network Corridor Study Final report, December 2014), and congestion on the Trieste-Divaca border section is expected in the medium-long term. The planned doubling of the rail line was intended to increase the available transport capacity, and its integration with the existing network and the main trading hubs (freight, ports and airports) would allow for optimal use of the two lines.

In 2014, after six years of preliminary design study and on the basis of the results of a new transport forecast (carried out by the Italian Infrastructure Manager (RFI) and adopted by the Italian-Slovenian IGC on 29 October 2014), it became clear that there would be insufficient transport volume to build a new line. The coordinator of the TEN-T Action (EEIG Trieste-Divaca) decided to proceed with a study to evaluate different scenarios for upgrading the existing line to comply with the TEN-T interoperability requirements and standards. Specific questioning of the EEIG-members about the reason for not considering an upgrade of the existing rail track in the early (strategic planning) phase of the project, didn’t reveal an unequivocal answer. “**The EEIG Italy-Slovenia was established in 2013. From this date the EEIG has rescheduled its activities also taking into consideration the delay of other infrastructure projects related to the rail corridor system, due to the lack of permits, impact on territories and little funding, which affected the uniform development of the railway line. Furthermore, in this way the EEIG is in line with the strategic guidelines of the members, which highlight the need to improve by all possible resources the actual lines, increasing their level of capacity, before build new ones**”.

A combination of decreased transport forecasts carried out by the Italian Infrastructure Manager (RFI) (2014), inflating project costs due to unexpected technical difficulties and environmental problems with the chosen routing (karst region), budgetary problems (and low funding levels) led the EEIG decide in 2014 that building a new line could only be justified after 2050.

A Strategic Study on Pan-European Corridor 5, prepared by the British consultancy Scott Wilson and financed by the CEI in 2009, analysed the economical, social and environmental impacts of PP6 and concluded that the social, economic and environmental benefits will significantly exceed the risks and negative impacts. Special attention was given to the proposed new rail link between Trieste and Divaca. The study analysed different scenario’s within 3 territorial settings: local, national, whole Corridor 5).

According to the SEETAC (South East European Transport Axis Cooperation)-WP5 “Mobility Report in the SEETAC Study Area (Central European Initiative, Trieste 2012), the infrastructure development up to 2020 would generate a significant improvement of main efficiency indicators of rail SEA transport system, with major improvements of transport capacity of more than 10% along the PP6.

The development of the section appears hindered by scarce traffic figures that leave little hope for large investments in new infrastructure other than upgrading existing lines. Due to the changed transport forecasts of 2014 and the inflated project costs, it seems that the need for additional transport capacity (and a new rail track) became much less urgent and the results of both aforementioned studies, actually have partly lost topical value.

The planning and appraisal phases of the project seem to have suffered from the lack of a clear transport development strategy and the absence of a clear analysis, a proper public debate or
consultation process. The Corridor 5 has been conceived as a High Speed/High Capacity railway project, hosting both heavy freight trains and high speed passenger trains through the provision of two parallel tracks in each direction. Due to the absence of a compact metropolitan areas in the region, the minimum conditions to justify the realization of a HS railway corridor for passengers are not met. The project can be justified for the region, by the presence of the ports of Venice, Trieste, Koper. To be effective a railway corridor would require efficient seaports ans inland terminals acting as gateways and hubs for freight flows. Although in 2007 the Italian Ministry of Infrastructure and Transport elaborated a plan for »Strategic Territorial Platforms« in the northwestern and northeastern borders of Italy, as a result of political cycles and government alternations, and the economic crisis, the plan has been progressively dismissed.

This case study shows the particular need for early and transparent public participation, assessment of alternatives and a clear project definition prior to the project decision. Here, the absence of a dedicated cost-benefit analysis was a serious shortcoming in the project plan, with no measurement of economic benefits or European added value in either the early project phase or the EC co-funding application. Moreover, different interests and lack of coordination at the international level between Italy and Slovenia have continued to postpone the achievement of the project.

The EEIG’s decision to change to another project alternative has important procedural consequences: the Slovenian National Spatial Plan and the preliminary design studies on the new alignment- agreed by both beneficiaries in 2011 - are no longer valid (until at least 2050). At least four years were lost between the decision on the alignment in 2011 and predesign for upgrading in 2015.

The project faced difficulties in the choice of route because of technical difficulties and the environmental impacts in karst geology areas. The route for the new railway and the extreme sensitivity of the environment in the region along the route was considered by the EEIG to be the main barrier in the original project cycle, with the route under evaluation for a long time.

A number of political/institutional issues arose in this project, with collaboration between the two countries proving difficult. From the initial phase of definition and investigation of the alignment alternatives onwards, each of the member states showed a strong preference for one of the different alignment alternatives, depending on the possibilities to integrate the corridor with their own local-regional context (airport, ports). In the initial phase (2008-2011), before the EEIG has been established, different alignment proposals were under discussion. At the end of June 2011, Italy and Slovenia decided on one optimised alignment for which the new project promoter (EEIG) elaborated the preliminary design. It runs through the karst highland in places where the presence of underground caves is comparably lower compared to the 2008 solution.

An EEIG was set up in 2012 (Rete Ferroviaria Italiana S.p.A. (IT) and Ministry of Infrastructure (SLO)), which served as the project promoter. Its statutes were signed in May 2013, having been delayed mainly by two changes of government in Slovenia.

Infrastructure projects in cross-border sections often involve a high financial burden despite having lower political priority than domestic projects. Here, two countries with often diverging priorities were required to cooperate, for which there were no predefined structures. Undoubtedly the new railway infrastructure in the region has a high economic importance for the port of Koper (Slovenia). The new Koper-Divaca line will enhance the capacity of the port in Koper, ensure a better link to the interior of Slovenia, while the cross-border railway line towards Italy provides a better link to the wider European area.

11.4 CONCLUSIONS

The planning and implementation of the project (as well as many other sections of the Mediterranean Corridor) shows criticalities or mistakes at its conception phase. It neglected the territorial differences (spatial planning related to ecological values, economic values…) as well as underestimated if not
misrepresented the transport situation and possible evolutions in a period of economic downturn.

The project seems to have been interpreted too much as a part of the European corridor railway infrastructure with high speed capacities for passengers and high capacity for freight transport, but independently of the spatial structure of the territory traversed. It can be assumed that a stronger “bottom-up” evidence in the project, with a systematic effort to open new perspectives and opportunities for the interested territories at the different scales (cities, regions), would be a valid strategy to pursue a more effective project approach to infrastructure planning.

The accuracy of the demand forecast (identification of the relevant economic patterns and trends and the fundamental drivers of demand) is key to any economic feasibility study. In the case of transport infrastructure, particularly railways, demand is determined by the linkage of potential markets to the railway, the integration of existing networks and main trading hubs, and thus the expected routing of the infrastructure planned. For the Trieste-Divaca project, the different investment cost of alternative routings presented an additional economic feasibility factor.

Cross-border countries often have conflicting priorities and these may be exacerbated by changes of government (twice the case in Slovenia) and associated changing political priorities. Also in Italy, as a result of political cycles and government changes and the economic situation, the transport plan of “Strategic Territorial Platforms” has been dismissed. This makes that the “utility of the corridor” and the synergetic effects for the cities and regions have diminished.
Rail Zevenaar-Emmerich-Oberhausen
12.1 PROJECT DESCRIPTION

One of the cross-border sections on the international freight railway Rotterdam-Genoa (Italy) requiring upgrades is Zevenaar-Emmerich-Oberhausen (75 km, cross-border between the Netherlands and Germany), as the infrastructure cannot cope with increasing rail traffic.

Rail Zevenaar-Emmerich-Oberhausen is part of one of the seven main branches of the Rhine-Alpine Corridor, i.e. the branch Köln – Düsseldorf – Duisburg - Nijmegen/Arnhem – Utrecht – Amsterdam (270 km).

In order to provide sufficient capacity on the existing double track line, a third track will be built between Zevenaar and Oberhausen via Emmerich to accommodate the expected increase of international freight and passenger trains on the Rhine-Alpine corridor. The corridor runs through the so-called ‘Blue banana’, which includes major EU economic centres such as Brussels and Antwerp in Belgium, the Randstad region in the Netherlands, the German Rhine-Ruhr and Rhine Neckar regions, the Basel and Zürich regions in Switzerland, and the Milan and Genoa regions in Northern Italy. The Corridor encompasses some of the world's largest ports, such as Rotterdam, Amsterdam, Antwerp and Zeebrugge, which function as entry and exit points to the corridor and stand at the crossroads for multiple modes. The railway between Rotterdam (the Netherlands) and Genoa (Italy) is one of the most important international freight railways of the Rhine-Alpine Corridor. Geographically, the most prominent bottlenecks along the corridor occur at cross-border sections and around urban nodes.

The two cross-border sections studied are characterised as follows:

- Dutch section: 3 km long, between the connection of the Betuweline to the existing double track line in Zevenaar and the German border. The project activities comprise the selection of the most suitable location for the third track between Zevenaar and the German border by means of an EIA, design and implementation of the third railway track, including adjustments to existing bridges, switches and connection to the German third track, and design and implementation of the 25 kV overhead line, including its energy supply system.

- German section: 72 km long between the German border and Oberhausen. The project activities comprise the capacity improvement of Emmerich station, removal of 55 level crossings, design and construction of a new third track between Oberhausen and the Dutch-German border, and construction of a double track line for the rail section between Oberhausen-Sterkrade railway station and Grafenbusch.

The project has the following components:

- Constructing a third track (equipped with 25 kV overhead line voltage traction systems).

- Constructing of noise barriers.

- Upgrading of stations.

- Constructing or modifying overpasses and bridges.

- Replacing level crossings with flyover crossings.

12.2 TIMELINE – KEY MILESTONES

Germany

1992-2001: Early developments

- The Treaty of Warnemünde between the Ministry of Transport of the Federal Republic of Germany and the Ministry of Transport of the Kingdom of the Netherlands was signed, with a view to improving German-Dutch rail freight transport and rail passenger traffic.
2002-2013: Planning phase

- In 2002, a Planning Agreement was signed between the Federal State (Germany) and the county of North Rhine-Westphalia (NRW). Under this agreement, the Federal State would pay for 64% of the infrastructure cost (at that time estimated to be EUR 895 million).
- Agreement on financing of noise barriers by the county of NRW.
- In 2003, the German Federal Transport Infrastructure Plan included the ABS 46/2 Emmerich – Oberhausen project.
- In 2004, German stopped the project for financial reasons.
- In 2007, there was a declaration of intent between the Ministries of Transport of Germany and the Netherlands (decision on the implementation of the third track).
- In 2008, the Pre-Design Phase was completed. Public information events were held, presenting the alternatives for noise barriers, construction of the third track and engineering work.
- In 2009, the procedure for first planning approval began, with the Developed Design Phase starting in parallel.
- In 2010, changes to the Federal Transport Infrastructure Plan (Bundesverkehrswegeplan) led to the adjustment of predicted train numbers and an associated re-adjustment of the calculation for noise and vibration.
- Also in 2010, changes to Federal Environmental law (Bundesnaturschutzgesetz) led to the adjustment of planning application documents.
- Between 2011 and 2013, all 12 planning approval procedures began. The project has been divided into 12 sections, the first of which are undergoing the plan approval procedure, including public participation. The proposed plans foresee 47 km of new track, 74 km of noise protection walls and the replacement of 55 level crossings by 38 new/adapted bridges (DB Projektbau 2011, 2012).
- In 2012, the Solid State Interlocking Emmerich was commissioned (with separate financing, secured in 2005).

In 2013, an Agreement of Financing with the Government of Germany, and an Agreement of Financing with the county of NRW took place. The cost of the investments are estimated at EUR 1.5 billion, with the agreement stating that the German Federal State would cover EUR 746 million and the Lander of NRW EUR 450 million. DB would cover a large share of the remaining investment (Tenta 2013).
- 2013 also saw the First Public Disclosure (Section Oberhausen).
- By the end of 2013, the plan approval process had started for all 12 sections.

2014-2022: Construction phase

- Construction of three Bridges in Voerde, Hamminkeln and Praest (Commissioning in 2015/16), with four public disclosures.
- In September 2015 the first planning approval granted in September (Oberhausen). A legal appeal against the planning approval was filed by the City of Oberhausen.
- In 2016, construction work began for the voltage changeover in the cross-border section, together with the first closures of tracks and commissioning (DB Netz and ProRail).
- Further Public disclosures will continue until 2017.
The project is expected to be completed in 2022.

The Netherlands

1985-1996: Early developments
- In 1985, preliminary investigations into the future of west-east transport in the Netherlands were undertaken by the Van Bonde commission.
- 1996 saw the final decision by the Netherlands to build the new freight railway line connecting the port of Rotterdam with the Dutch-German border at Zevenaar-Emmerich. This line was dubbed the Betuweroute.

1998-2008: Works - Dutch part
- Work on the Dutch part of the track (Betuweroute) began in 1998 by the NS.
- By mid-2007, the railway was finished, after a delay of two years. The Betuweroute was put into normal operations on 16 June 2007. The new freight route connected the port of Rotterdam with the Ruhr and southern Germany, joining the existing line in Zevenaar.
- By December 2007, problems with safety equipment, and the unfinished German connection, meant that traffic remained light.

2009-2016: Preparation works - German part
ProRail started the Planning Procedure for the Third Rail Track between Zevenaar and the German border.
- From 19 September 2012 until 31 October 2012 public consultation took place on the Routing Decision (Design) and EIA Third Track Zevenaar-German Border (routing plans and mitigating measures).
- In July 2013, the German Federal Government, the state of NRW, Deutsche Bahn and other parties signed a EUR 1.5 billion funding agreement to upgrade the 73 km Emmerich-Oberhausen segment. Improvements included laying a third track to remove bottlenecks, removal of level crossings, renewal of electrical equipment, installation of ETCS and building of noise attenuating walls.
- From 18 July 2013 until 28 August 2013, public consultation took place on the Routing Decision (Final) / Comments of Interested Parties for the Third Track Zevenaar-German Border (routing plans, mitigating measures against vibrations).
- In 2015 the Final Routing Decision was contested in court. However, the Council of State rejected the appeal, leaving the Final Routing Decision in force and allowing ProRail to continue the procedure.
- The demolition of two houses began at Babberich (the only houses to be removed).

2017-2018: Works - German part
- The works for the third track are expected to start in 2017 and continue into 2018.

<table>
<thead>
<tr>
<th>Key project milestones</th>
<th>Original planning/timing</th>
<th>Real or currently estimated planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning and financing</td>
<td>2002-2004</td>
<td>2002-2006</td>
</tr>
<tr>
<td>Pre-design</td>
<td>2006-2008</td>
<td>2006-2008</td>
</tr>
<tr>
<td>Planning approval procedure first section Germany</td>
<td>2009-2010</td>
<td>2009-2015</td>
</tr>
<tr>
<td>Planning approval procedure other 12 sections Germany</td>
<td>2009-2010</td>
<td>2012-2016</td>
</tr>
<tr>
<td>EIA/project approval procedure The Netherlands</td>
<td>2011-2012</td>
<td>2012-2013</td>
</tr>
<tr>
<td>Construction Phase The Netherlands</td>
<td>2012-2013</td>
<td>2017-2018</td>
</tr>
<tr>
<td>Construction Phase Germany</td>
<td>2010-2013</td>
<td>2016-2022</td>
</tr>
</tbody>
</table>
The actual planning for the construction phase is realistic.

**12.3 ANALYSIS**

Despite the 1992 joint Dutch-German agreement on improvement of the German-Dutch rail connection (Agreement from Warnemunde), progress on the German side for the 72 km of track connecting Emmerich at the border with Oberhausen was very limited until 2002, when a funding agreement was reached between the Federal State and the county of NRW. Following a declaration of intent between the Ministries of Transport of Germany and the Netherlands in 2007, work on the Dutch part of the track between Rotterdam and Zevenaar (Betuwe Route) was finished with a delay of two years. On the German side, planning approval was granted for the first section (Oberhausen) in 2015, although a legal appeal has been filed. Works in Germany are due to be completed in 2022 (30 years after the Agreement from Warnemunde), while works for the third track in the Netherlands are expected to begin in 2017 and be completed in 2018.

The delays in the permitting procedures stemmed from the reprioritisation of Transport Infrastructure Plan (2007-2010, Germany) removing funding from the plan, changes of legislation requiring adjustments to the design and permitting applications (2010, Germany), legal appeals (2013-2015 the Netherlands and Germany), partly due to the lack of harmonisation in safety legislation between the two countries.

**Delays in the Planning Approval Process** were caused by the removal of funding after the reprioritisation of the Federal Transport Infrastructure Plan, lawsuits filed by stakeholders and the local authorities, and the time taken for public hearings and consultation, including follow-up communications. Further delays may have been caused by the lack of binding timelines in the German Planning Approval Process.

The project faced a number of other difficulties as well.

There were **changes in the legal framework** to take into account:

- Changes to the Federal Transport Infrastructure Plan (*Bundesverkehrswegeplan*) resulted in a change in the predicted train numbers and an adjustment of the calculation for noise and vibration.
- Changes to the Federal Environmental Law (*Bundesnaturschutzgesetz*) resulted in adjustments to the planning application documents, causing a delay in completing the environmental studies.

The project – in its cross-border context – encountered difficulties relating to the **implementation of (European) environmental legislation:**

- Different Dutch and German technical and regulatory standards for fire safety, disaster control and transport of dangerous goods caused an increased public demand (in Germany) for safety measures.
- The Dutch policy and law on rail transport of dangerous goods has been in force since 1 April 2015. The objective of the Dutch legislation is to specify the corridors and the amount of transport of dangerous goods through densely populated regions, as well as specifying limitations for building developments along the tracks. Germany has no comparable policy.
- Similarly, cross-border differences in technical and regulatory standards occur in the domain of Fire Safety and Disaster Control, with regulatory standards for fire water supply and distance between safety doors being different in the two countries.
This caused an increased public demand in Germany for additional safety measures, (comparable to those in the Netherlands) and the filing of a lawsuit by the City of Oberhausen against a planning permission which allowed Germany to apply less stringent standards than those in the Dutch regions.

The development of an EU wide harmonised approach to rail safety legislation could provide a solution in theory, but harmonisation at an EU level would require significantly detailed safety provisions.

The process was vulnerable. As in all EU countries, the EIA is time-consuming and resource-intensive. Legal appeals have the potential to block or cause serious delays to a project that has been in planning for many years. Taken together, the extended process of stakeholder consultation, shortage of financial resources, the vulnerability of the process (no binding timelines, changes in legislation) and differences in safety standards created a situation where it took between five and six years for the competent authority to grant the 12 planning approvals.

Public resistance / stakeholder consultation
The high volume of public information and participation (information events, brochures, etc.) seemed to decrease public acceptance of the project. Legal appeals against the permitting decisions caused constant uncertainty, disrupting financing and planning. Although appropriate communication strategies were employed to actively involve the local public in the early planning stages, these should remain a constant focus.

In general, communication and intensive working with all stakeholders is important:

- Continuous Jour Fixe/information exchanges with administrations, communities involved, county planning agencies, regulatory agencies and all parties involved, in order to prevent unexpected surprises, time gaps or resource shifts.
- Increase/create a mutual understanding of regulations, procedures and milestones.

This case highlighted a number of good practices in both countries.

A centralised planning and permitting set-up/approach was used. The railway project was not subject to a Regional Planning Procedure/SEA (Regional Planning Act). The project is listed in the German Federal Transport Infrastructure Plan and was developed as an extension of the existing two track railways. At the Project Planning Level, a Plan Approval Procedure was applied. The German competent authority for railway projects is the Federal Railway Agency EBA (Eisenbahn-Bundesamt), which is responsible for planning and licensing federal railway infrastructure. All public and private interests, including environmental compatibility, are weighed before public approval is granted. In the General Railway Act, the Federation has regulated planning approval for all railways, including state railways. This centralised set-up helps project developers and the relevant authorities to build up a body of expertise and knowledge in respect of large-scale railway infrastructure projects, especially with a view to complex popular participation procedures.

By contrast, federal motorways and federal highways in Germany are built and administered by the States (State Highway Department) on behalf of the Federation. The specialist administrative authorities in the States (Länder) are the key players in the planning and approval process for individual projects. Major transportation infrastructure projects are often processed alongside their regular day-to-day tasks without the addition of extra staff. This results in procedural delays and also leaves the process vulnerable to errors. In addition, the decentralised structure runs the risk of fragmenting the planning and approval process where projects involve more than one of the Länder, especially where different Länder handle procedural issues differently. In this decentralised set-up, the experience of managing major infrastructure projects gathered by individual authorities remains much more fragmented, making it difficult for project developers and the relevant authorities to build up a
sustainable body of expertise and knowledge.

**Dutch-German Bilateral Working Groups and subgroups** were established. As this project is of a cross-border nature, ProRail and DB Netz worked closely together on planning and layout. The specification and design of the interfaces between the DB Netz and ProRail infrastructure in the section Zevenaar – Emmerich was produced by Dutch-German bilateral working groups and several subgroups of the common DB Netz – ProRail organisation established in November 2010. The following technical interfaces were studied by this common organisation: ERTMS interface; GSM-R interface; Interlocking interface; Traffic Control interface; 25kV Traction Power interface; 25kV Catenary interface; 25kV Earthing System interface; Hotbox detection interface; EIA; and third track interface. As German and Dutch railway systems do not have standard interfaces which fit easily together, specifications and designs were needed to determine what would be built and how technical and organisational interfaces would be defined. ProRail and DB Netz agreed on the design and specifications, allowing them to clearly define a plan for the scope and timeframe of the building activities.

**Contact was established between the involved parties in Germany and the Netherlands for environmental impact studies.** An early meeting determined that planning approval for section 3.5 (Emmerich-Elten) requires cross-border EIA, with planning approval in the Netherlands requiring disclosure. They agreed that it was sufficient to disclose DB plans for the third track only in Zevenaar. The Province of Gelderland was also involved in the procedure, as a representative of public interest. The Dutch Commission for Environmental Assessment suggested performing a coherent study (together with the German study) on the effects of the third track on the Natura 2000 area. DB Netz provided ProRail with the draft management plan of the Bird protection area *Unterer Niederheim* and this was taken into account in the Dutch project. The German ecology impact study also contains the effects on the Natura 2000 area *Gelderse Poort*.

An information event was held in Zevenaar (the Netherlands) on the project activities of section 3.5 Elten (cross-border section in Germany). All necessary documentation and information was translated in order to facilitate communication and understanding. Citizens’ participation in the planning of infrastructure projects was made a priority in the project cycle in both countries.

Compulsory public participation after the formal procedures is often much too late in the planning process. The first formal procedural stage which requires communication between the project developer and the stakeholders is the approval procedure, at which time the route has already been planned and changes to the design of the project are very difficult. In both countries, meetings with local residents and stakeholders took place early in the planning process. The project promoter took considerable care before overruling the views of local stakeholders and authorities, finding it easier, in many instances, to reach mutual agreement.

**12.4 CONCLUSIONS**

- The project – in its cross-border context - encountered difficulties relating to the implementation of (European) environmental legislation. Different Dutch and German technical and regulatory standards related to fire safety, disaster control and transport of dangerous goods, caused an increased public demand in Germany for safety measures and the filing of a lawsuit against a planning permission allowing for less stringent standards in Germany than in the Netherlands. Development of an EU harmonised approach to rail safety legislation could provide a solution.
- The railway has strategic importance as a freight corridor connecting the port of Rotterdam to the Ruhr region in Germany. While the Dutch Government fast-tracked the procedure for implementation of the project, the German procedure has no strict deadlines for implementation, thereby hampering implementation. Under German law, the new development should provide the necessary compensations to the communities (e.g. Oberhausen), including noise reduction measures (noise walls). Due to the topographical structure of the area these walls need to be high (2-6 m). The German section of the line also experienced additional problems, such as some fifty
level crossings along the line, insufficient capacity of the stations (Oberhausen), and disturbances to the surrounding settlements. Taken together with the less stringent safety measures in Germany compared to the Netherlands, these factors increased public opposition by local communities.

- Analysis of the drivers of delay reveal a measure of political resistance to the project, as well as unbalanced public and local benefits in both countries, hindering efficient cross-border cooperation.
- Citizens’ participation was given high priority and can be seen to play an important role in cross-border projects. Appropriate communication strategies should actively involve the local public in the early planning stages and remain a focus throughout.
- An information event on the common project activities in cross-border sections is good practice in cross-border projects’ permitting procedures. To facilitate communication and understanding, all necessary documentation and information should be translated into the national language of the country concerned.
- Cross-border Bilateral Working Groups and subgroups should be established between the cross-border transport organisations from the start, while, for environmental impact studies, contacts should also be established between the involved parties in both countries. If the cross-border section has potential impacts on Natura 2000 areas, a coherent study between the countries is a prerequisite.
- A centralised planning and permitting set-up and approach (like in Germany and the Netherlands) can shorten delays and improve decisions by means of:
  - Centralised responsibility to decide the scope and adequacy of review. The general principles for review should be disclosure of material facts sufficient to make a considered decision, with a focus on the overall environmental impact of the project. This centralised set-up makes it easy for project developers and the relevant authorities to build up a sustainable body of expertise and knowledge in respect of large-scale infrastructure projects.
  - Avoiding complications from overlapping jurisdiction by three or more levels of government.
  - Clear lines of authority, with consolidated decision-making on both environmental review and permitting. One agency should have overriding permitting authority, with the obligation to balance the concerns of other agencies and departments.

The railway project was not subject to a Regional Planning Procedure/SEA. In the Netherlands, the Routing Decision (Planning Approval) ends up with the routing being integrated in a spatial plan. This has advantages for the length of permitting procedures.
13.1 PROJECT DESCRIPTION

The Liège Port Authority has developed a multimodal platform Liège Trilogiport. This 12 ha platform is located at Hermalle-sous-Argenteau (in the outskirts of Liège), alongside the Albert Canal which links Liège to Antwerp. The project is on the Alpine and North Sea Baltic TEN-T Corridors.

Development work on the Liège Trilogiport multimodal platform, one of the 32 port areas managed by the Liège Port Authority and located along the Albert Canal in Hermalle-sous-Argenteau, started on 28 June 2013.

This multimodal platform will become a real logistics village at the heart of Europe. Named Liège Trilogiport for its tri-modal character, it aims to be a mass storage area upstream of Northern Europe’s sea ports.

Liège Trilogiport boasts:
- Three access points to the sea: Antwerp, Rotterdam and Dunkirk.
- Three transport modes: water, rail and road.
- Three cross-border markets: France, the Netherlands and Germany.

The investment required to carry out the Trilogiport project and provide road and railway access is estimated at almost EUR 45 million.
- Construction of the platform within the limits of the port area - EUR 29.5 million (20% from Port autonome de Liège and 80% from Walloon Region), included in the Marshall plan.
- The platform's operation: road and access construction and installation of outside equipment - EUR 22.5 million (60% from Walloon Region and 40% from the EU), allocated within the framework of the FEDER 2007-2013 programme.
- Study contract for the construction of the multimodal platform - EUR 712,366, allocated within the framework of the FEDER 2000-2006 programme.

Private investments will amount to approximately EUR 115 million.

The construction of the Trilogiport multimodal platform lasted two years and finished in November 2015. It is now waiting for its first users.

The primary objective of Liège Trilogiport is to attract companies who use the waterway and main European distribution centres. It will provide a high value-added activity and create 2,000 new jobs (study by the Direction de la Promotion des Voies Navigables et de l’Intermodalité, an inland navigation promotion organisation).

13.2 TIMELINE – KEY MILESTONES

1998-2005: Early developments
- The Port of Liège and the Walloon Ministry of Transport launched a study in 1998 to examine which sites are best suited to develop economic activities primarily focused on freight and valuing the multimodal potential.
- In April 2002 the Walloon Minister of Public Works decided to expropriate a piece of land owned by Electrabel in order to create a large multimodal area (of +/- 100ha) multimodal that will become “Trilogiport”. The ministerial decree of expropriation was issued in April 2003.

2004-2012: Planning phase
The building permit for the 1st phase was granted to the Port in March 2004.

The expropriation of the land (+/- 100 ha) was carried out between June 2003 and December 2005.

In January 2006, the Walloon government decided to partly finance the work via the “Marshall 2 plan”. In addition, ERDF (2004-2009) funds were requested and obtained.

The Walloon Ministry of Equipment and Transport started the study of the development of the project site in 2006

A second building permit was granted to the Ministry of Equipment and Transport in October 2006 for the infrastructure project of the multimodal platform.

In October one of the stakeholders (Electrabel) submitted an appeal for suspension for the Belgian Council of State against this building permit

In 2009, the study and development of the infrastructure project of the multimodal platform was assigned to a contractor (Greisch design office). This project was subject to an environmental impact assessment (EIA) - assigned in March 2009 to ARIES; the EIA commenced with a public consultation session.

The studies for the North Bridge and the road access to the site were awarded to AM Consultants and Arcadis-Greisch and began in July 2010.

A third building permit was granted in August 2010 regarding the road access project north to the new bridge over the Meuse. An additional expropriation plan was required as well.

Infrastructure works (infrastructure project, bridge and access roads) on the site are awarded to Momentary Corporation ELOY-Kumpen-Eraerts in 2012-2013.

2013-2015: Construction works

In June 2013 the development work on the multimodal platform started.

In October 2013 construction of the North Bridge and the link road (between the North Bridge and the N618 at the Haccourt bridge) started.

In June 2014, development work on the multimodal platform finished.

October 2014 saw the completion of the roundabouts (north zone).

At the beginning of 2015, construction began on the logistics warehouses (logistics zone).

In October, construction was completed on the North Bridge and the link road (between the North Bridge and the N618 at the Haccourt bridge) and the project was nearly ready for operation.

The Trilogiport multimodal platform finished in November 2015 and is awaiting its first users.

<table>
<thead>
<tr>
<th>Key project milestones</th>
<th>Original planning/timing</th>
<th>Real or currently estimated planning</th>
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<tbody>
<tr>
<td>Building permit 1st phase</td>
<td>2004</td>
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<tr>
<td>Site development study</td>
<td>2006</td>
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<tr>
<td>Building permit 2nd phase (infrastructure project multimodal platform)</td>
<td>2006</td>
<td>2006</td>
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<tr>
<td>Appeal for suspension (Belgian Council of State) against 2nd building permit</td>
<td>2006</td>
<td>2006</td>
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<tr>
<td>Start public procurement procedure</td>
<td>2008</td>
<td>2008</td>
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<tr>
<td>Assignment of the study and development of part the infrastructure projects to contractors</td>
<td>2009-2010</td>
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Despite the challenges the project has faced, there were no delays. The schedule set was a realistic one.

13.3 ANALYSIS

Although now finished, the project experienced some **obstacles during the implementation phase**.

**The changing economic landscape had an influence on the project progress.** During the project process, multinational companies located near Trilogiport took key decisions, such as re-opening sites which were previously closed down, requiring the original plans to be changed, e.g. changing access, building a new bridge. The new plans demanded that additional land be bought, causing additional costs. They also included a new bridge much closer to the residents, causing a lawsuit (see below).

**There was public opposition to the project.** At the start of the project (during the pre-study) not-im-my-back-yard attitudes were already evident among the residents, who complained about the expected levels of noise and dust. Changes to the plans during the project, as a result of the economic climate, also drew criticism from local residents, who appealed against these new plans to the Belgian Council of State. The appeal for suspension was rejected, although no decision has yet been taken on the appeal for annulment. Despite the appeal, the project was completed.

**The decision-making process was not easy** because the Minister for Infrastructure is both permit applicant and permit authority for this project, **which led to legal discussions**.

**Issues with unforeseen nature impacts.** During the permitting procedure, the administration provided negative advice in relation to protected species. Although the area is not a natural habitat, additional measures were necessary to protect one species. These measures did not cause project delays.

At the start of the project there was no legal framework for soil protection, however, during the implementation of the project a new law on soil was approved. The project promoter decided to proactively implement a remediation plan on a voluntary basis.

The project promoter believes that the project is supported, politically as well as financially, by the Walloon government. Despite the various changes in the project (see above) increasing the costs, the required additional budget was provided by the Walloon government.

Extensive communication and continuing consultation with stakeholders were key in this project:

- Informal consultation during realisation phase: A task force was set up with representatives of the various administrations and cabinets. During the monthly meetings, the problems were discussed directly and solutions were found, thereby limiting delays.

- Dialogue with stakeholders in a support committee: The permit imposed the set-up of a support committee with local residents, municipalities and administrations. The purpose of this consultation was to engage in dialogue with stakeholders to monitor adherence to the permit conditions during the implementation phase.

- Clear communication to residents: During the implementation phase, residents were notified when specific work would cause nuisance, e.g. exceptional freight by road.
A comprehensive discussion took place with respect to the urban development of the area. This ensured that the project was integrated with the Albert Canal and the village of Hermalle-sous-Argenteau to the extent possible. Of the 120 ha planned, nearly 40 hectares will be devoted to an area of environmental integration, which will encircle the platform and beautify the access to the north bridge. The project promoter is convinced that the result of consultation and dialogue with the representatives of the Hermalle-sous-Argenteau Village Committee will render the large environmental integration zone (39 hectares in total) satisfactory. Local input has resulted in a plan featuring orchards and community gardens, pontoons for fishing, paths dedicated to the soft modes of transport (RAVeL) and bodies of water with a walkway and a four hectare wooded area.

13.4 CONCLUSIONS

Flexibility with respect to the changing economic landscape is a key requirement for this type of project.

A proactive response to changing legislation helps to avoid delays at a later stage of the process. In this case, for example, the project promoter decided to proactively implement a soil remediation plan before this was required by law.

Extensive communication and consultation with stakeholders on an ongoing basis is a significant success factor, as seen in this case.
### ANNEX 1: SELECTED BIBIOGRAPHY - OVERVIEW OF SOURCES (DESK RESEARCH)

**Table 1 – Overview of sources**

<table>
<thead>
<tr>
<th>Case study</th>
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<tbody>
<tr>
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| ‘National Strategy for Sea and Inland Ports 2015’ (Germany) |  
| **Cross-border section Trieste-Divaca-Koper** |  
| Priority Annual Report of the Coordinator - Laurens Jan Brinkhorst (Brussels, October 2013) |  
| **Rail Zevenaar-Emmerich-Oberhausen** |  
| Priority Annual Report of the Coordinator - Laurens Jan Brinkhorst (Brussels, October 2013) |  
| Progress Report 2012 - Executive Board Rail Freight Corridor 1: Zeebrugge-Antwerp/Rotterdam- Duisburg-Basel- Milan-Genoa |  
| Progress Report 2013 - Executive Board Freight Corridor 1/A Rhine-Alpine |  
| Annual Report 2014 Rail freight corridor Rhine-Alpine |  
| Border section Zevenaar-Oost (NL) –Emmerich (D): Border crossing projectMigration steps and challenges (ProRail / DB Netz AG Henri van Houten , Reiner Behnsch - CCRCC Meeting, Lille – 23 September 2015) |  
| Arcadis, MER Derde spoor Zevenaar-Duitse grens, 2012 |  
| **Trilogiport Liege** |  
| http://www.liege.be/projet-de-ville/investir-a-liege-nl/opportunites-d2019investissements-nl/trilogiport |  
| Press release ‘Development work on the Liège Trilogiport multimodal platform starts on 28 June 2013!’ |  
Case study | Sources
--- | ---
 | platform-liege-airport
 | http://www.warehouseandlogistics.com/trilogiport-de-infrastructuur-zo-goed-als-klaar/

ANNEX 2: STAKEHOLDERS CONSULTED (INTERVIEWS)

Table 2 – Overview of Stakeholders consulted

<table>
<thead>
<tr>
<th>Stakeholders consulted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Innovation &amp; Networks Executive Agency (INEA)</td>
</tr>
<tr>
<td>Tunnel Euralpin Lyon-Turin (TELT)-SAS</td>
</tr>
<tr>
<td>Femern A/S</td>
</tr>
<tr>
<td>Brenner Basistunnel (BBT)-SE</td>
</tr>
<tr>
<td>European Investment Bank (EIB)</td>
</tr>
<tr>
<td>Rail Baltica (RB) Rail AS</td>
</tr>
<tr>
<td>PKP Polskie Linie Kolejowe (PLK) / Polish Railway Lines S.A. (Poland)</td>
</tr>
<tr>
<td>Agentschap Waterwegen en Zeekanaal nv / The Flemish Waterways and Sea Canal Agency (Belgium/Flanders)</td>
</tr>
<tr>
<td>Voies navigables de France / French Inland Waterways (France)</td>
</tr>
<tr>
<td>Département du Nord (France)</td>
</tr>
<tr>
<td>Departement Mobiliteit en Openbare Werken / Flemish Ministry of Mobility and Public Works</td>
</tr>
<tr>
<td>Vlaams-Nederlandse Schelde Commissie / Flemish-Dutch Scheldt Commission</td>
</tr>
<tr>
<td>Service Public de Wallonie, La Direction de la Promotion des Voies Navigables et de l'Intermodalité</td>
</tr>
<tr>
<td>Tractebel SA (Belgium and Romania)</td>
</tr>
<tr>
<td>Administratia Fluviala a Dunarii de Jos Galati (AFDJ) - SCN Giurgiu</td>
</tr>
<tr>
<td>Joint Assistance to Support Projects in European Regions (JASPERS)</td>
</tr>
<tr>
<td>DG Regio</td>
</tr>
<tr>
<td>Bulmarket DM Ltd</td>
</tr>
<tr>
<td>Pro Danube International</td>
</tr>
<tr>
<td>Austrian Ministry for Transport, Innovation and Technology</td>
</tr>
<tr>
<td>Autobahnen- und Schnellstrassen- Finanzierungs-Aktiengesellschaft (ASFINAG)</td>
</tr>
<tr>
<td>Czech Ministry of Transport</td>
</tr>
<tr>
<td>Le Havre Port Authority</td>
</tr>
<tr>
<td>DG MOVE</td>
</tr>
<tr>
<td>German Federal Ministry of Transport and Digital Infrastructure (Ports)</td>
</tr>
<tr>
<td>German Ministry for Economy, Labour and Ports of Bremen (Port economy, infrastructure, shipping)</td>
</tr>
<tr>
<td>DG Environment</td>
</tr>
<tr>
<td>Hamburg Port Authority</td>
</tr>
<tr>
<td>Stakeholders consulted</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
</tr>
<tr>
<td>Rete Ferroviaria Italiana RFI, EEIG Trieste-Divaca Italy</td>
</tr>
<tr>
<td>Deutsche Bahn (DB) Netz AG</td>
</tr>
<tr>
<td>Direction des voies hydrauliques de Liège – Service public de Wallonie</td>
</tr>
</tbody>
</table>
Study on permitting and facilitating the preparation of TEN-T core network projects

Annex 5: Summary report on public consultation

N°MOVE/B3/2014-751
This report has been prepared by Milieu Ltd under Contract No MOVE/B3/2014-751, by Lise Oulès (Milieu Ltd) and reviewed by Sarah O’Brien (Milieu Ltd).

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

**Milieu Ltd** (Belgium), Chaussee de Charleroi 112, B-1060 Brussels, tel.: +32 2 506 1000; e-mail: sarah.obrien@milieu.be; web address: www.milieu.be.
TABLE OF CONTENTS

1. INTRODUCTION .................................................................................................................. 5
   1.1 Purpose of the public consultation .............................................................................. 5
   1.2 Respondents ............................................................................................................... 5

2. OVERVIEW OF RESULTS ................................................................................................. 8
   2.1 Streamlining permitting procedures ......................................................................... 8
       2.1.1 One-stop-shop .................................................................................................. 9
       2.1.2 Time-limits ........................................................................................................ 11
       2.1.3 Other measures for the streamlining of permitting procedures ............... 13
   2.2 Public procurement and development of public-private partnerships ....... 14
       2.2.1 Public procurement ......................................................................................... 14
       2.2.2 Public-private partnerships ............................................................................ 15
   2.3 State aid ..................................................................................................................... 18
   2.4 Scope of the measures ............................................................................................... 20
   2.5 Options for implementing measures to facilitate the permitting and
       preparation of TEN-T projects ............................................................................... 22

ANNEX 1: QUESTIONNAIRE ................................................................................................. 24

ANNEX 2: LIST OF RESPONDENTS ..................................................................................... 36
LIST OF TABLES

Table 1: Breakdown of responses by type of organisation ........................................... 5
Table 2: Breakdown of responses by Member States .................................................... 6
Table 3: Breakdown of responses by mode .................................................................... 6
Table 4: Question 21, breakdown per category of respondents ..................................... 10
Table 5: Question 25, breakdown per category of respondents ..................................... 12
Table 6: Question 38, breakdown by mode .................................................................. 19

LIST OF FIGURES

Figure 1: Question 17: Which TEN-T projects would you consider as most impacted by regulatory and administrative obstacles related to permitting? ........................................... 8
Figure 2: Question 18: What measures should be applied to TEN-T projects to facilitate their permitting and preparation? ................................................................. 8
Figure 3: Question 20: In your view, would a one-stop-shop assist in facilitating and accelerating the permitting of TEN-T projects? ...................................................... 9
Figure 4: Question 21: What level of authority should a one-stop-shop have in the permitting of TEN-T projects? ................................................................................ 9
Figure 5: Question 24: Would you consider an overall time-limit for the permitting of TEN-T projects useful in accelerating the permitting process? ................................. 11
Figure 6: Question 25: What would you consider an appropriate overall time-limit for the permitting of TEN-T projects? ................................................................. 11
Figure 7: Question 30: Some projects are located on both sides of an internal EU border. Although the main rules in public procurement are the same in all Member States, differences in carrying out public procurement exist between them. What would you consider to be the biggest challenge in applying national rules in a cross-border procurement? .................................................................................. 15
Figure 8: Question 34: What measures could be useful in facilitating the development of public-private partnerships for the delivery of TEN-T projects? .................... 17
Figure 9: Question 36: Should PPP and other schemes involving private investors in the TEN-T projects benefit from preferential permitting procedures and/or other preferential treatment? ............................................................................. 18
Figure 10: Question 38: Do you consider the recent Commission initiatives sufficient to increase the legal certainty in delivering transport infrastructure projects? ............................ 19
Figure 11: Q40: Should the streamlined framework or facilitated procedures apply to specific categories of TEN-T projects with a particular EU relevance? ........................ 20
Figure 12: Question 42: What factors should be taken into account when selecting projects which would benefit from a streamlined framework or facilitated procedures? .................................................................................. 21
Figure 13: Question 45: Do you think that the facilitated schemes as envisaged above for permitting, public procurement and PPPs, as well as State aid procedures, could also apply to economic sectors other than transport? .......................... 22
Figure 14: Question 47: In your view, which of the following options would be most effective for implementing measures to facilitate the permitting and preparation of TEN-T projects? Please rank the options according to their effectiveness. 23
1. INTRODUCTION

1.1 PURPOSE OF THE PUBLIC CONSULTATION

This report presents the results of the online consultation, organised as part of the study on Permitting and facilitating the preparation of TEN-T core network projects. The consultation was launched on 17 June 2016 and remained opened for a period of twelve weeks, until 5 September 2016.

The consultation asked for opinions on possible options to streamline and facilitate the permitting, procurement and state aid procedures for TEN-T core network projects, and invited respondents to comment on the impact of proposed options and suggest any further possible options. The questionnaire is available in Annex 1.

Names and organisations of respondents have not been mentioned in this report. Respondents are only identified by their category (individuals, national government, regional or local authority, project developer, company, business organisation). All direct quotations are from respondents who accepted their contribution to be published.

1.2 RESPONDENTS

The initial part of the questionnaire asked respondents to provide some background information on themselves.

In total, 88 responses to the questionnaire were received, including 84 from 21 Member States and four responses from non-EU Member States (Norway, Serbia and Switzerland). Of these, 21 were received from individuals, and 67 from organisations, consisting mainly of public authorities (14 national governments, 20 regional, local or municipal authorities). In addition, three organisations (one national government and two industry associations) sent written contributions.

Table 1: Breakdown of responses by type of organisation

<table>
<thead>
<tr>
<th>Type of organisation</th>
<th>Number of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>A regional/local/municipal authority</td>
<td>20</td>
</tr>
<tr>
<td>A national government</td>
<td>14</td>
</tr>
<tr>
<td>A company (other than project developer)</td>
<td>10</td>
</tr>
<tr>
<td>A project developer (public or private)</td>
<td>8</td>
</tr>
<tr>
<td>An industrial interest group, business association, sectoral association</td>
<td>6</td>
</tr>
<tr>
<td>Other:</td>
<td>9</td>
</tr>
<tr>
<td>• Port authority / Port Governance Agency</td>
<td>2</td>
</tr>
<tr>
<td>• Executive agency</td>
<td>1</td>
</tr>
<tr>
<td>• Intergovernmental organisation</td>
<td>1</td>
</tr>
<tr>
<td>• Public sector undertaking</td>
<td>1</td>
</tr>
<tr>
<td>• Allocation Body</td>
<td>1</td>
</tr>
<tr>
<td>• Bi-national society</td>
<td>1</td>
</tr>
</tbody>
</table>

1 As these contributions did not explicitly answer the questions of the consultation, they were not included in this report, but integrated to the evidence base for the study.
Responses were received from most EU Member States. The largest samples of answers are coming from countries with large TEN-T projects (Italy, Poland, Germany and France).

Table 2: Breakdown of responses by Member States

<table>
<thead>
<tr>
<th>Member States</th>
<th>Number of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>12</td>
</tr>
<tr>
<td>Poland</td>
<td>9</td>
</tr>
<tr>
<td>Germany</td>
<td>9</td>
</tr>
<tr>
<td>France</td>
<td>7</td>
</tr>
<tr>
<td>Belgium</td>
<td>6</td>
</tr>
<tr>
<td>Portugal</td>
<td>5</td>
</tr>
<tr>
<td>Greece</td>
<td>4</td>
</tr>
<tr>
<td>Sweden</td>
<td>4</td>
</tr>
<tr>
<td>Netherlands</td>
<td>3</td>
</tr>
<tr>
<td>Slovenia</td>
<td>3</td>
</tr>
<tr>
<td>Spain</td>
<td>3</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>3</td>
</tr>
<tr>
<td>Austria</td>
<td>3</td>
</tr>
<tr>
<td>Denmark</td>
<td>2</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>2</td>
</tr>
<tr>
<td>Romania</td>
<td>2</td>
</tr>
<tr>
<td>Latvia</td>
<td>2</td>
</tr>
<tr>
<td>Lithuania</td>
<td>2</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>1</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>1</td>
</tr>
<tr>
<td>Hungary</td>
<td>1</td>
</tr>
<tr>
<td>Non EU Member State:</td>
<td>3</td>
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<tr>
<td>Norway</td>
<td>1</td>
</tr>
<tr>
<td>Serbia</td>
<td>2</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1</td>
</tr>
</tbody>
</table>

Largest samples of answers were received from stakeholders whose activities do not focus on a particular mode, from rail stakeholders and waterborne transport stakeholders. Stakeholders whose activities do not focus on a particular mode are essentially national and regional/local authorities.

Table 3: Breakdown of responses by mode

<table>
<thead>
<tr>
<th>Focus of activity</th>
<th>Number of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>No focus on a particular mode</td>
<td>29</td>
</tr>
<tr>
<td>Rail</td>
<td>23</td>
</tr>
<tr>
<td>Maritime transport and ports</td>
<td>17</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----</td>
</tr>
<tr>
<td>Road</td>
<td>8</td>
</tr>
<tr>
<td>Inland waterways and ports</td>
<td>6</td>
</tr>
<tr>
<td>Air transport</td>
<td>5</td>
</tr>
</tbody>
</table>
2. OVERVIEW OF RESULTS

2.1 STREAMLINING PERMITTING PROCEDURES

When asked which projects they considered most impacted by regulatory and administrative obstacles in permitting, the majority of respondents (60%) replied that all hard infrastructure projects are equally impacted, regardless of their nature, and location on the TEN-T network. Cross-border projects were however considered more impacted by 28% of respondents, mostly individuals, project developers and regional/local authorities.

Figure 1: Question 17: Which TEN-T projects would you consider as most impacted by regulatory and administrative obstacles related to permitting?

61% of respondents think that a one-stop-shop for permitting should be established to facilitate the preparation and permitting of TEN-T projects. 56% answered that time limits should be established and 35% recommended a combination of both measures.

Figure 2: Question 18: What measures should be applied to TEN-T projects to facilitate their permitting and preparation?

22 respondents replied ‘other’. As many answers are similar to the answers provided to question 28 below, propositions made in both questions have been grouped in section 2.1.3.
2.1.1 One-stop-shop

The majority of respondents (72%) consider that the establishment of a one-stop shop would contribute to accelerate the permitting of TEN-T projects. Respondents that do not support the establishment of a one-stop-shop are mainly individuals and regional/local authorities.

Figure 3: Question 20: In your view, would a one-stop-shop assist in facilitating and accelerating the permitting of TEN-T projects?

47% of respondents stated that the one-stop-shop should have extended decision-making power, while 36% think it should only have coordinating powers.

Figure 4: Question 21: What level of authority should a one-stop-shop have in the permitting of TEN-T projects?
Table 4: Question 21, breakdown per category of respondents

<table>
<thead>
<tr>
<th></th>
<th>Individuals</th>
<th>Company</th>
<th>National government</th>
<th>Project developer</th>
<th>Regional/local authority</th>
<th>Business association</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coordination powers only</td>
<td>55%</td>
<td>20%</td>
<td>21%</td>
<td>38%</td>
<td>35%</td>
<td>0%</td>
<td>56%</td>
</tr>
<tr>
<td>Extended decision making power,</td>
<td>40%</td>
<td>70%</td>
<td>50%</td>
<td>50%</td>
<td>45%</td>
<td>50%</td>
<td>33%</td>
</tr>
<tr>
<td>No opinion</td>
<td>5%</td>
<td>10%</td>
<td>29%</td>
<td>13%</td>
<td>20%</td>
<td>50%</td>
<td>11%</td>
</tr>
</tbody>
</table>

When asked about the benefits and risks of establishing a one-stop-shop (question 22), the majority of respondents (31 out of the 63 that provided an answer to this question), see the acceleration of permitting procedure as the main benefit. 11 respondents stated that establishing a one-stop-shop would result in the concentration of the various processes; 11 mentioned in an increased certainty and simplified procedures for stakeholders, and 8 in a smoother coordination between authorities and resolution of contradictory interests and decisions.

Regarding risks, 10 respondents (out of 63) indicated that the one-stop-shop might face human and/or technical resources problems, if a high number of projects have to be dealt with at the same time. This could lead to additional delays instead of reducing the time needed to obtain a decision. Another risk mentioned by a number of stakeholders is the possibility that the one-stop-shop becomes an additional layer of governance, increasing bureaucracy instead of facilitating decision-making. A project developer stated in that respect that the one-stop-shop had to be clearly appointed with the support of other authorities involved, because, if only created on paper, the one-stop-shop will only create more obstacles for the project developer. 13 respondents also expressed concerned about the one-stop-shop concentrating too much powers in one place, not being neutral, and taking less account of regional and local interests, and of opinions of sectoral authorities consulted. Finally, in terms of feasibility, a small number of respondents suggested that the creation of a one-stop-shop would results in conflicts between national authorities involved in permitting procedures.

Comment from a project developer

Risks: in our opinion, a one stop-shop approach is only successful if all the bodies (usually governmental) that give up their prerogatives have common goals. Depending on the political climate, this may be very difficult to achieve, but, otherwise, the implementation of the one-stop-shop may lead to more bureaucracy, and longer processes. It is essential that the one-stop-shop for permitting procedures has clearly appointed and well respected sponsors, as well as authority and resources - generally there is a risk that when introduced on paper only, it will create more hurdles for the applicant. Another risk relates to the appeal procedures - in a case of a cross-agency body it needs to be clearly determined what is the appeal procedure and who is responsible for it.

Benefits: if set up successfully, it should considerably speed up the process, both in terms of individual permits being acquired and the lead time (time between acquiring one permit and applying for the next one necessary in the process). It should limit the number of permits being applied for (a centralised body can easily determine that a specific permit will not be granted for a specific project, without the organisation going through the processes of acquiring some of them). It also allows the government for better collection of feedback from the private sector and better learning curve in terms of the permit process and creating very resource-effective advisory function for the partners (both public and private) acquiring permits. In term of the private sector it should minimise the uncertainty of the permit acquisition project (how much it will cost, how long will it take, can it get terminated towards the end of the process).

Respondents were asked what role or powers should the one-stop-shop have, if such a body were to be
created, to facilitate the implementation of TEN-T projects (question 23). 16 respondents (out of 59 who replied to this question) stated that the one-stop-shop should have full decision-making power and six respondents that it should have decision-making powers, without further specifying the extent of these powers. 17 respondents stated on the contrary that the one-stop-shop should have a facilitation and coordination role. In addition, according to some respondents, the one-stop-shop would particularly assist in arbitrating between different interests and authorities (6 respondents), assisting project developers in preparing their application (6 respondents), imposing and ensuring the respect of a time schedule (4 respondents) and ensuring that TEN-T projects are given priority in administrative procedures (2 respondents).

2.1.2 Time-limits

The majority of respondents (77%) consider that an overall time-limit would be useful in accelerating the permitting procedure. National governments are the category of respondents least in favour of an overall time-limit, with 64% in favour, and 29% against.

Figure 5: Question 24: Would you consider an overall time-limit for the permitting of TEN-T projects useful in accelerating the permitting process?

Respondents are generally in favour of establishing a short time-limit. 60% of respondents think that an appropriate time-limit would be up to two years or shorter, while the other 40% support a longer time-limit of three years or beyond. National governments support longer time limits than other categories of respondents. 43% of them think a time-limit beyond three years would be appropriate.

Figure 6: Question 25: What would you consider an appropriate overall time-limit for the permitting of TEN-T projects?
When asked about the benefits and risks of establishing an overall time-limit (question 26), respondents see as main benefits the acceleration of permitting procedures (20 respondents out of 52 that provided a comment), an increased predictability for project developers and investors who have then a clear timeframe and are able to plan for the next steps of the project (12 respondents), and a more efficient management and coordination of the permitting procedure by the authority (7 respondents) as the authority is responsible to ensure that the time-limit is respected. For example, a regional authority explained that: ‘The benefit of an overall time limit for permitting is setting an objective and requiring that efforts are made by all relevant actors in order to comply with it. It puts more responsibility on the side of the permitting authority and creates the possibility to give sanctions to the permitting authority when the time limits are not respected.’

A number of respondents (9) expressed concerns on the feasibility of applying the same time-limit to all TEN-T projects, as projects vary greatly in scope and complexity, characteristics which can have a significant impact on the timeframe of the project. Among other risks, 8 respondents have pointed out that time-limits might not be respected and fail to accelerate the procedure, or even be counter-productive, leading to more TEN-T project being rejected by the authority if there is not sufficient time to complete the procedure by the deadline (7 respondents), and putting unnecessary pressure on the authority, that might expedite insufficiently justified decisions. Several respondents added that the time-limit should not prevent high quality environmental assessment and technical studies, and therefore leave sufficient time for the applicant to provide the additional documentation or data requested by the authority in the course of the procedure. Finally a few respondents mentioned that sufficient time should also be available to guarantee the public acceptance of the project.

**Comment from a regional authority**

The benefit of an overall time limit for permitting is setting an objective and requiring that efforts are made by all relevant actors in order to comply with it. It puts more responsibility on the side of the permitting authority and creates the possibility to give sanctions to the permitting authority when the time limits are not respected. For example: a reaction/advise that is too late has no value and has to be considered non-existing.

A time limit for permitting may lead more easily to a negative decision (the refusal of the permit) when time is running out. There may not be enough man-power to examine the applications in time.

A single stringent time limit may also not be suitable for all projects. TEN-T projects may differ greatly in scope, constraints and complexity and are often unique.

It has to be taken in account that a certain procedure (e.g. EIA) may reveal the need for further investigation of for amendments to the project. A fixed time limit should not prevent a high-quality research and survey.

Sufficient time should be available for the technical elaboration of the projects while going through the permitting procedures.

---

Table 5: Question 25, breakdown per category of respondents

<table>
<thead>
<tr>
<th></th>
<th>Individual</th>
<th>Company</th>
<th>National government</th>
<th>Project developer</th>
<th>Regional/local authority</th>
<th>Business association</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beyond 3 years</td>
<td>20%</td>
<td>10%</td>
<td>43%</td>
<td>0%</td>
<td>15%</td>
<td>17%</td>
<td>11%</td>
</tr>
<tr>
<td>Shorter than 2 years</td>
<td>30%</td>
<td>50%</td>
<td>21%</td>
<td>50%</td>
<td>40%</td>
<td>0%</td>
<td>67%</td>
</tr>
<tr>
<td>Up to 2 years</td>
<td>20%</td>
<td>20%</td>
<td>29%</td>
<td>25%</td>
<td>25%</td>
<td>33%</td>
<td>11%</td>
</tr>
<tr>
<td>Up to three years</td>
<td>30%</td>
<td>20%</td>
<td>7%</td>
<td>25%</td>
<td>20%</td>
<td>50%</td>
<td>11%</td>
</tr>
</tbody>
</table>
2.1.3 Other measures for the streamlining of permitting procedures

37 respondents stated that there are additional measures that would facilitate and accelerate permitting procedures of TEN-T projects. Responses were very varied and included a number of measures or best practices that could be implemented either at national or EU level:

**Permitting procedures:**
- Improved public participation (three respondents)
- Single public participation step and avoid duplication (one respondent)
- Better coordination of the various players involved (two respondents)
- Better planning (two respondents)
- Improve project promoters engagement in permitting procedures (one respondent)
- Strongly support the preparation of the project proposal since initial drafting phase (one respondent)
- Stable regulatory environment (three respondents)
- Time limits for completion of projects with loss of EU funding as sanction if the time-limit is not respected (one respondent)

**Assessments of environmental impacts:**
- Concentrating the resources on the evaluation of especially significant environmental impacts (one respondent)
- Reduce documentation in application to only the necessary (two respondents)
- EU guidance on Article 4.7 of WFD (one respondent)
- EU guidance for the assessment of the effects of infrastructure projects on the environmental objectives of the WFD (one respondent)

**Cross-border projects:**
- Guidelines on cross-border projects (three respondents)
- Harmonised procedures for cross-border projects (three respondents)
- Bilateral agreements for cross-border projects (one respondent)

**Appeals**
- Limit suspensive effect of appeals (two respondents)
- Appeals limited in time, only open to parties with a legitimate interest (one respondent)
- Single jurisdiction for appeal (one respondent)

**Other:**
- Map showing completion status of projects including all stages of infrastructure development (one respondent)
- Binding economic assessment of a project (one respondent)
- Evaluation study concerning the preparation processes related to the TSI-regulations (one respondent)
- Common online platform (one respondent)

**Comment from a national government**

Environmental impact assessment is required in most TEN-T projects. Public participation is always part of the EIA process. It is very important to improve and incorporate public participation into environmental decision-making. Public involvement is often reduced to a procedural exercise instead of a substantive process to include the public in environmental decision making. For this reason, involving the community participation in decision-making process often helps to avoid the public obstruction of decisions.
Comment from a project developer
Reducing the depth of evaluation and concentrating the resources on the evaluation of especially significant environmental impacts as well as potential risks of projects would be of particular importance. An EU-wide standard for an appropriate depth of evaluation that would be binding for all member states would be desirable and help to accelerate permitting procedures.
Reshaping the rights of parties to the permitting procedures with the aim of accelerating the procedures
Introducing an appropriate privileged treatment of infrastructure projects which are of public interest (especially TEN-T projects)

Comment from a project developer
A one-stop shop indeed centralizes and harmonizes permitting procedures whereas time limits guarantee an acceptable timeframe for all stakeholders, especially project holders and public authorities.
But these two measures represent only one part of the solution. More generally speaking, fast track procedures (that of course imply one-stop shop and time limits) could be set up for different key aspects of a project such as environmental and urban planning permitting, but also archeological investigations, expropriations procedures (including challenges on expropriations before Courts) and networks relocation.
Key is not only swift and coordinated decision-making, but also ensuring that legal certainty as regards the validity and effectiveness of such decisions is established as soon as possible. This requires inter alia that the possibility for legal challenges are clearly limited in time, only open to parties with a legitimate interest (importance of prior use of participation rights in the context of decision-making process), that review procedures are quick, and that the assessment of review bodies allows for a balancing of private interests of plaintiffs with public interests related to the project.

2.2 PUBLIC PROCUREMENT AND DEVELOPMENT OF PUBLIC-PRIVATE PARTNERSHIPS

2.2.1 Public procurement
Stakeholders were asked what measures could Member States and/or the EU take to make the public procurement of TEN-T projects more efficient (question 29). 71 respondents provided an answer to this question. Four respondents mentioned the upcoming implementation of the new Procurement Directives (three national governments, one company), and suggested that, since, improvements coming from the new legislation cannot be seen immediately, there should not be any new measures taken in the short term. In spite of the entry into force of the new Procurement Directives, 12 respondents suggested procurement rules should be simplified, although often not making the distinction between EU and national procurement legislation. However, three respondents clearly stated that the Procurement Directives should be reviewed to simplify procedures.

A number of respondents called for the alignment of procurement procedures across Member States, either by the publication of guidelines and the promotion of standard practices (5 respondents) or by the establishment of a standard procurement procedure at EU level (6 respondents). Some answers lacked clarity about the legal status of the EU level procedure and its application to all projects or only to cross-border projects. A small number of respondents proposed the establishment of standardisation tools, such as models for procurement documentation (1 respondent) or standard award criteria for different types of infrastructures, especially including non-financial criteria (2 respondents).

Respondents also proposed a list of measures that Member States could apply to increase the efficiency of procurement procedures, these include for example having a single jurisdiction for litigations, involving private investors early in the project preparation phase, introducing a prequalification process of tenderers, conducting preliminary market consultations, providing technical assistance to tenderers for tendering in another Member State, better considering innovation in award
criteria, switching to electronic submission and electronic auction in all Member States, providing in one place up-to-date information on national rules, having a common website listing public sector calls for tenders at national level, etc.

Over half of the respondents identified rules on remedies and applicable jurisdictions as the biggest challenge in cross-border procurement, followed by language rules (42% of respondents).

**Figure 7: Question 30:** Some projects are located on both sides of an internal EU border. Although the main rules in public procurement are the same in all Member States, differences in carrying out public procurement exist between them. What would you consider to be the biggest challenge in applying national rules in a cross-border procurement?

Stakeholders were asked how the procurement process for cross-border transport infrastructure could be improved (question 32). As in the previous question, respondents generally called for more standardized procurement procedures between Member States and guidelines for cross-border procurement. Nine respondents (out of the 41 who replied to this question) proposed the establishment of a European standard procedure, not always specifying whether this procedure should apply only to cross-border projects or more widely, and whether it should replace national procedures or be used as reference / guidance. The creation of a joint body coordinating the cross-border procurement procedure was mentioned by seven respondents.

### 2.2.2 Public-private partnerships

Respondents were asked to identify the key problems hindering the involvement of private investors in the development of transport infrastructure (question 33). According to 37 respondents (out of 83 that provided an answer to this question), the high costs of transport infrastructures, the long timeframe and the lack of certainty on the return-on-investment is the main deterrent for private investors. The management of risks involved in a large infrastructure project was also mentioned by 10 respondents.

**Comment from a regional authority**

A lot of (trans)port infrastructure does not generate a return (within a reasonable time frame). The public mission of public port authorities, namely optimising the added value of their port platform, allows them to build and maintain expensive port infrastructure without necessarily having a perspective on any return on investment (within a reasonable time frame). Private investors would not decide to invest on these terms. This is not necessarily a problem. It follows from the public nature of basic port infrastructure.
Comment from a company

Infrastructural development projects within the rail sector are not attractive for private investors due to a very limited return on Investment (ROI). The enhancement of attractiveness of such projects towards private investors would only be possible by transferring a significant amount of risks towards the sponsor of such project (which mainly would be the state itself) leaving almost no advantages to the sponsor in relation to the private investor. (with all the risks the sponsor could do the project by himself)

Legislation and administrative procedures is the second key problem identified by stakeholders. The unstable regulatory framework has been mentioned by 13 respondents, the long permitting and procurement procedures, especially for cross-border projects, by 13 respondents and long remedies by three. The lack of knowledge and experience of authorities was mentioned by 12 respondents, and the lack of interest in PPPs of tendering authorities by 7 respondents. 4 respondents included changing Eurostat rules among the key problems.

Comment from a project developer

The main problem for the private investors is the lack of consistent long-term policies and framework in terms of the transport infrastructure projects which leads to lack of steady environment and makes business and financial modelling next to impossible, which in turn makes it extremely difficult to assess return on investment and other financial indicators necessary to secure co-financing - as a result private investors that engage in transport infrastructure projects have to employ own equity capital, which is both less cost effective and more risky. This in turn limits the number of private investors interested in more complex projects to only those least risk averse. Moreover, it leads to an increased number of small, uncoordinated and more temporary projects being carried out, to meet only the most pressing needs without securing future demands and sustainability of transport infrastructure.

To facilitate the development of PPPs in TEN-T projects, respondents consider most useful the exchange of good practices between authorities implementing TEN-T projects (50% of respondents), capacity-building activities for authorities implementing TEN-T projects (50% of respondents). 45% of respondents support a preferential and fast-track treatment in permitting procedures to increase legal certainty. This option is more popular among project developers and business organisations.
Figure 8: Question 34: What measures could be useful in facilitating the development of public-private partnerships for the delivery of TEN-T projects?

Four respondents answered ‘other’. Two respondents added to the measures listed above the development of guidelines and standard procurement procedures for PPPs, together with capacity building in the form of a dedicated structure to provide standardized methodologies for contracting e.g. for risk mitigations and transfer, competitive dialogue with tenderers etc. and to support public administrations for launching PPP schemes. Similar comments were made in question 29 Comments mostly related to developing Member States capacity on PPPs (2 respondents) and developing PPP guidelines (2 respondents).

Comment from a project developer

‘As far as PPP projects are concerned, a set of complementary steps could be implemented and they apply to TEN-T projects. As outlined by the Christophersen report, there is a compelling need for a standalone technical assistance program aiming at developing Member States’ capacities to technically, economically and financially appraise infrastructure projects, evaluate their suitability to project finance schemes, prioritize them and develop a bankable project structure and the corresponding project documentation. This assistance could also encompass the development of standard procurement guidelines and procedures based on European best practices. In addition, some Member States would also highly benefit from EU support to devise an appropriate legal and regulatory framework for private investment in infrastructure and in particular for PPPs. Finally, early involvement of private investors in the project preparation phase can be instrumental to develop a sound and efficient project structure, which will attract many bidders and financing entities.’

Another respondent proposed European guarantees, or emission of bonds that ensure better costs of commercial banks funding. Finally, one respondent stated that the use of PPPs and the management of risks in such contracts is the sole responsibility of the authority or public planner.

When asked whether PPPs should benefit from preferential permitting procedures and/or other preferential treatment (question 36), respondents were very divided, with 41% of respondents stating they should, and 35% of respondents that they should not.
Figure 9: Question 36: Should PPP and other schemes involving private investors in the TEN-T projects benefit from preferential permitting procedures and/or other preferential treatment?

Respondents were asked what type of safeguards or preferential solutions would, according to them, increase the attractiveness of transport infrastructure projects for private investors against the risk for delays or long-lasting remedies (question 37). Based on the key problems identified in question 33, respondents logically see as best solutions guaranteed revenues for investors (7 respondents out of 26 that provided an answer to this question), faster permitting and procurement procedures (8 respondents), a stable regulatory framework for PPPs (5 respondents). Three respondents see the clarification and stability of Eurostat rules for statistical treatment of PPPs a potential safeguard. Other respondents have suggested the establishment of:

- Clear rules concerning the distribution of risk in case of delays in permitting procedures (2 respondents),
- Financial remedies, such as automatic reimbursement for delays caused by the authority (1 respondent),
- A European guaranteed assurance for the aspects of the project that are in the hands/authority of the public authorities (1 respondent),
- An improved tendering process at national level including more preparatory work, using draft contractual documentation based on precedent, clear rules for the competition from the beginning in order to minimize the risk of delays due to legal challenges (1 respondent)
- Appeal procedures without suspensive effect at national level (1 respondent)
- A faster process to receive EU Funds for PPP or co-financing

2.3 STATE AID

Respondents were asked whether they considered the recent Commission initiatives sufficient to increase the legal certainty in delivering transport infrastructure projects. 36% of respondents think these initiatives are sufficient, 14% answered that they aren’t sufficient, and nearly half of the respondents do not have a position on the matter. Compared to other categories of respondents, national governments expressed a more positive opinion: 57% answered ‘yes’, 7% ‘no’, and 36% have no opinion. The category of respondents with the highest share of ‘no’ is regional and local authorities, which include several port authorities. 50% of respondents whose activities focus on inland waterways and ports believe that recent Commission initiative are not sufficient.
Respondents were asked to suggest additional measures that could be taken at EU or national level to improve the efficiency of State aid procedures for TEN-T projects and promote an early assessment of State aid issues. A number of respondents (7 out of 26 who replied to the question) called for the clarification of the applicability of State aid rules to TEN-T projects, including on different types of public funding, and guidance in relation to grants and financial instruments. In addition, a few respondents suggested clarifications or guidance related to specific infrastructure projects, namely for ports and airports.

A second proposition concerned the establishment of a fast-track mechanism for obtaining the Commission opinion on whether state aid is involved. A project developer explained this proposition stating that ‘for certain large projects, the 2-month period currently applying for preliminary examination may actually be too long to be compatible with tender timelines’. Other respondents stated that the State aid procedure should be faster. One project developer proposed to shorten the timeline for completing a formal investigation, which currently lasts 18 months.

**Comment from a project developer**

The modernisation of State aid policies has been substantial and has implied major positive simplifications: higher focus on state aids with biggest impact on the internal market, de minimis ruling, the reviewing of the General Block Exemption Regulation or the streamlining of procedures. But such modernisation has not yet involved large transport infrastructure projects in particular and the timeframe of state aid notification and assessment remains insufficiently business-relevant especially when private partners are involved in transport projects.

State aid issues are something for the public authorities to deal with. From a private investor perspective, it is again key that legal certainty is achieved as quickly as possible. Clear rules as to the applicability of state aid rules to transport infrastructure projects, including types of public funding mechanisms (e.g. by state held investment vehicles) is a first element.
A second element is fast track mechanisms allowing Member States to quickly obtain a confirmation whether state-aid is involved or not. For certain large projects, the 2-month period currently applying for preliminary examination may actually be too long to be compatible with tender timelines. Furthermore, the timeline for completing a formal investigation to determine whether an envisaged measure, deemed to be state aid, is lawful or not, and which currently stands at 18 months, should be shortened.

Comment from a regional authority

TEN-T projects applications often suffer from a lack of coordination between policy objectives of the different DGs of the European Commission. This is especially true for State aid rules: projects realizing or upgrading the TEN-T network are backed by DG MOVE (and/or INEA), while the project still needs to get cleared by DG COMP that has to verify the compatibility of national co-financing with State aid rules. Under the EFSI framework an initiative to install a fast-track notification procedure has been taken. We believe that state aid notifications should always be handled fast and predictable since this procedure can be jeopardize the global project throughput time. Administrative burden would also decrease if the Commission would clearly accept the existence of public (trans)port infrastructure staying outside the state aid scope.

Finally, five respondents brought up possible exemptions from state aid rules for TEN-T projects in general or specific types of infrastructures, such as ports. One respondent mentioned that inland ports should be part of the general block exemption, as discussed by the Commission and Member States in 2016.

2.4 SCOPE OF THE MEASURES

This part of the questionnaire asked respondents to comment on the scope of a potential streamlined framework and of which projects it would apply. According to half of the respondent, the streamlined framework for permitting should apply to certain categories of TEN-T projects with EU relevance.

Figure 11: Q40: Should the streamlined framework or facilitated procedures apply to specific categories of TEN-T projects with a particular EU relevance?

Respondents were asked to explain their answer (question 41). They mainly made comments on the benefits of a special status and the categories of projects to which it should apply. Among the benefits, respondents indicated that the special status would facilitate the implementation of projects, ensure effective prioritisation of projects, simplify procurement procedures, decrease business risk and make large projects more attractive to investors.
Regarding the categories of projects, the special status should apply to, seven respondents stated that all projects should benefit from streamlined procedures. Other respondents mentioned selection criteria such as being on the core network (2 respondents), EU relevance (3 respondents), cross-border nature (2 respondents), railway projects (3 respondents) or airport projects (1 respondent), contribution to the development of the objectives outlined by the TEN-T regulation (2 respondent), projects benefitting the competitiveness of a sub-developed region (2 respondents), projects benefitting to citizens, quality of life, and the environment (2 respondents). One respondent mentioned that a status similar to the one applies in the TEN-E Regulation would be suitable.

<table>
<thead>
<tr>
<th>Comment from a regional authority</th>
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</thead>
</table>

All TEN-T projects, even all infrastructural projects, should be able to benefit from a more streamlined framework and facilitated procedures.

A more enhanced support (e.g. dedicated technical assistance facilities for administrations) and specific accelerated permitting procedures and improved regulatory conditions could be elaborated for the projects identified as Projects of Common Interest as is the case for the Trans-European energy network (TEN-E).

A similar arrangement could be introduced in TEN-T. TEN-T projects would hereby receive a specific status allowing them to benefit from a priority treatment in the permitting procedures, e.g. to call on imperative reasons of overriding public interest in the context of the Bird and Habitat Directive, to call on exemptions to the environmental objectives within article 4.7 of the Water Framework Directive, etc.

It will facilitate the permitting and the realization of the project. At the same time, it will bring the quality of the project on a higher level and will contribute more on the European aspects of the project.

The preference of respondents for relatively broad selection criteria is also reflected in the next questions, where 43% of respondents said that all projects on the TEN-T network should benefit from streamlined procedures, and 28% that all projects on the core network should benefit from it.

**Figure 12: Question 42: What factors should be taken into account when selecting projects which would benefit from a streamlined framework or facilitated procedures?**

![Figure 12](image)

Five respondents replied ‘other’. Among them, two national governments reiterated their opposition to
any kind of special status and their belief that all projects should be treated the same way. One respondent stated that the cross-border nature of project should be one factor taken into account, another respondent mentioned projects promoting the connection between comprehensive and core network, and finally one respondent mentioned projects located on the Rail Freight Corridors.

Respondents were asked to identify measures that could be taken to help ensure the process for selecting EU relevant projects is transparent and credible (question 44). A number of respondents simply made the comment that the process for selecting projects had to be transparent (eight respondents out the 74 who answered this question), based on clear criteria and timeframes (nine respondents), and that the results should be made public, with clear explanations why a project had been retained or rejected (6 respondents). 10 respondents considered that increased consultation with stakeholders and public participation should be part of the selection process. Three respondents attach importance to the independence of the selection process, two mentioning that the projects should be selected by an ‘external and independent authority’ or ‘independent transport experts’ and one on the basis of ‘independent studies’. Finally, two respondents considered that increased reporting on projects is necessary to increase accountability.

Other respondents identified in their comment selection criteria that would increase the acceptance of the selection process, such as a selection of projects based on a sound CBA (12 respondents), according to the main priorities of EU legislation and strategies (four respondents), based on a corridor work plans (two respondents), according to their contribution to European economy and transport network (one respondents) or a balanced selection across EU Member States (one respondent).

Around half of the respondents think that a streamlined process for permitting and procurement as outlined above could potentially apply to other economic sectors than transport.

Figure 13: Question 45: Do you think that the facilitated schemes as envisaged above for permitting, public procurement and PPPs, as well as State aid procedures, could also apply to economic sectors other than transport?

As potential sectors, 13 respondents mentioned energy (where a streamlined process has already been implemented), eight respondents telecommunication.

2.5 OPTIONS FOR IMPLEMENTING MEASURES TO FACILITATE THE PERMITTING AND PREPARATION OF TEN-T PROJECTS

Respondents were asked to rank the effectiveness of four options for implementing measures to facilitate the permitting and preparation of TEN-T projects. The most preferred option is an ‘EU Regulation on the permitting and preparation of priority status TEN-T projects, which would be
directly applicable in Member States’. 57% of respondents consider this option to be effective. All categories of stakeholders support this option; however, individuals, regional and local authorities and national governments are more divided on the effectiveness of a regulation. The second preferred option is ‘conditionality to apply certain binding rules when using EU funds’. National governments are less supportive of this option with only 7% considering conditionality effective, and 57% somewhat effective.

Figure 14: Question 47: In your view, which of the following options would be most effective for implementing measures to facilitate the permitting and preparation of TEN-T projects? Please rank the options according to their effectiveness.

19 respondents commented on their answers (question 48), mainly to reiterate their support or opposition to certain instrument. Two respondents indicated that an EU legislative act would not be suitable either because the diversity of projects does not allow standardised approach or because permitting procedures are too much based on the administrative culture of each country. Three other respondents see the publication of guidelines as the most feasible or realistic solution in the short term. On respondents recalled the necessity to ensure proper stakeholders’ consultation to set up a suitable regulation.
ANNEX 1: QUESTIONNAIRE

Permitting and facilitating the preparation of TEN-T core network projects

Fields marked with * are mandatory.

Disclaimer

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1 About the consultation

1.1 Consultation period

This consultation will be running for a period of 12 weeks, from 20 June to 5 September.

1.2 Background to the consultation

The EU's Trans-European Transport Network (TEN-T) policy recognises the importance of a strategic approach to developing a Europe-wide network of transport infrastructure. The TEN-T Guidelines establish a core network, which consists of the elements of the network 'of highest strategic importance' and is to be implemented by 2030.

However, the efficient completion of the TEN-T core network may be impacted by complex permitting and administrative arrangements, which can contribute to increased costs, delay and uncertainty for projects. This is particularly critical for cross-border projects which may be subject to different sets of rules on one or other sides of the border. Notwithstanding the relevance and importance of regulatory safeguards, unnecessary costs and delays can arise when regulations or policies are unclear, non-coordinated or inconsistently implemented. Unclear regulation can lead to sub-optimal investment choices, while legal uncertainty can deter private investment in projects.

Moreover, such regulatory obstacles limit the attractiveness of transport infrastructure projects for private investors. In the context of mobilising the investment in Europe and the instauration of the European Fund for Strategic Investment, this element has to be specifically and efficiently addressed. The creation of an enabling environment for investment is critical for certain well-needed transport infrastructure projects, in order to ensure that these attract long-term investors.

In 2014, the Council of the European Union invited the European Commission to take stock of good practices in the permitting of transport projects and identify options to streamline the permitting and preparation of projects. Following this, the 2015 Report prepared by the former Vice President Christopersensen and European Coordinators Bodewig and Secchi (the 'CBS Action Plan') outlined three actions that would support the streamlining of procedures:

1 Simplifying procurement procedures, particularly for major cross-border projects
2 Simplifying permitting procedures
3 Clarifying the State aid framework.

On 1 June 2016, the Commission adopted a Communication on Europe investing again which takes stock and acknowledges the perceived complexity of permitting rules and procedures and the need to reduce costs entailed by excessive administrative burden and time when these procedures are not sufficiently coordinated at national and European level.

The objective of this consultation is to collect the opinions of stakeholders and interested parties on measures that could be adopted to streamline and facilitate the permitting and preparation of TEN-T core network projects. The feedback collected through this consultation will be used to analyse the feasibility and effectiveness of such measures.

1.3 Using the questionnaire

You can answer this questionnaire either in your own personal capacity or on behalf of an organisation, public authority, industry representative or other stakeholder. All questions marked with an asterisk are mandatory. If any of the corresponding mandatory fields have not been filled in, the system will redirect you to the incomplete answer before allowing submission.

Please note that you have the possibility to save your contribution before submitting it and to modify it after submission. A Help page for participants is available on the EU Survey website. For more information or additional questions please contact MOVE-B1-CNC@ec.europa.eu

1.4 Transparency Register

As part of the European Transparency Initiative, organisations are invited to use the Register of interest representatives to provide the European Commission and the public at large with information about their objectives, funding and structures.

If your organisation is not registered, you have the opportunity to register it now on the Transparency Register webpage.

1.5 Disclaimer

Please note that this document has been drafted for information and consultation purposes only. It has not been adopted or in any way approved by the European Commission and should not be regarded as representative of the views of Commission staff. It does not in any way prejudice, or constitute the announcement of, any position on the part of the Commission on the issues covered. The European Commission does not guarantee the accuracy of the information provided, nor does it accept responsibility for any use made thereof.

2 Important notice on the publication of responses

Please note that contributions received from this survey, together with the identity of the contributor, will be published on the European Commission's website, unless the contributor objects to the publication of personal data on the grounds that such publication would harm his or her legitimate interests. In this case, the contribution may be published in anonymous form.
Explanations about the protection of personal data are available on the Commission’s website. The policy on "protection of individuals with regard to the processing of personal data by the Community institutions" is based on Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000. In accordance with Regulation 45/2001, all personal data collected through this survey will be kept securely and will ultimately be destroyed.

1. *Please indicate your preference as regards publication of your contribution:

☐ My contribution may be published mentioning my name or the name of my organization
☐ My contribution may only be published anonymously
☐ I do not wish my contribution to be published at all

2. *May the Commission contact you, or your organisation, to collect further information on the information you provided?

☐ Yes
☐ No

3. **About the respondent**

3. *Are you replying as:

☐ An individual?
☐ An organisation?

For individuals only

4. *Please state your name

5. *Please provide your address

6. *Please provide your email address

For organisations only

7. *What type of organisation do you represent?

☐ A national government
☐ A regional/local/municipal authority
☐ An EU institution
☐ A project developer (public or private)
☐ A company (other than project developer)
☐ An industrial interest group, business association, sectoral association
☐ An NGO, civil society, environmental group or charity
☐ A research organisation (university, public and private institute)
☐ Other

8. *If other, please specify
9. *Please state the name of your organisation

10. *Please provide the address of your organisation

11. *Please provide the email address of a contact person

12. *Is your organisation registered in the Transparency Register of the European Commission?
   ☐ Yes
   ☐ No

13. *If yes, please enter the identification number

For both organisations and individuals

14. *What is your country of origin or main country of activity?
   ☐ Austria
   ☐ Belgium
   ☐ Bulgaria
   ☐ Croatia
   ☐ Cyprus
   ☐ Czech Republic
   ☐ Denmark
   ☐ Estonia
   ☐ Finland
   ☐ France
   ☐ Germany
   ☐ Greece
   ☐ Hungary
   ☐ Iceland
   ☐ Ireland
   ☐ Italy
   ☐ Latvia
   ☐ Liechtenstein
   ☐ Lithuania
   ☐ Luxembourg
   ☐ Malta
   ☐ Netherlands
   ☐ Norway
   ☐ Poland
   ☐ Portugal
   ☐ Romania
☐ Slovak Republic
☐ Slovenia
☐ Spain
☐ Sweden
☐ United Kingdom
☐ Non EU/EEA country

15. *If non EU/EEA country, please specify which is your country of origin or main activity:

16. *Do your activities focus on a particular mode of transport?
☐ Road
☐ Rail
☐ Inland waterways and ports
☐ Maritime transport and ports
☐ Air transport
☐ No focus on a particular mode

4 Streamlining permitting procedures

For the purpose of this consultation on TEN-T projects, the permitting procedure is considered as all the steps between the application for the first permitting decision (often the decision on the Environmental Impact Assessment) to the final decision authorising the construction of the project, impacting the decision of financing the project as well as impacting the choice of financial scheme for a particular project.

The fragmentation of competence and decision making powers in permitting procedures and the lack of coordination between permitting authorities has been identified as resulting in duplication of work, uncoordinated assessments, additional administrative burden for project developers, and delays in reaching permitting decisions. Some of the projects may seem to be more impacted by those obstacles.

17. *Which TEN-T projects would you consider as most impacted by regulatory and administrative obstacles related to permitting?
☐ All transport 'hard infrastructure' projects are equally impacted
☐ TEN-T 'hard infrastructure' projects
☐ PPP projects
☐ Cross-border projects
☐ Waterborne projects (inland and maritime ports, inland waterways)
☐ No opinion

18. *What measures should be applied to TEN-T projects to facilitate their permitting and preparation?

You may choose one or more answers
☐ One-stop shop for permitting
4.1 One-stop-shop

The designation of a national authority responsible for the permitting procedure (‘one-stop-shop’) in all Member States could help to solve some of the issues mentioned above, in particular in countries where project promoters need to obtain a large number of permits. A one-stop-shop can have varying degrees of authority: it can have full responsibility for issuing permits and therefore concentrate all decision-making power; it can be endowed with the power to ensure the successful completion of the permitting procedure and take a decision instead of another authority; or coordinate between the different permitting authorities without additional decision-making power.

20. *In your view, would a one-stop-shop assist in facilitating and accelerating the permitting of TEN-T projects?

☐ Yes
☐ No
☐ No opinion

21. *What level of authority should a one-stop-shop have in the permitting of TEN-T projects?

☐ Extended decision making power, including e.g. the possibility to take a single decision
☐ Coordination powers only
☐ No opinion

22. What would be the main risks and benefits related to the implementation of a one-stop-shop in your Member State?

2500 character(s) maximum

23. If a one-stop-shop were to be created, what role or powers should such a body have to facilitate the implementation of TEN-T projects?

2500 character(s) maximum

4.2 Time limits

Time limits for the permitting of projects often exist at national level, but generally apply to specific parts of the procedure rather than to the completion of the whole permitting procedure. An overall time limit for the permitting procedure (from the application for the first
permit to the final decision authorising construction) could reduce delays occurring during the permitting procedure by setting an objective and requiring that efforts are made in order to comply with it.

24. *Would you consider an overall time-limit for the permitting of TEN-T projects useful in accelerating the permitting process?

☐ Yes
☐ No
☐ No opinion

25. *What would you consider an appropriate overall time-limit for the permitting of TEN-T projects?

☐ Beyond 3 years
☐ Up to three years
☐ Up to 2 years
☐ Shorter than 2 years

26. What would be the main risks and benefits related to the introduction of time limits in your Member State?

2500 character(s) maximum

4.3 Other measures for the streamlining of permitting procedures

27. *Are there any additional measures that would facilitate and accelerate permitting procedures of TEN-T projects?

☐ Yes
☐ No

28. If yes, please add any comments regarding the risks and benefits related to the implementation of these measures in your Member State.

2500 character(s) maximum

5 Public procurement and development of public-private partnerships

Differences in public procurement practices across sectors and Member States can contribute to additional costs and delays in the planning and delivery of TEN-T projects, as well as limit their attractiveness for private investors. This consultation is seeking stakeholders' views on opportunities to improve the way Member States' transport authorities
engage contractors for the delivery of TEN-T projects, in accordance with EU Public Procurement Directives.

An opportunity which is yet not fully exploited in the field of transport infrastructure is the mobilisation of private investors. Uncoordinated permitting procedures causing additional delays maximise risks for complicated infrastructure projects. Thus, the potential attractiveness of infrastructure ventures for private capital is limited and increases the cost of securing the financing. This consultation is looking to identify ways of increasing the legal certainty to bring better prospects for PPP schemes.

29. *What measures could Member States and/or the EU take to make the public procurement of TEN-T projects more efficient?

2500 character(s) maximum

30. *Some projects are located on both sides of an internal EU border. Although the main rules in public procurement are the same in all Member States, differences in carrying out public procurement exist between them. What would you consider to be the biggest challenge in applying national rules in a cross-border procurement?

You may choose one or more answers
☐ Language rules
☐ Rules on remedies and applicable jurisdiction
☐ Other applicable national legislation
☐ Lack of experience
☐ Insufficient promotion of best practices
☐ No opinion

31. *If you answered 'other applicable national legislation', please specify

2000 character(s) maximum

32. How can the procurement process for cross-border transport infrastructure be improved?

2500 character(s) maximum

33. *What are the key problems hindering the involvement of private investors in the development of transport infrastructure?

2500 character(s) maximum

34. *What measures could be useful in facilitating the development of public-private partnerships for the delivery of TEN-T projects?
You may choose one or more answers
☑ Capacity-building activities (training, advice services) for authorities implementing TEN-T projects
☑ The development of new guidance documents on the use of public-private partnerships for TEN-T projects
☑ Opportunities for the exchange of good practices between authorities implementing TEN-T projects
☑ Preferential and fast-track treatment in the permitting procedures to increase legal certainty
☑ Improve certainty and clarity on the statistical treatment of PPPs in National Accounts according to Eurostat rules
☑ Off-the-shelf models/best practices for risk-sharing between public and private entities
☑ Other
☑ No opinion

35. *If other, please specify

2000 character(s) maximum

36. *Should PPP and other schemes involving private investors in the TEN-T projects benefit from preferential permitting procedures and/or other preferential treatment?

☐ Yes
☐ No
☐ No opinion

37. What type of safeguards or preferential solutions would increase the attractiveness of transport infrastructure projects for private investors against the risk for delays or long-lasting remedies?

2500 character(s) maximum

6 State aid

Problems in State aid procedures for TEN-T projects can lead to delays and uncertainty in the delivery of projects. These problems often arise out of the late and/or incomplete notification of State aid issues. The European Commission’s pre-notification procedure can assist Member States in preparing complete State aid notifications in an appropriate timeframe.

There have been recent developments in the process of modernisation of the State Aid rules. The overall purpose is to provide legal certainty and reduce red tape for public authorities and companies, and focus the Commission's resources on enforcing State aid rules in cases with the biggest impact on the Single Market. The newest developments include the new communication on the notion of aid as well as a draft updated general block exemption regulation (GBER).
38. *Do you consider the recent Commission initiatives sufficient to increase the legal certainty in delivering transport infrastructure projects?*

☐ Yes
☐ No
☐ No opinion

39. *Are there additional measures that could be taken at EU or national level to improve the efficiency of State aid procedures for TEN-T projects and promote an early assessment of State aid issues?*

2500 character(s) maximum

7 Scope of the measures

To facilitate the permitting and preparation of certain TEN-T projects, a streamlined framework or facilitated procedures as mentioned in sections 4, 5 and 6 could be introduced for certain projects of particular interest for the development of the TEN-T network. The TEN-T Regulation (Regulation (EU) 1315/2013) currently defines a Project of Common Interest (PCI) as a project contributing to at least two of the four overall TEN-T objectives (cohesion, efficiency, sustainability, and benefits for users), which can be considered economically viable on the basis of a socio-economic cost-benefit analysis (CBA), and which demonstrate European Added Value. PCIs are eligible to Connecting Europe Facility (CEF) funding.

This raises the question of the scope of such a streamlined framework or facilitated procedures and to which projects it would apply. Answering this question is the objective of the present survey.

40. *Should the streamlined framework or facilitated procedures apply to specific categories of TEN-T projects with a particular EU relevance?*

☐ Yes
☐ No
☐ No opinion

41. Please explain your answer

2500 character(s) maximum

42. *What factors should be taken into account when selecting projects which would benefit from a streamlined framework or facilitated procedures?*

You may choose one or more answers
☐ All projects on the TEN-T network
☐ All projects on the TEN-T core network
☐ All projects on the TEN-T core network meeting a set financial threshold
☐ Projects receiving EU financial assistance over a certain threshold (EU contribution to eligible cost)
☐ Projects pre-identified in an implementing act adopted accordingly to the TEN-T Regulation (art. 47(2))
☐ Projects pre-identified in a consultative procedure based on a new or updated piece of legislation
☐ Projects pre-identified in the core network corridors work plans
☐ Other

43. *If other, please specify

2000 character(s) maximum

44. *What measures could be taken to help ensure the process for selecting EU relevant projects is transparent and credible?

2500 character(s) maximum

45. *Do you think that the facilitated schemes as envisaged above for permitting, public procurement and PPPs, as well as State aid procedures, could also apply to economic sectors other than transport?

☐ Yes
☐ No
☐ No opinion

46. Please explain your answer

2500 character(s) maximum

8 Options for implementing measures to facilitate the permitting and preparation of TEN-T projects

There are a number of options available for implementing any measures to facilitate the permitting and preparations of TEN-T projects.

47. *In your view, which of the following options would be most effective for implementing measures to facilitate the permitting and preparation of TEN-T projects? Please rank the options according to their effectiveness.

You may choose the same rank for several options

| Options for implementing measures to facilitate the permitting and preparation of TEN-T projects |
|---------------------------------------------------------------|-------------------|-------------------|-------------------|
| Not effective | Somewhat effective | Effective | No opinion |
| *An EU Directive on the framework conditions for the permitting and preparation of priority status TEN-T projects, which would need to be implemented through transposition measures at Member State level | ☐ | ☐ | ☐ | ☐ |
| *An EU Regulation on the permitting and preparation of priority status TEN-T projects, which would be directly applicable in Member States | ☐ | ☐ | ☐ | ☐ |
| EU guidelines on the permitting and preparation of priority status TEN-T projects, which would not be legally binding on Member States | ☐ | ☐ | ☐ | ☐ |
| *Conditionality to apply certain binding rules when using EU funds | ☐ | ☐ | ☐ | ☐ |

**48. Please add any comments on your answer**

2500 character(s) maximum
ANNEX 2: LIST OF RESPONDENTS

This list includes all respondents who accepted their identity to be disclosed.

<table>
<thead>
<tr>
<th>List of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interregional Agency for the Po River (AIPO)</td>
</tr>
<tr>
<td>Liguria Region</td>
</tr>
<tr>
<td>Norwegian Ministry of Transport and Communications</td>
</tr>
<tr>
<td>Ministry of Economics, Labour and Ports of Bremen</td>
</tr>
<tr>
<td>STRING</td>
</tr>
<tr>
<td>Trelleborgs Hamn AB</td>
</tr>
<tr>
<td>Lithuanian Road Administration (Ministry of Transport and Communications)</td>
</tr>
<tr>
<td>ÖBB-Holding AG</td>
</tr>
<tr>
<td>Autobahndirektion Südbayern</td>
</tr>
<tr>
<td>EEIG ERTMS Users Group</td>
</tr>
<tr>
<td>Waterwegen en Zeekanaal NV</td>
</tr>
<tr>
<td>HAROPA Port du Havre</td>
</tr>
<tr>
<td>Regional Goverment of Comunitat Valenciana</td>
</tr>
<tr>
<td>Port Authority of Taranto</td>
</tr>
<tr>
<td>Vlaams Nederlandse Schelde Commissie (VNSC)</td>
</tr>
<tr>
<td>Flemish Ministry of Mobility and Public works</td>
</tr>
<tr>
<td>Bulgarian Ports Infrastructure Company</td>
</tr>
<tr>
<td>Autostrada Brescia Verona Vicenza Padova SPA</td>
</tr>
<tr>
<td>European Construction Industry Federation (FIEC)</td>
</tr>
<tr>
<td>Autonomous Province of Trento</td>
</tr>
<tr>
<td>Polish Ministry of Infrastructure and Construction</td>
</tr>
<tr>
<td>Gdańsk Lech Walesa Airport</td>
</tr>
<tr>
<td>Katowice International Airport</td>
</tr>
<tr>
<td>Czech Ministry of Transport</td>
</tr>
<tr>
<td>John Paul II International Airport Krakow-Balice</td>
</tr>
<tr>
<td>Infraestruturas de Portugal</td>
</tr>
<tr>
<td>PCC Intermodal S.A.</td>
</tr>
<tr>
<td>Portuguese Civil Aviation Authority</td>
</tr>
<tr>
<td>Galleria di base del Brennero-Brenner Basistunnel (BBT SE)</td>
</tr>
<tr>
<td>Slovenian Ministry of Infrastructure, Slovenian Infrastructure Agency</td>
</tr>
<tr>
<td>Antwerp Port Authority</td>
</tr>
<tr>
<td>Swedish Transport Administration (Trafikverket)</td>
</tr>
<tr>
<td>Ministry of Infrastructure and Transport</td>
</tr>
<tr>
<td>ERGOSE S.A.</td>
</tr>
<tr>
<td>ASFINAG</td>
</tr>
<tr>
<td>Name</td>
</tr>
<tr>
<td>---------------------------</td>
</tr>
<tr>
<td>Mr. Bassano Perniceni</td>
</tr>
<tr>
<td>Mr. Ilias Koromplis</td>
</tr>
<tr>
<td>Mr. Bill M. Halkias</td>
</tr>
<tr>
<td>Mr. Luis Marinho Dias</td>
</tr>
<tr>
<td>Mr. Pieter Mulder</td>
</tr>
</tbody>
</table>
Delivering TEN-T core network projects

Guide of good practice

December 2016
This report has been prepared by Milieu Ltd under Contract No MOVE/B3/2014-751, by Jennifer McGuinn, Sarah O’Brien, Lise Oulès (Milieu Ltd), Stefanie van den Bogaerde and Francis Vansina (Tractebel Engineering).

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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# TABLE OF CONTENTS

- **ABBREVIATIONS AND ACRONYMS** ........................................................................................................ 4
- **1 INTRODUCTION** ................................................................................................................................. 5
  - 1.1 About this guide ................................................................................................................................. 5
  - 1.2 How to use this guide ......................................................................................................................... 6
  - 1.3 Generic authorisation framework and applicable legislation for permitting and procurement of TEN-T projects ......................................................................................................................... 6
- **2 FACILITATING THE PERMITTING OF TEN-T CORE NETWORK PROJECTS** ......................... 10
  - 2.1 Increasing the efficiency of administrative procedures ...................................................................... 10
    - 2.1.1 Special status and fast-track procedures ...................................................................................... 10
    - 2.1.2 Centralised approach to permitting and the ‘one-stop shop’ .................................................. 11
    - 2.1.3 Time limits for procedures ........................................................................................................... 13
    - 2.1.4 Reducing the impact of appeals .................................................................................................... 15
    - 2.1.5 Facilitating timely land acquisition ............................................................................................... 15
  - 2.2 Ensuring early and effective consideration of environmental impacts .............................................. 16
    - 2.2.1 Early consideration of environmental impacts ............................................................................ 17
    - 2.2.2 Specialised support ....................................................................................................................... 17
    - 2.2.3 Managing cross-border environmental assessments ..................................................................... 18
  - 2.3 Ensuring greater legitimacy of TEN-T projects .................................................................................. 18
    - 2.3.1 Early and broad public consultation procedures ......................................................................... 19
    - 2.3.2 Strategies to enhance and demonstrate local benefits .................................................................. 19
    - 2.3.3 Ensuring political consensus ......................................................................................................... 20
- **3 IMPROVING THE PROCUREMENT OF TEN-T CORE NETWORK PROJECTS** ......................... 20
  - 3.1 Increasing capacity on public procurement and public-private partnerships .................................... 20
  - 3.2 Involving contractors early ................................................................................................................ 21
  - 3.3 Cross-border procurement .................................................................................................................. 21
- **4 STATE AID** .......................................................................................................................................... 22
## Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA</td>
<td>Appropriate Assessment</td>
</tr>
<tr>
<td>CBA</td>
<td>Cost-benefit Analysis</td>
</tr>
<tr>
<td>CEF</td>
<td>Connecting Europe Facility</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>MSP</td>
<td>Maritime Spatial Planning</td>
</tr>
<tr>
<td>PPP</td>
<td>Public-private partnership</td>
</tr>
<tr>
<td>RBMP</td>
<td>River Basin Management Plan</td>
</tr>
<tr>
<td>SEA</td>
<td>Strategic Environmental Assessment</td>
</tr>
<tr>
<td>TEN-T</td>
<td>Trans-European Network for Transport</td>
</tr>
<tr>
<td>WFD</td>
<td>Water Framework Directive</td>
</tr>
</tbody>
</table>
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 MOVE.

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

*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 interlinked 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**

<table>
<thead>
<tr>
<th>Stage of procedure</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strategic level</strong></td>
<td></td>
</tr>
<tr>
<td>National/Regional transport plan</td>
<td>National</td>
</tr>
<tr>
<td>Spatial plan</td>
<td>National</td>
</tr>
<tr>
<td>Strategic Environmental Assessment (SEA)</td>
<td>Strategic Environmental Assessment Directive 2001/42/EC</td>
</tr>
<tr>
<td><strong>Project planning</strong></td>
<td></td>
</tr>
<tr>
<td>Feasibility studies, technical studies, CBA</td>
<td>National EU funding programmes (e.g. Structural Funds or CEF)</td>
</tr>
<tr>
<td><strong>Project permitting</strong></td>
<td></td>
</tr>
<tr>
<td>Spatial planning permit</td>
<td>National</td>
</tr>
<tr>
<td>Other environmental assessment procedures and possible permits</td>
<td>Water Framework Directive 2000/60/EC</td>
</tr>
<tr>
<td></td>
<td>Habitat Directive 92/43/EC</td>
</tr>
<tr>
<td></td>
<td>Birds Directive 2009/147/EC</td>
</tr>
<tr>
<td></td>
<td>Seveso Directive 2012/18/EU</td>
</tr>
<tr>
<td></td>
<td>Others may be applicable</td>
</tr>
<tr>
<td>Other permits (e.g. forest, land clearing, archaeological etc.)</td>
<td>National</td>
</tr>
<tr>
<td><strong>Public procurement</strong></td>
<td></td>
</tr>
<tr>
<td>Public procurement, including public-private partnerships (PPPs)</td>
<td>Concessions Directive 2014/23/EU</td>
</tr>
<tr>
<td></td>
<td>Public Procurement Directive 2014/24/EU</td>
</tr>
<tr>
<td></td>
<td>Utilities Directive 2014/25/EU</td>
</tr>
<tr>
<td><strong>State aid</strong></td>
<td></td>
</tr>
<tr>
<td>State aid notification</td>
<td>EU Regulation laying down detailed rules for the application of Article 108 of the TFEU</td>
</tr>
</tbody>
</table>
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 though 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

<table>
<thead>
<tr>
<th>Member State</th>
<th>Legal Basis</th>
<th>Applies to</th>
<th>Main characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hungary</td>
<td>Priority Projects Act (2006), as amended in 2015</td>
<td>Projects designated by Government Decree No. 345/2012 as investments of national interest</td>
<td>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</td>
</tr>
<tr>
<td>Italy</td>
<td>Legge Obbietto (2001)</td>
<td>Projects included on the ‘National Strategic List’ established by the CIPE</td>
<td>Development consent granted on preliminary project Tighter time limits for decision-taking</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Crisis and Recovery Act (2010)</td>
<td>Projects designated by government</td>
<td>Limitations of legal standing of municipalities</td>
</tr>
</tbody>
</table>
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**

<table>
<thead>
<tr>
<th>Austria</th>
<th>Germany</th>
<th>Italy</th>
<th>Netherlands</th>
<th>United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-project procedure</td>
<td>Regional planning procedure (if necessary)</td>
<td>Single authorisation: Application</td>
<td>Approval procedure</td>
<td>Pre-application: Consultation with local community</td>
</tr>
<tr>
<td>Public consultation</td>
<td>Plan approval procedure</td>
<td>Conference of Services Public consultation</td>
<td>Start decision Assessment (consultation)</td>
<td>Habitat Regulation assessment</td>
</tr>
<tr>
<td>Partially concentrated procedure at federal level</td>
<td>Scoping Application to authority (including EIA)</td>
<td>Ministry opinion on preferred option</td>
<td>Ministry opinion on preferred option</td>
<td></td>
</tr>
<tr>
<td>EIA and federal law permitting Public consultation</td>
<td>Consultation of authorities and public consultation</td>
<td>Draft planning procedure decision (consultation)</td>
<td>Draft planning procedure decision (consultation)</td>
<td></td>
</tr>
<tr>
<td>Partially concentrated procedure at State level</td>
<td>Approval of final design</td>
<td>Planning procedure decision</td>
<td>Planning procedure decision</td>
<td></td>
</tr>
<tr>
<td>State law permitting including nature protection Public consultation</td>
<td>Planning approval decision</td>
<td>Decision by SoS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval at Federal level</td>
<td>Permission procedure: Acceptance of application by SoS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval at State level</td>
<td>Examination + public consultation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

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”) 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 promoter) 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

<table>
<thead>
<tr>
<th>Member State</th>
<th>Legal time limits</th>
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</table>

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)).
<table>
<thead>
<tr>
<th>Member State</th>
<th>Legal time limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Time limits for EIA procedure: 12 months / 9 months if simplified procedures (from submission to decision)</td>
</tr>
</tbody>
</table>
| 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 – examples

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 Convention 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.

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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.

<table>
<thead>
<tr>
<th>Early consideration of environmental impacts – examples</th>
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<tbody>
<tr>
<td>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.</td>
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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.

<table>
<thead>
<tr>
<th>Guidance and support – examples</th>
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<tbody>
<tr>
<td>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.</td>
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<tr>
<td>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.</td>
</tr>
<tr>
<td>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.</td>
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</tbody>
</table>
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
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.