

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

Tender No. ENER/B1/452-2010

**– FINAL REPORT –**

**European Commission  
Directorate-General for Energy**

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## Management Summary

The European Commission (EC) is actively driving the development of energy infrastructure in EU Member States. However, projects given priority status under the Trans-European Energy Networks (TEN-E) guidelines frequently suffer delays. In most cases, these delays occur during the permitting procedure in the country in question. According to project developers in Member States, the main reasons are strong opposition to projects from stakeholders and complex national permitting procedures. Therefore, if the goals of the EU's 2020 scenario are to be met, stakeholder opposition to prioritised projects needs to be mitigated and the effectiveness of permitting procedures improved.

To provide input for a new legislative proposal in 2011, the EC commissioned Roland Berger Strategy Consultants to perform a study on the permitting procedures for energy infrastructure projects in the EU (Tender No. ENER/B1/452-2010). This should include an evaluation of existing legal frameworks and challenges, and legislative recommendations for making permitting procedures more effective.

**This is the final report relating to the tender. It aims to answer three key questions:**

- 1. What is the current permitting landscape in the Member States** and what good practices can be identified?
- 2. What are the key challenges that cause delays in permitting procedures**, which of these challenges are the most important and in which Member States are they most prevalent?
- 3. What measures and instruments** should be implemented to overcome these challenges?

For the purposes of this study, we held detailed discussions with stakeholders in the industry. We conducted 20 interviews with legal experts, 19 interviews with project developers in the electricity and natural gas sector and 2 interviews with authorities responsible for permitting procedures. We also reviewed 13 answers to questionnaires circulated to TSOs in Europe by the European Commission and ran workshops with legal experts and selected project developers.

We begin the study by developing a generic framework for authorisation processes and permitting procedures in energy infrastructure projects. We also define the terminology used here and describe the analytical framework for our analysis.

We define the **permitting procedure** as a **core part of the authorisation framework**, consisting of four steps: (1) the definition of projects of public interest, (2) the spatial planning, (3) the actual permitting procedure, and (4) securing the land or

the right to use the land required to construct and operate the project (see **B.1** for a detailed description of the authorisation framework).

Our study **focuses on the permitting procedure. Permitting procedures in the EU may consist of one or more processes leading to a decision about a permit.**

Each permitting process typically consists of **six process steps**: (1) the scoping, (2) preparation of application documents, (3) verification of the application, (4) a public consultation, (5) the decision phase, and (6) – after the permit has been granted – appeal and litigation (see **B.3** for a detailed description of the process steps).

We used a **tried and tested framework for analysing the permitting procedure.**

This involved adapting a Roland Berger Strategy Consultants Business Process Analysis Model for analysing the permitting procedures for prioritised energy infrastructure in the EU (see **B.4** for a detailed description of the methodological framework).

Based on our interviews with 20 legal experts, 19 project developers and 2 authorities in different EU Member States and our analysis of the EC Questionnaires, we identify a number of **key challenges** (see section **C** for details). The most important challenges are:

- Responsibility for the overall procedure is not clearly assigned to a single institution
- Transparency on the progress of permitting procedures is insufficient due to the lack of standard timelines for benchmarking progress and the lack of effective monitoring and reporting instruments
- Overall steering of the procedure is hampered by the lack of instruments such as an effective monitoring and reporting system and the absence of clearly defined measures for intervening in case of potential delay
- Legal frameworks only foresee the involvement of relevant stakeholders, including the public, at a late stage in the permitting procedure
- The additional information provided to stakeholders apart from the application documents is not sufficiently targeted at specific groups
- Authorities do not have access to sufficient resources and expertise

The following challenges are also significant:

- Stakeholders are not sufficiently informed about the effect a project might have and their options for getting involved in the procedure
- Developers do not allocate sufficient resources to handling the permitting procedure
- There are no clearly defined maximum durations for procedures, processes, process steps and length of time between them

On the basis of these challenges, we have developed a series of **potential measures**. We have discussed these measures with TSOs, legal experts and the EC and performed an evaluation of them. The measures fall into five groups:

## **1. Improve Transparency and Manageability**

In our analysis, we found a lack of transparency and manageability for permitting processes on both a European and a national level. Gaps exist with regard to transparency on the status of processes and possible challenges, the manageability of processes (including opportunities to intervene) and responsibility for meeting quality and time targets.

The measures which we have developed in response aim to facilitate or enable the realisation of prioritised energy infrastructure (for more detailed information, see **D.1**). **Defining projects of public interest (Measure 1)** foresees the creation of a list of projects of European interest and the prioritisation of projects on this list on a national level by the Member States, for example by the legislator. This measure is a precondition for Measure 2.

Establishing an **Implementation and Monitoring Plan (Measure 2)** envisages creating a plan with target timelines for the permitting procedure for all prioritised projects. Based on this plan, it should be verified on a regular basis whether the actual progress corresponds to the timeline as defined for the Implementation and Monitoring Plan. The results of the monitoring should be aggregated on both a national and EU level. The implementation and monitoring should make it possible to identify delays or potential delays in the realisation of prioritised energy infrastructure early on.

The creation of the function of a **National Energy Infrastructure Supervision (Measure 3)** in the Member States aims to ensure monitoring of the progress of permitting procedures for priority projects, based on the Implementation and Monitoring Plan. This function should be assigned to an existing institution on a national level, for example a national ministry, the regulator or a similar body. The function should be able to take action in case of delay or risk of delay.

The creation of the function of a **European Energy Infrastructure Supervision (Measure 4)** aims to ensure monitoring of the progress of prioritised projects based on the Implementation and Monitoring Plan on a European level. This function should be provided by an existing institution or body at the EC or by an institution designated by the EC. The function should act in close coordination with the National Energy Infrastructure Supervisor. The institution providing this function should flag up any delays or risks of delays and should be able to trigger action to help prevent or remedy such problems. The function should also be specifically responsible for coordinating support for transnational projects.

**Legally defined target durations and effective implementation (Measure 5)**

implies the introduction of legally binding target durations for the permitting procedure by the legislator. For effective monitoring and controlling of permitting processes to be possible, it is crucial that target durations are defined for each procedure and process.

The **definition of a reference permitting process (Measure 6)** foresees the creation of a generic procedure outlining the major milestones and minimum contents of procedures. This generic procedure should be defined by the European Commission. It helps to facilitate monitoring and reporting activities as it provides a common denominator for such purposes. It should also indicate the target duration of a permitting procedure for a prioritised energy infrastructure project in the EU. Based on our initial assessment, we suggest a **target duration of one year from the submission of application documents to the decision about the permit, or three to four years from the scoping and start of the preparation of application documents to the decision about the permit**. This is considerably shorter than the current average duration of permitting procedures in the analysed Member States, where the period from submission of application documents to the issuing of the permit is typically four years.

## **2. Empower Authorities**

Authorities currently have to deal with a high level of legal, technical and environmental complexity within permitting procedures. This is a cause of many delays to the permitting process in Member States. Empowering the authorities responsible for permitting procedures in the Member States is essential. The measures outlined below aim to help the authorities handle the complex permitting procedures (for more detailed information, see **D.2**).

The creation of a **one stop shop (Measure 7)** involves establishing a single authority responsible for handling a single permitting procedure for the construction and operation of a project. One stop shops already exist in some countries, e.g. England and Wales, the Netherlands. In countries with no such facility, an existing authority can be transformed into a one stop shop by assigning it overall responsibility for the single procedure for prioritised energy infrastructure projects and equipping it with the required expertise and resources. A one stop shop can also be created by integrating functions at different authorities into a single authority. Where the creation of a "full" one stop shop – i.e. with full decision-making powers on all main aspects of the project – at a national level is not possible, as is the case in some federal states, establishing a "coordinating" one stop shop should be considered.

**Improving authorities' access to experts (Measure 8)** aims to ensure that the authority responsible for the handling of the permitting procedure has sufficient access to experts and that this access is flexible. This is particularly relevant for phases of the permitting procedure requiring more resources or specialised expertise.

In these phases, the responsible authority should be able to draw on additional experts for handling the procedure and evaluating documentation.

To support good practice and efforts to make permitting more efficient, we recommend considering an **award for territorial entities for implementing smooth permitting procedures (Measure 9)** at a European level. This award would act as an incentive for authorities at a sub-national level. It could consider innovative approaches used by authorities operating on budgets. It should bring together employees from the award-winning institutions for meetings and training. This measure creates an incentive for authorities to handle permitting procedures well. However, it is clearly not a solution to the key issue of insufficient resources and expertise at authorities.

### **3. Optimise Permitting Procedures**

In our analysis, we found that the most effective permitting procedures consist of a small number of processes (or ideally a single process for obtaining all the required permissions for the construction and operation of a project) handled by a single responsible authority. There is room for improvement here, especially in Member States where the project developer has to handle a large number of separate processes to obtain all the required permits. The measures outlined here aim to simplify and shorten the permitting procedure, i.e. the set up of processes and process steps in a procedure (for more detailed information, see **D.3**).

**Freezing the legal framework for the duration of the permitting procedure (Measure 10)** aims to avoid the problem of having to restart certain parts of an on-going permitting procedure from scratch due to changes in the legal framework. This measure foresees a freezing of the legal basis applicable during the permitting procedure at the start of the official scoping. Changes to laws should not be taken into account in the subsequent procedure. The freeze would apply for the process from the scoping to the issuing of the final permit, and for a defined maximum duration.

The **integration of spatial planning into the permitting procedure (Measure 11)** foresees spatial planning concerns being covered in the overall permitting procedure. This would mean that there would be no separate spatial planning procedure, at least for projects of European interest or projects defined as being of public interest. Required decisions with regard to spatial planning should be integrated into the processes concerned with the permit for the construction and operation of the project. This would allow a significant shortening of the overall duration of the permitting procedure as processes which formerly occurred one after the other would now take place in parallel.

**Making the scoping mandatory (Measure 12)** would establish a common understanding on the part of stakeholders about what should be covered in the

application documents developed by the project developer and thus in the permitting procedure. Scoping is established as an optional process step in the EIA procedure by the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC).<sup>1</sup> This measure foresees that the scoping would be established as a mandatory process step for the overall permitting procedure. Moreover, the focus of the scoping should be extended to cover the requirements of the Environmental Impact Assessment and other application documents which may be required. The outcome of the scoping is a clear outline of what needs to be covered in the application documents.

**Granting access to land/easement together with the permit (Measure 13)**

foresees that the permit would allow the project developer to start construction as soon as it is enforceable, i.e. where no appeal with suspensive effect arises within a defined time period after the granting of the permit. A decision about compensation levels may follow the start of construction. This measure would help overcome any delays in the realisation of prioritised energy infrastructure projects arising from ongoing appeals against the permit.

**Limiting legal recourse to a single level of jurisdiction (Measure 14)** envisages that there would be only one court responsible for appeals against permits. The decision taken by this court would be final, i.e. no revision of the decision would be possible. Moreover, appeals would not have a suspensive effect, so the project developer can start construction as soon as the permit is issued, irrespective of whether an appeal process was ongoing or not.

#### **4. Improve Project Developers' Planning and Involvement in Permitting Procedures**

Project developers play an important role when it comes to the effectiveness and speed of permitting procedures. The technical planning – which is often completed before any stakeholder dialogue or environmental assessment – is a main driver of how much opposition there is from stakeholders and the public, and how the environment is effected by the planned project. How open project developers are in their discussions with stakeholders is another critical point for completing permitting procedures in time. Like permitting authorities, project developers often lack expertise in driving complex processes forward. The measures outlined here aim to support project developers in assuming their responsibility and taking a proactive role in handling the permitting procedure, especially in terms of the proper involvement of stakeholders and taking environmental protection into account (for more detailed information, see **D.4**).

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<sup>1</sup> Council Directive of June 27, 1985 on the assessment of the effects of certain public and private projects on the environment (Council Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC), OJ L 175, July 5, 1985, p. 40.



Defining **principles for inclusive permitting procedures (Measure 15)** aims to influence project developers' behaviour outside the legal framework on an EU level and in the Member States, i.e. without adapting legal systems. These principles should bring together proven good practice in sustainable, inclusive planning and permitting procedures. These principles need to be communicated actively to project developers.

To give the principles a binding character, **access to European Investment Bank (EIB), European Bank for Reconstruction and Development (EBRD) and EU funds should be linked to project developers' performance with regard to the principles for inclusive permitting procedures (Measure 16)**. Access to EIB loans, EBRD loans and EU funds should be made dependent on developers' commitment to and/or compliance with the principles.

Within national procedures, **developers should be given incentives for effective stakeholder dialogue (Measure 17)**. Project developers should be required to conduct a public information campaign before submitting application documents. This would be the responsibility of the project developer, but can be overseen by the permitting authority. The latter should have the right to approve the concept for the campaign or request changes, and to monitor its implementation. The completion of the campaign should be a requirement for the submission of application documents.

## **5. Improve Communication and Mitigate Public Opposition**

Lack of acceptance of energy infrastructure projects by stakeholders is one of the main reasons for delays. Project developers identify public opposition as a key problem, along with the complexity of the permitting procedure. Increasing stakeholder acceptance of energy infrastructure projects is thus one of the most important challenges to be addressed in making permitting procedures more effective. The measures outlined here aim to improve public acceptance of prioritised projects (for more detailed information, see **D.5**).

**A communication strategy focusing on the necessity and benefits of extending energy infrastructure in the EU (Measure 18)** should aim to make the link clear between energy infrastructure expansion (especially prioritised projects), security of supply and the integration of renewable energy into the EU energy mix. It should target three different groups: the general public, stakeholders directly affected by prioritised projects on a local level, and the authorities responsible for permitting the prioritised energy infrastructure projects.



In addition, an **Environmental Advocate (Measure 19)** can be established. This is a public institution, the task of which is to represent environmental concerns in permitting procedures. It has the rights of a party to the procedure and is therefore entitled to participate in the public consultation, submit comments and appeal against

decisions by the responsible authority. Moreover, it acts as the first point of contact for the public with regard to environmental concerns.

Stakeholder concerns can also be mitigated by **increasing stakeholder eligibility for compensation or mitigation (Measure 20)**. Under this measure, affected stakeholders would either be given a guarantee that the impact of the project will be mitigated or they would receive compensation. The municipality in question would receive an in-kind or financial compensation for having the energy infrastructure project on its territory. A key element in this measure is that the financial benefits actually reach the people affected: the extra funds would be explicitly dedicated to a project benefitting them or the financial benefits would be redistributed.

## Recommendations

We have evaluated each of the measures with regard to impact on acceptance by stakeholders, impact on duration, legal impact and impact on costs. As a result of this evaluation, we recommend 18 of the 20 measures, to be implemented by the EC, the Member States, or both (see **Figure 1**).

|  |  <b>European Commission</b>  |  <b>EU Member States</b>  |
|--|---|--|
| <b>1. Improve Transparency and Manageability</b>               | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 2:</b> Implementation and monitoring plan</li> <li>&gt; <b>MEASURE 4:</b> European Energy Infrastructure Supervision</li> <li>&gt; <b>MEASURE 6:</b> Definition of a reference permitting process</li> </ul> | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 1:</b> Definition of projects of public interest</li> <li>&gt; <b>MEASURE 2:</b> Implementation and monitoring plan</li> <li>&gt; <b>MEASURE 3:</b> National Energy Infrastructure Supervision</li> <li>&gt; <b>MEASURE 5:</b> Legally binding target durations</li> </ul>  |
| <b>2. Empower Authorities</b>                                  | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 9:</b> Award for territorial entities for implementing a smooth permitting procedure</li> </ul>  | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 7:</b> One stop shop</li> <li>&gt; <b>MEASURE 8:</b> Improving authorities' access to experts</li> </ul>  |
| <b>3. Optimise Permitting Procedures</b>                       |   | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 10:</b> Fixing the legal status quo for the duration of the permitting procedure</li> <li>&gt; <b>MEASURE 11:</b> Integration of spatial planning into the permitting procedure</li> <li>&gt; <b>MEASURE 12:</b> Mandatory Scoping</li> <li>&gt; <b>MEASURE 13:</b> Granting access to land / easement together with permit</li> <li>&gt; <b>MEASURE 14:</b> Limiting legal recourse to a single level of jurisdiction</li> </ul> |
| <b>4. Increase Project Developers' Engagement</b>              | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 15:</b> Principles for inclusive permitting procedures</li> <li>&gt; <b>MEASURE 16:</b> Linking access to EIB, EBRD, EU funds to guidelines</li> </ul>   | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 17:</b> Creating incentives for developers to take responsibility for effective stakeholder dialogue within the procedure</li> </ul>  |
| <b>5. Improve Communication and Mitigate Public Opposition</b> | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 18:</b> Communication strategy focusing on the necessity and benefits of extending energy infrastructure in the EU</li> </ul>  |  |

**Figure 1:** Overview of recommended measures

## A. Introduction

The European Commission (EC) is actively driving the development of energy infrastructure in Member States. It has identified 568 energy infrastructure projects of European and national interest, giving them priority status under the Trans-European Energy Networks (TEN-E) guidelines. The realisation of prioritised projects, especially "interconnectors", is key to achieving the Energy 2020 strategy, especially the 20% target for renewable energy in 2020. It is also essential for furthering the development of a more integrated, interconnected and competitive energy market.<sup>2</sup> Member States are obliged to facilitate the realisation of these projects within a reasonable timeframe.

With regard to the status of realisation of the TEN-E projects, the EC finds that it is not uncommon for projects to take years – and in some cases more than a decade – to pass the hurdles of national administrative procedures. Thus the permitting procedure for the high-voltage transmission line connecting Hungary and Slovenia started over ten years ago and is still ongoing. The permitting procedure for the electricity interconnector between France and Spain began in 2001 with a new proposal after the project was rejected in 1996, and the permitting procedures were concluded only in 2011. In Germany, part of the critical connection allowing the transport of surplus electricity from offshore wind installations from Northern Germany to the South – the section from Halle/Salle to Schweinfurt – has been in the permitting phase since 2006. And there are many other examples besides these.

Authorisation procedures often present a major challenge to the realisation of critical energy infrastructure projects, both national and of transboundary. The duration of authorisation procedures is in many cases unpredictable. The EC finds that "existing rules and procedures for projects of European interest (serving security of supply, solidarity or renewable integration purposes) will need to be improved and streamlined significantly, while respecting the principles of public acceptance and existing environmental legislation".<sup>3</sup> The following obstacles delaying permitting procedures have been identified: inappropriate national legal frameworks, ineffective and unintegrated administrative practices (e.g. various public authorities with different responsibilities are involved), public opposition and environmental requirements.

Transboundary projects face additional challenges. The design, timeline and requirements of permitting procedures in different EU Member States vary strongly. This often results in the conclusion of the permitting procedure much earlier on one side of the border than on the other. Sometimes even the construction of a project is finished on one side of the border while the permitting procedure on the other side is on-going. Different requirements, such as the minimum distance between an

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<sup>2</sup> See the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Energy 2020 – A strategy for competitive, sustainable and secure energy" (SEC(2010)1346)), p. 9

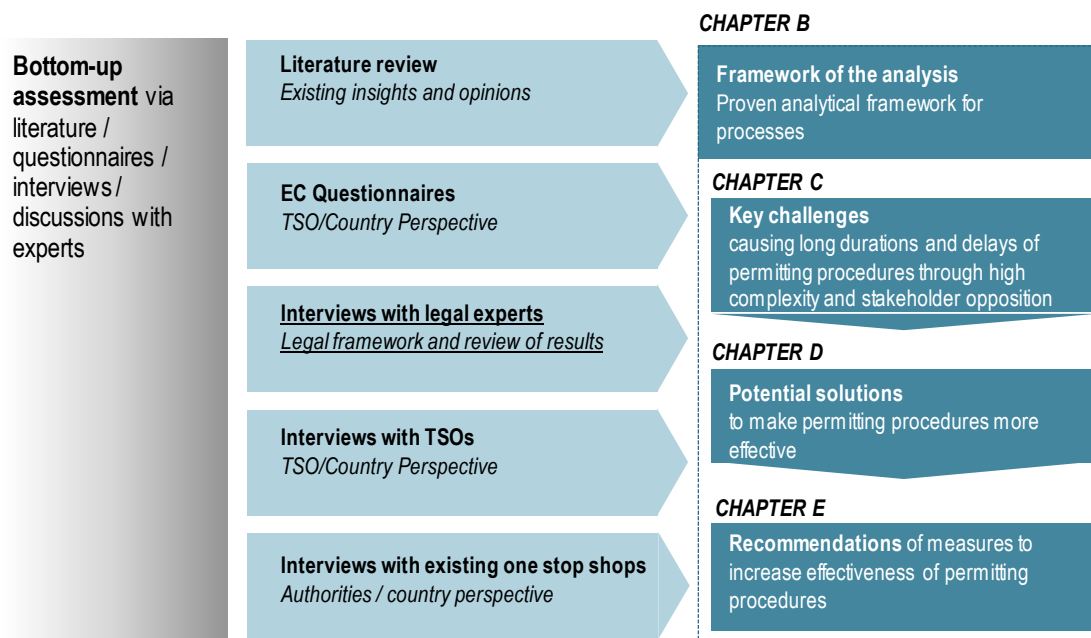
<sup>3</sup> Ibid., p. 10

infrastructure project and a settlement in a protected area, or the level of detail required in application documents, mean that adjustments are needed for the same project in different countries. As long as these discrepancies persist, the realisation of transboundary projects will require enormous coordination by the EC, Member States, and authorities and project developers in particular.

The main reason for the excessive duration of permitting procedures and the major delays that often occur is their design in the Member States and differing practices on national, regional and local levels. This study therefore focuses on national permitting procedures. We also address the increased complexity and need for coordination in handling transnational projects; we do this in Sections D and E, where we present and evaluate possible solutions.

In 2011, the EC plans to present a new legislative proposal aiming to provide solutions for improving and streamlining permitting procedures for energy infrastructure projects in Member States. Roland Berger Strategy Consultants has been commissioned by the EC to provide input to this proposal by preparing a study on the problems with permitting procedures and potential solutions for speeding up these processes. This study is the result. In it, we critically review authorisation procedures in Member States and, on the basis of our findings, elaborate best practices and design tailor-made recommendations for tackling the issues identified.

This study draws on five sources: a review of existing literature, interviews with lawyers specialising in the permitting process for energy infrastructure in different Member States, interviews with practitioners working for energy infrastructure operators in different Member States, questionnaires compiled by the EC and completed by European operators of energy infrastructure, and a detailed review and discussion of the results with legal experts.



**Figure 2:** Summary of the study's approach: analysis of permitting procedures in the EU

In the first phase of this project, we created an overview of the European authorisation environment, drawing on a review of literature and interviews with lawyers. The second phase consisted of an in-depth analysis of 13 selected authorisation environments, drawing mainly on interviews with experts working for energy infrastructure operators. Based on this input, we identify key challenges to permitting procedures. In the third and final project phase, we developed potential solutions for these challenges in the form of measures. These measures were evaluated according to four criteria: impact on stakeholder acceptance, impact on duration, legal impact, and impact on cost. On this basis we form our recommendations for the European framework on energy infrastructure projects.

For the purpose of this study, we agreed with the EC that we would focus on 13 countries: Austria, Denmark, France, Germany, Hungary, Ireland, Italy, the Netherlands, Poland, Slovenia, Spain, Sweden and the UK.<sup>4</sup> The criteria for selecting these particular countries were as follows: (a) choose the countries with the highest number of TEN-E projects; (b) exclude countries with few licensing issues related to existing TEN-E projects; (c) include a number of additional countries with interesting local regulations or which present helpful examples.

<sup>4</sup> The example of the United Kingdom is of particular relevance in the context of this study due to the institutional role of its Infrastructure Planning Commission (IPC), as established by the Planning Act 2008. However, as the scope of the Planning Act 2008 is restricted to applications for infrastructure projects in England and Wales, we explicitly refer to England and Wales rather than the whole of the United Kingdom in the following sections.

Section B, below, describes the general characteristics of permitting procedures for energy transmission infrastructure projects in Europe and defines a framework for analyzing permitting procedures. Section C then applies this framework to the data, presenting a systematic overview of permitting procedures according to the key dimensions of this analysis. It further identifies key challenges to permitting practices, summarising and evaluating them according to their impact on delays to the permitting procedure. In Section D, we describe potential solutions to these challenges and establish a framework for evaluating them. This is intended as input for the discussion with the EC about which solution pathways the EC should focus on and prioritise. Finally, Section E summarises our recommendations to the EC.

## B. Authorisation Procedures for Energy Infrastructure in the European Union – Framework of the Analysis

In this section we describe a generic framework for the authorisation processes of energy transmission projects and establish the terminology used throughout the study. We also create an analytical framework for the analysis of procedures. This section is based on our analysis of a wide variety of different procedures.

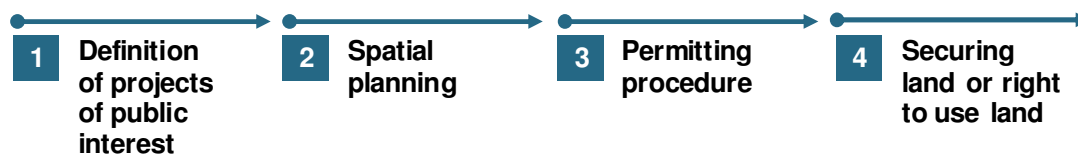
When looking at authorisation processes, three layers of procedural aspects should be differentiated. They are as follows, from the most general to the most detailed:

1. The **authorisation framework**, of which the actual permitting procedure is a core part
2. The actual **permitting procedure**, which in many cases has to be further broken down into individual processes and results
3. The **individual permitting processes**, which typically follow a generic structure of six process steps

### B.1 Authorisation Framework for Energy Transmission Infrastructure

By "the authorisation of energy infrastructure projects" we mean the development of a project from the identification of the need for expanding the energy infrastructure to the start of construction of an energy infrastructure project. In all Member States, the authorisation of energy infrastructure projects involves four key procedures, each of which must be completed (see **Figure 3**):

#### AUTHORIZATION FRAMEWORK



**Figure 3:** The authorisation of energy infrastructure projects

1. **Definition of projects of public interest:** In many countries, the legislator or the government identifies the need for expanding the energy infrastructure. This is based on a demand analysis, which looks at forecast energy production and consumption levels. The required increase in transmission, transport or storage volumes, or an abstract outline of the required infrastructure projects is then legislated for or incorporated into an official planning document. Energy

infrastructure projects legislated for or incorporated in planning documents are considered to be of public interest.

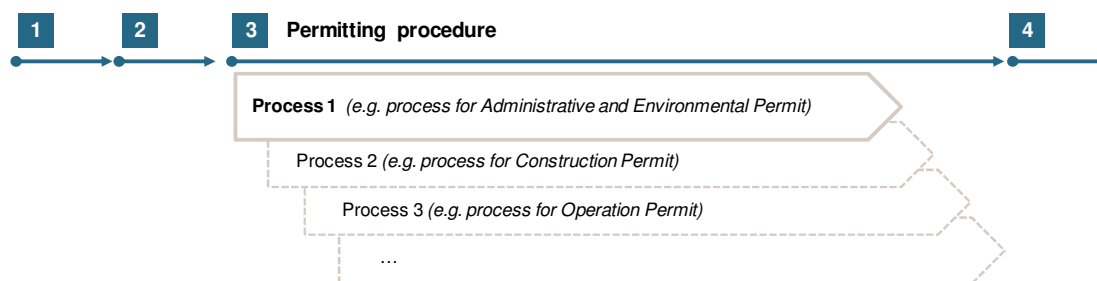
2. **Spatial planning:** The spatial planning procedure consists of two distinct steps: deciding on the location of planned energy infrastructure projects or the route they follow, and the question of whether and how to adjust the existing spatial plan. In practice, these two steps are often inseparably linked. With regard to the first step, it has to be taken into account that the location and/or route must in many countries be compatible with the official spatial planning documents. The spatial plan determines what purpose land may be used for. In the process of detailing the location and/or route of the planned energy infrastructure project, the results of the EIA also play a significant role. With regard to the second step, the following considerations apply: for land to be used for building and operating energy infrastructure, the spatial plan must first be adapted to reflect the location of the energy infrastructure or its approximate route. Adapting the spatial plan can be done by decision of the legislator, and /or through a separate spatial planning procedure at a regional or local level.
3. **Permitting procedure:** The project developer planning to build and operate the energy infrastructure must obtain the permits for its construction and operation required by each national legal framework. These permits sometimes relate to requirements under EU legislation (e.g. energy and environmental requirements) and the way they have been implemented in the country's legislation. In other cases, the permits may relate solely to national legislation (e.g. assessments of health or social impacts). During the permitting procedure, all aspects of the project are analysed, including its technical aspects, safety aspects and its environmental and social impact. This analysis is based on detailed application documents compiled by and received from the developer, comments from stakeholders (the relevant authorities, NGOs, interest groups, people affected and the general public) and assessment by the responsible authority. The responsible authority then decides whether to issue a permit or not.
4. **Securing land, or the right to use land:** The developer needs to obtain the land (or the right to use the land) required for construction and operation of the project. Affected landowners receive financial compensation. This process may take various forms: (1) the right to use the land is granted along with the permits, and the compensation levels are determined by law; (2) the right to use the land is granted along with the permits, and compensation levels are agreed individually between project developer and landowner; (3) a private agreement is reached between project developer and landowner about the right to use the land and the compensation levels. If a private agreement between the project developer and landowner subsequently breaks down, a court decision may establish the right to use the land and/or set the level of compensation.

The **focus of this study is the authorisation framework, particularly the actual permitting procedure** (Step 3 above). This phase is responsible for most delays.



## B.2 Permitting Procedure and Processes

The legislators in Member States set the legal framework for the permitting procedure. The permitting procedure itself differs between Member States. First of all, the permitting procedure may consist of one or of several different processes which have to be carried out in parallel or one after the other. If a permitting procedure consists of several processes, each of the processes typically leads to a different output, e.g. a different permit (see **Figure 4**). Each of the outputs is required for building and operating the project.

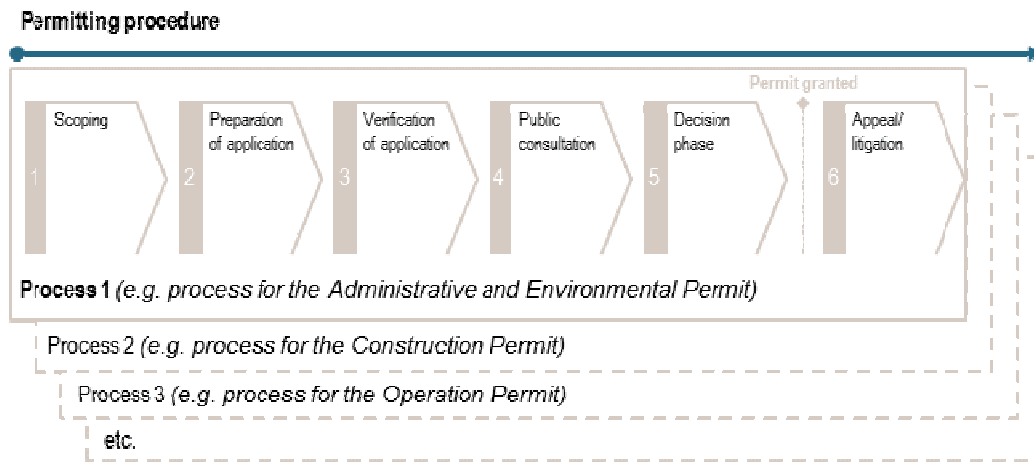


**Figure 4:** Permitting procedure consisting of several processes

In Spain, for example, the permitting procedure encompasses three different processes, one for the Environmental Impact Assessment, one for the Construction Permit and one for the Operation Permit. In Hungary, the permitting procedure consists of six different processes: one each for obtaining the Agricultural Field Permit, the Environmental Permit, the Theoretical Permit, the Preparatory Work Permit, the Construction Permit and the Operation Permit. By contrast, in some countries only one process has to be followed, leading to a single permit which covers all of these aspects.

## B.3 Six Process Steps within the Permitting Procedure

Each process within the permitting procedure typically consists of several process steps. Six process steps are generally found (see **Figure 5**):



**Figure 5:** Each process in the permitting procedure consists of several steps

Each procedure, including its design (i.e. processes and process steps), results from either EU or national legislation:

1. **Scoping:** Scoping is stipulated by Article 5(2) of the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC).<sup>5</sup> The scoping is "the process of determining the content and extent of the matters which should be covered in the environmental information to be submitted to a competent authority for projects which are subject to EIA".<sup>6</sup> This covers potential environmental impacts of the project. However, this process may be used to cover safety and social impacts. The scoping also defines what underlying data must be collected and what surveys carried out. Scoping is considered "an important feature of an adequate EIA regime, mainly because it improves the quality of the EIA".<sup>7</sup> To ensure all concerns are taken into account during the preparation of the application, stakeholders may be invited to participate in the scoping. The scoping takes place at the very beginning of the process, which usually corresponds to an early planning stage of the project. At this stage, stakeholders' concerns and findings from the analyses of potential impacts can still influence the planning of the project. The result of the scoping is a list of analyses to be carried out by the developer and included in the application documents. This list is drawn up by the responsible authority. The scoping is not mandatory, but it can be initiated at the request of the developer.

<sup>5</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (Council Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC), OJ L 175, 5.7.1985, p. 40.

<sup>6</sup> "Guidance on EIA Scoping", Office for Official Publications of the European Communities, June 2001.

<sup>7</sup> See p. 3 of the report by the Commission on the application and effectiveness of the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC and 2003/35/EC), COM(2009)378.

The minimum requirement for Member States is that the competent authorities provide guidance on the information to be submitted in the framework of the EIA procedure to the applicant. However, many Member States have gone further than the minimum requirements of the Directive, making scoping mandatory and providing for public consultation during it.<sup>8</sup>

2. **Preparation of application documents:** The developer prepares the application documents based on the list of requirements issued at the end of the scoping exercise. This list of requirements is issued based on applicable laws, which also need to be taken into account in the preparation of the application documents. Applicable laws include public international law such as the "Espoo Convention" (Convention on Environmental Impact Assessment in a Transboundary Context), EU legislation,<sup>9</sup> national law and (especially in federal states) state law, as well as other applicable rules, regulations and standards. The preparation process usually takes over a year: some environmental surveys can only be carried out in a specific season and they may have to be carried out over two seasons to ensure representativeness. Application documents are usually prepared during the detailed technical planning of the project. As a result, the environmental analyses may influence the detailed technical planning. When the application documents have been finalised, the developer submits them to the responsible authority.
3. **Verification of completeness of the application:** The purpose of this process step is to ensure that the application documents cover all the requirements outlined in the scoping and enable a proper assessment of all the potential impacts of the project. The responsible authority accepts the application documents from the project developer. Its task is then to verify the completeness of the documents and ask the developer to supply any missing information. The result of this process step is that the authority declares that the application documents are complete and the next process step – usually public consultation – may start.
4. **Public consultation:** During the public consultation, a formal dialogue between the responsible authority, stakeholders and developer is established. Stakeholders – including authorities, NGOs and the general public – are given

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<sup>8</sup> This is confirmed in p. 3 of the report from the Commission on the application and effectiveness of the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC and 2003/35/EC), COM (2009)378.

<sup>9</sup> Applicable EU legislation may include, for example, Council Directive of 2 April 1979 on the conservation of wild birds (79/409/EEC), Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC), Council Directive of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (92/43/EEC), or the Decision of the European Parliament and of the Council of 6 September 2006 laying down guidelines for trans-European energy networks and repealing Decision 96/391/EC and Decision No 1229/2003/EC (1364/2006/EC).

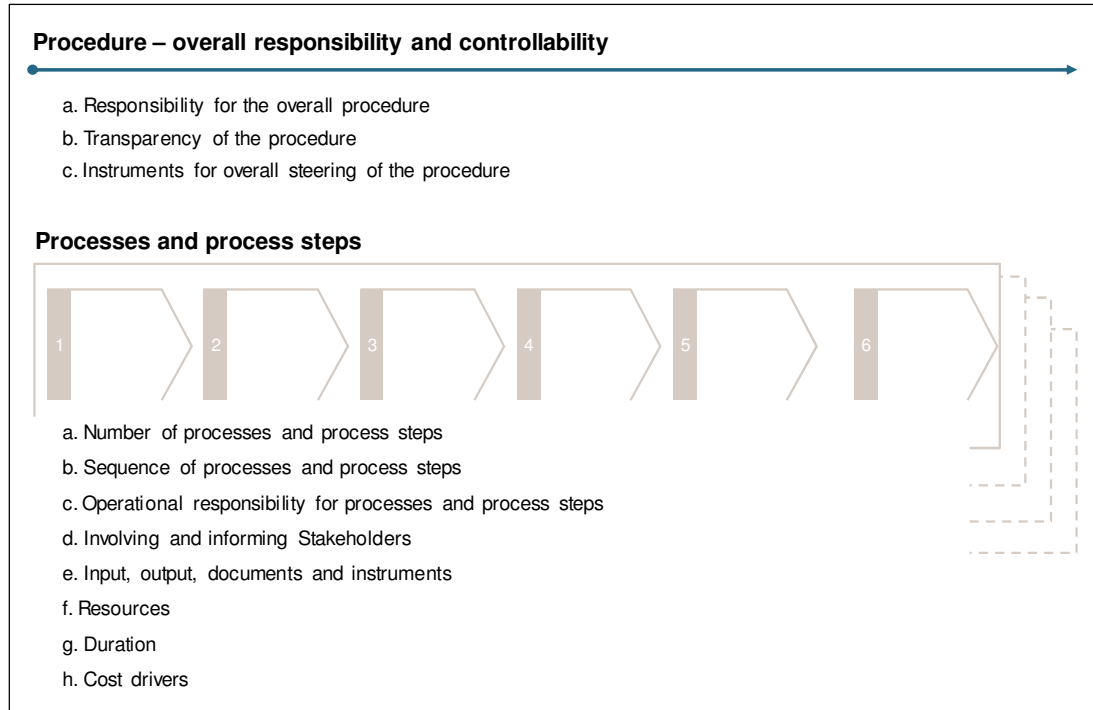
access to the application documents so they can get detailed information about the project and its potential impact. Stakeholders have an opportunity to comment on the application documents. There may also be a public hearing, i.e. a physical meeting of all the parties involved, to discuss the project and its potential impact. Timeframes for public consultation vary considerably. For instance, as regards the EIA procedure, at the stages of scoping and consultation on the EIA documentation, the timeframe is between 10 and 60 days. The result of this process step is a compilation of all comments by stakeholders, which is then taken into account in the decision made by the relevant authority.

5. **Decision phase:** The goal of this process step is to issue a permit which allows the developer to carry out the project and which does not conflict with stakeholders' key concerns or existing legislation. The responsible authority has the task of deciding whether to issue the permit and, if it approves the project, of drawing up the permit. In so doing, it takes into account the application documents, stakeholders' comments and its own analyses. The authority may include conditions in the permit to accommodate stakeholders' concerns, for instance the steps which the developer must take to avoid or mitigate any potentially negative impacts of the project. The result of this process step is that the responsible authority either issues a permit and makes it available to the public, or rejects the application.
6. **Appeal and litigation:** After a permit has been issued, stakeholders may appeal. The possibility of appeal serves to ensure that permits based on faulty procedures, and unlawful permits, are prevented from being enforced. The right to appeal may be restricted to certain stakeholders, such as those who have submitted comments during the public consultation stage. Appeals may have a "suspensive" effect, i.e. the developer may not start with construction until the appeal has been decided on by the relevant court. The result of this process step is a decision about the permit. If the appeal is rejected, the permit becomes enforceable.

#### **B.4 Methodological Framework for the Analysis of the Permitting Procedure**

For our analysis of challenges to permitting procedures in Member States, we apply a **process analysis framework** that we have used successfully at Roland Berger Strategy Consultants for a wide variety of processes in both private and public sector institutions. This framework we call our **Business Process Analysis Model**. It was specifically adapted for the subject in hand and allows us to assess the drivers of effective processes and to identify factors that lead to delays in the permitting procedure.

Our analysis focuses on certain key dimensions of the permitting procedure (see **Figure 6**).

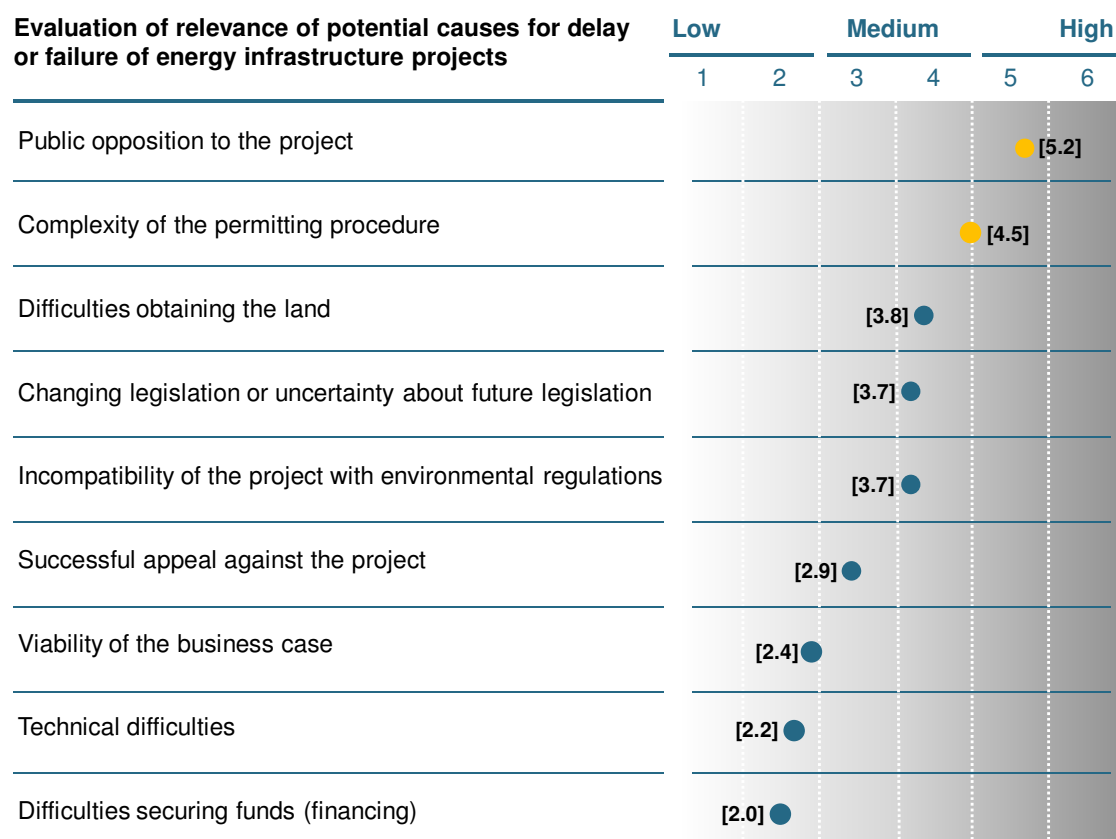


**Figure 6:** Dimensions of the analysis of permitting procedures for energy infrastructure

In the following section – Section C – we look first at processes and process steps, describing the structure of the different permitting procedures in Member States. We then investigate challenges with regards to the overall responsibility and controllability of procedures.

## C. Key Challenges to Permitting Procedures

For the purposes of this study, we conducted interviews with project developers in different Member States. The first part of these interviews focused on the reasons for delays in energy infrastructure projects. The results (see **Figure 7**) show clearly that public opposition to projects and complex permitting procedures are the most important causes of delays from the perspective of project developers. The evaluation of these two factors as the main cause of delays was similar in all the countries we investigated.



**Figure 7:** Results of interviews with project developers – Question: What are the most frequent causes for the delay or failure of energy infrastructure projects? Average evaluation of relevance by project developers in 13 Member States

In this section, we analyse the main causes of delays, i.e. what developers mean exactly when they talk generally about "complex permitting procedures" and "public opposition to projects". Our goal is to determine what makes a permitting procedure complex and what causes the public opposition that results in delays to prioritised energy infrastructure projects, or even their failure.

To this end, we analyse the permitting procedures, processes and process steps using the proven process analysis framework presented above. For each dimension of the analytical framework described above in Section B.4, we structure our analysis as follows:

- I. Definition of the relevant analytical dimension
- II. Description of the Permitting Landscape (with regard to this dimension)
- III. Description of challenges to permitting procedures

## C.1 Processes and Process Steps

### a. Number of processes and process steps

#### I. Definition of the Relevant Analytical Dimension

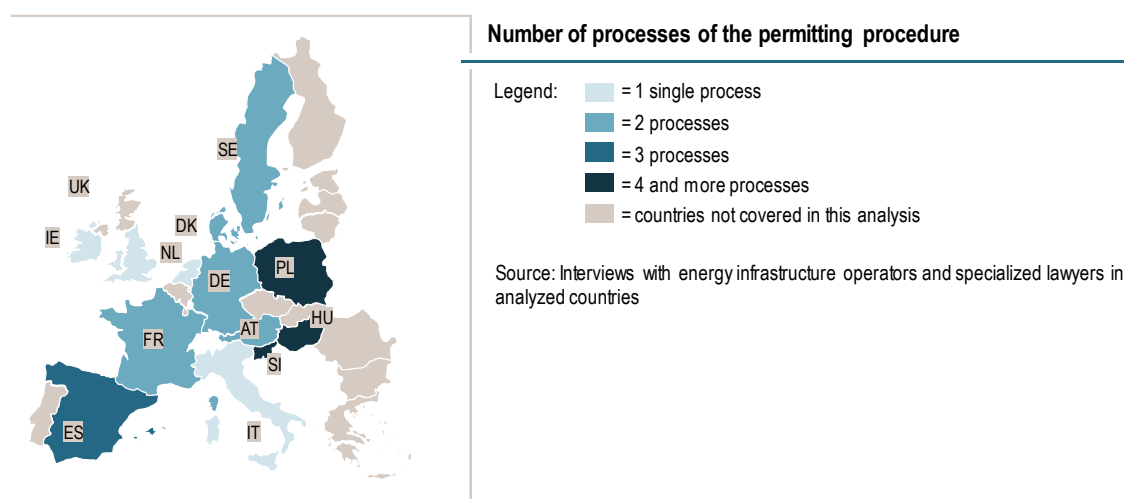
The number of processes and process steps is one of the main drivers of the efficiency – and also the effectiveness – of the permitting procedure.

Generally, more processes and process steps means greater complexity and a larger number of interfaces between processes and the people involved in them. This results in an increased need for knowledge transfer and paperwork, and is thus a driver of resource requirements and duration. Such complexity is multiplied if responsibilities and the required resources differ for adjacent process steps.

With regard to the permitting procedure, the number of processes can be reduced by concentrating them into a single process. This, in turn, means less complexity for the developer and can also reduce complexity for the authorities involved. Furthermore, it can improve efficiency on the part of the authority thanks to economies of scale and more efficient use of specialised resources: permitting processes usually require specialist know-how, which is utilised much more effectively in a centralised process than if process steps are fragmented across several sub-processes or process steps.

#### II. Description of the Permitting Landscape

The number of processes involved in permitting procedures varies greatly between Member States (see **Figure 8**).



**Figure 8:** Number of processes in the permitting procedure in selected Member States



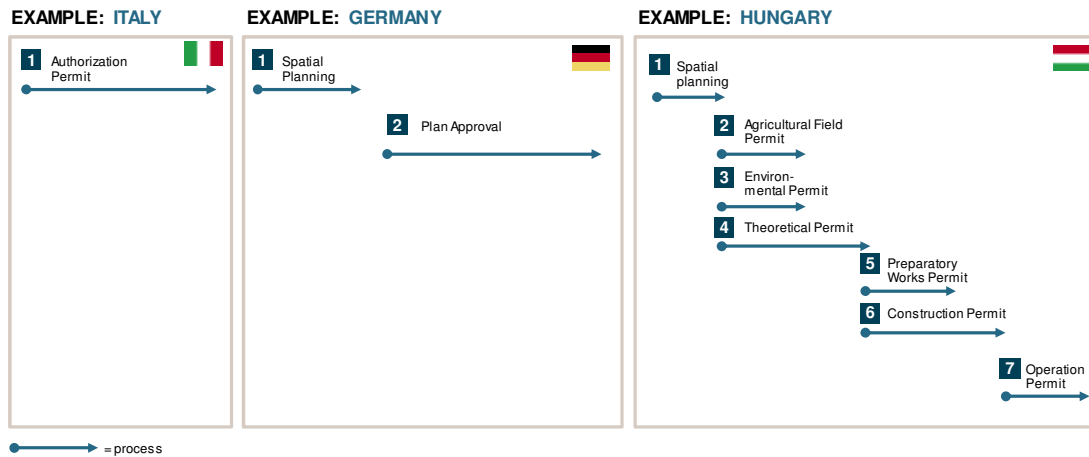
The average number of processes required in the countries analysed to obtain all the required permits for the construction and operation of a project is three or more. However, as illustrated in Figure 8, major differences exist between Member States with regard to the number of processes required to obtain all the required permits. In some countries only one process is needed, while in others four and more processes are needed. How these processes differ is shown by the following more detailed examples:

**Example 1:** In Italy, only one process needs to be completed by the developer to obtain all the required permits for construction and operation of a project. The Authorisation Permit process covers both the Environmental Assessment and Technical Analysis. For large energy transmission or transport projects, the Ministry for Economic Development is responsible for handling the process and involving other stakeholders, including other competent authorities. The complexity of the procedure is therefore low, as no interfaces between responsible authorities need to be handled between processes. Particularly from the perspective of the project developer, complexity is low, as there is one main interface for the company at the Ministry for Economic Development.

**Example 2:** In Germany, two processes need to be completed by the developer. The first is the Spatial Planning, which aims to identify an appropriate routing for the project. This process is administered by an authority on a state (Bundesland) level. The second process is the Plan Approval, which results in the issuing of a permit for the construction and operation of the project. This is administered by an authority on state level – usually not the same authority as the one responsible for the Spatial Planning process. Two processes means just one interface, so the effort required for coordinating and passing project knowledge between experts in the different authorities and for transferring paperwork is low. There is no need to coordinate the timeline between the two successive processes. Applicants submit each application to each authority once only. Due to the small number of processes, complexity is relatively low and it is easy for both the authority and the developer to keep track of the progress of the different processes and the permitting procedure as a whole.

**Example 3:** Hungary's permitting procedure consists of up to seven processes: one for obtaining the Spatial Planning, one for the Agricultural Field Permit, one for the Environmental Permit, one for the Theoretical Permit, one for the Preparatory Work Permit, one for the Construction Permit and one for the Operation Permit. Each process is handled by a different authority. In addition, five of the seven authorities exist on more than one level – municipal, district and county – so the same process must be carried out in all the affected regional sections of the project simultaneously. For projects involving a large number of municipalities, districts or counties (e.g. a long electricity transmission line), this can mean a very large number of simultaneous processes. Application documents must be produced and checked in several versions, each differing for the different locations. Both the responsible authorities and the developers require significant resources. From the viewpoint of the developer

in particular, the permitting procedure is highly complex as so many processes occur in parallel or one after the other and therefore need to be coordinated.



**Figure 9:** Number of procedures required to obtain permission to construct and operate energy infrastructure: Italy, Germany and Hungary

A small total number of processes and process steps in the permitting procedure can mean that fewer resources are required and the overall procedure is faster. However, three examples show that a small number of processes is not necessarily enough to solve the problem in all countries:

**Example 4:** In England and Wales, the average duration of the permitting procedure is 9 to 12 months, which is very short compared to other countries. This is fully in line with our expectations based on the number of processes and process steps. The permitting procedure in England and Wales consists of one process only.

**Example 5:** In the Netherlands, the permitting procedure also consists of only one process. The official duration of the permitting procedure from submission of application documents until decision about the permit is 9 to 12 months. The system was introduced recently and it is not yet known how it will affect the timeline in practice. However, project developers and the responsible authority report that in order to achieve this target duration, highly detailed and extensive preparations are required from both the responsible authority and the project developer before the official start of the procedure, including preparing high quality application documents and holding extensive stakeholder discussions, which can take up to four years. Thus when evaluating the time-span of a procedure, the time for the preparation and adjustment of application documents must be factored in.

**Example 6:** In Austria, the permitting procedure consists of three processes: the Design Approval process, determining the general routing of the project; the

Preparatory Work Approval process, in which the developer carries out preparatory work such as test drilling and topographical surveys; and the Permit Application process, which results in the issuing of a permit for the construction and operation of the infrastructure. A single authority is responsible for handling all three processes at the level of the federal state concerned (Bundesland). With just three processes, the permitting procedure in Austria can be considered to have a comparatively small number of processes. As these processes are handled by the same authority, the issue of dealing with interfaces between processes is not relevant. The permitting procedure takes in practice an average of 18 months to 3 years, which is low to average compared to other Member States.

**Example 7:** In Sweden, the permitting procedure consists of two processes. The Concession process is handled by the Energy Market Inspectorate and results in permission being granted for the developer to build and operate an energy infrastructure project, on condition that subsequent permits are granted. The Permit Application process, which focuses on the environmental aspects of the project, is handled by the County Administrative Board and the municipalities with regard to protected areas, and the County Administrative Board or the Environmental Courts with regard to tunnelling or extensive ground works. The County Administrative Board takes the lead in handling the second process. Despite the small number of processes, the permitting procedure in Sweden (as reported by the TSO) generally takes four to five years, and in some cases as long as ten years. The reasons given are that the public consultation process may be repeated several times (multiplying the process steps within the processes) and that binding maximum durations for authorities are lacking. This means that beyond the sheer number of processes, other factors are also drivers of complexity and duration, especially stakeholder interaction processes.

### III. Description of Challenges to Permitting Procedures

A low total number of processes and process steps in the permitting procedure can lead to lower resource requirements and a faster overall procedure. The relevant authorities and the developer need fewer resources and less time to produce and verify documents, to oversee processes and to take the necessary steps. The risk of reduplicated work (the same documents being checked and assessed by two or more different levels of jurisdiction) is reduced. Moreover, there is less risk of inconsistency between decisions due to different processes, so the authority and developer can invest less time in coordinating interfaces between the different processes. In interviews with TSOs, it was confirmed that reducing the number of processes can help to reduce the duration of permitting procedures.

One way to tackle permitting delays is therefore to help Member States to integrate the processes which make up their permitting procedures, in such a way as to achieve a reasonably low number of total processes and process steps.

## **b. Sequence of Processes and Process Steps**

### I. Definition of the Relevant Analytical Dimension

The sequence of processes and process steps can influence the effectiveness of the procedure significantly. Key drivers are:

- The necessity of handling processes in a sequence due to interdependencies between them, or the possibility of handling processes in parallel.
- The optimal sequence of sub-processes or process steps, where some sequences are more effective than others.

Interdependent processes and process steps arise where one process step requires the result of another process step as its input. The two processes cannot be performed in parallel. This increases complexity and usually also the overall time needed to complete the process.

The importance of getting the sequence of steps within a process right is often underestimated. In practice, the sequence of steps can increase or decrease the required effort significantly. The reason for this is that in many cases, implicit, and not formally documented or required dependencies, exist between process steps. For example, talking to key stakeholders informally and getting them involved early on in the process may not be required by the law that governs the procedure, but it can significantly reduce the effort required later on, boosting acceptance of the project and allowing the developer to take stakeholders' concerns into account early on in the planning stage, when changes can still be made with relatively little effort.

### II. Description of the Permitting Landscape

**Parallel handling of processes** has a positive impact on the duration of permitting procedures. This is particularly relevant in countries where the permitting procedure comprises a large number of processes. Many options exist with regard to allowing processes to occur in parallel. In the case of "full parallelisation", procedures are organised in such a way that all the processes which are not interdependent (i.e. where the start of one process does not depend on the output of the preceding process) can be carried out simultaneously. In the case of "zero parallelisation", each process can only start when the previous process is complete. Most cases lie somewhere between these two extremes, with some but not all processes occurring in parallel. The situation differs between Member States, as shown by the following examples:

**Example 8:** In Hungary, several processes for permitting transmission lines can occur in parallel – for example, the Agricultural Field Permit, the Environmental Permit, the Theoretical Permit and the Easement. This speeds up the permitting procedure; despite the large number of processes, the procedure usually takes about

three and a half years, only slightly longer than the average for the Member States we examined (see below subsection g)).

**Example 9:** In Poland, the permitting procedure comprises four processes: the EIA Decision process, the Planning Permission process, the Designation of Land process and the Construction Permit process. At least three of these four processes must be carried out successively (the Planning Permission process and the Designation of Land process can be handled in parallel). For the processes to be handled successively, current legislation requires that the preceding permit must be attached to the application for a permit at the following stage. The average duration of permitting procedures according to the local TSO PSE-Operator is four years for a high voltage line investment of approximately 100 km. This is about half a year longer than the permitting procedure in Hungary. The Hungarian permitting procedure also consists of a large number of processes, but most processes can be carried out in parallel. It is therefore very likely that the impossibility of carrying out processes in parallel in Poland contributes to the longer average duration of the permitting procedure in that country.

Looking at the **sequence of process steps**, the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC)<sup>10</sup> stipulates that the public is given the opportunity to be involved "at an early stage in the environmental decision making process". In fact, the **early and effective involvement of stakeholders in the procedure is key** in ensuring that:

- Stakeholders are properly informed and can address authorities and the project developer with their concerns
- The concerns of stakeholders are taken into account in the planning and permitting of the project

The permitting landscape differs widely from country to country with respect to the timing of stakeholder involvement. Indeed, this is the most significant difference in the sequence of process steps. Stakeholders can be involved at an early stage of the procedure, formally or informally. Early formal involvement can be ensured by having processes or process steps with stakeholder involvement take place early on in the procedure. Informal involvement can be implemented such that the developer proactively starts a dialogue with stakeholders. The timing and type of stakeholder involvement differs in different Member States, as shown by the following examples:

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<sup>10</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (Council Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC), OJ L 175, 5.7.1985, p. 40.

**Example 10:** In Germany and Hungary, the Spatial Planning process precedes the actual permitting procedure. Stakeholders are formally involved in this process. In Germany, the Spatial Planning process starts with an official Scoping, followed by the preparation of the application documents and a public consultation. Everybody is allowed to participate in this part of the Spatial Planning process. The possibility of involvement is usually announced via a small notice in regional newspapers. In Hungary, public consultation also forms part of the Spatial Planning process. However, actual participation by stakeholders in the initial stages in both countries is very low. The reason for this is that stakeholders are often not fully aware that they are potentially affected by the project subject to the spatial planning. Only later on, when environmental NGOs in some cases mobilise the general public, do stakeholders become more involved. Especially in Germany, insufficient stakeholder involvement in the initial stages of the permitting procedure results in a high volume of comments later on and subsequently a large number of appeals.

**Example 11:** In Austria, only selected stakeholders are involved in the first three processes of the permitting procedure. In the first process (Design Approval), no stakeholders are involved besides the responsible authority. In the second process (Preparatory Work Approval), local authorities and selected stakeholders have the right to be party to the procedure. In the third process (Permit Application), the competent authorities and sometimes Austria's "Environmental Advocate" are involved. The general public is involved in none of the first three processes. During the third process, the developer usually carries out a separate public information campaign. The lack of early involvement of parties who may be affected, including local residents and environmental NGOs, has a negative impact on later process steps. The Austrian TSO Verbund rates public opposition and difficulties accommodating stakeholder interests as the most important challenge to the permitting procedure. Stakeholders submit a large number of comments during later process steps, and often use public campaigns to express their concerns. This lack of early involvement is one reason why stakeholders resort to written comments and campaigns as a way of voicing their concerns.

**Example 12:** In England and Wales, stakeholders are involved at an early stage of the procedure by the developer. The developer is forced by law to carry out an extensive public consultation before submitting the application for the project. The developer must also submit a proposal for the structure and handling of the public consultation to the relevant authority, in this case the Infrastructure Planning Commission (IPC). The IPC may then amend or approve this proposal. While the project developer is in charge of carrying out this initial public consultation, the IPC monitors its proper implementation. After the application for the project has been submitted, the IPC holds a second public consultation involving all stakeholders.

**Example 13:** In the Netherlands, the developer enters into direct dialogue with parties potentially affected by the project, before the official start of the permitting procedure. The developer interacts directly with affected municipalities and even with

citizens, providing information about the planned project and discussing its potential impact. This early direct dialogue between developer and stakeholders is reported as being very successful. The TSO considers it a key success factor in the smooth running of the permitting procedure.

### III. Description of Challenges to Permitting Procedures

There are two key challenges with regard to the sequence of processes and process steps:

- Organising processes in parallel where possible
- Early and effective involvement of stakeholders in the procedure

Arranging non-interdependent processes in parallel is an effective lever for cutting the average duration of permitting procedures. It can be achieved by identifying which processes do not depend on each other and then allowing them to occur in parallel, or combining them into a single process.

The key challenge with regard to the sequence of processes (and process steps) is early stakeholder involvement. However, changing the sequence of processes in itself is not enough to ensure effective early involvement by stakeholders. Often stakeholders do not realise that they can get involved early on, or they are unaware of the impact of the project on them personally. As the examples above show, it would be advisable to involve stakeholders proactively early on rather than waiting for them to become interested later, by which time their suspicions may have been aroused. Particularly in countries where the relationship between developers, authorities and citizens is highly formalised, fostering informal stakeholder involvement and building trust is a challenging undertaking. Nevertheless this is an effective means of avoiding a large volume of written comments by stakeholders later on, dealing with which can represent a significant drain on resources.

## **c. Operational Responsibility for Processes and Process Steps**

### I. Definition of the Relevant Analytical Dimension

Clearly defined operational responsibilities are the key to effective implementation of processes. Three aspects are relevant here:

- Clearly defined responsibilities: Responsibility must be defined for every process or process step so it is clear who is responsible for the process and its results. It is usually much more effective to assign responsibility for the whole procedure to one entity than to assign responsibility for different processes and process steps to different entities.

- Responsibility for quality, time or process: Responsibility can take different forms, resulting in different outcomes. This shapes the priorities of the responsible entity. In the public sector, for example, responsibility often focuses on the handling of a process and achieving a specific technical quality or integrity – with respect to legal aspects, say. But responsibility can also entail meeting a certain goal within a given time period.
- Alignment of responsibility, capacity and incentives: The assignment of responsibility for a certain outcome of a process should be aligned with the capacity needed to ensure this outcome. Even more effective is to align responsibilities with personal or organisational incentives – in other words, to create rewards for exercising responsibilities within the time and quality targets.

Authorisation processes typically have complex requirements regarding documentation, the involvement of stakeholders and process integrity. Defining clear responsibilities for quality, time and process is the key to ensuring effectiveness.

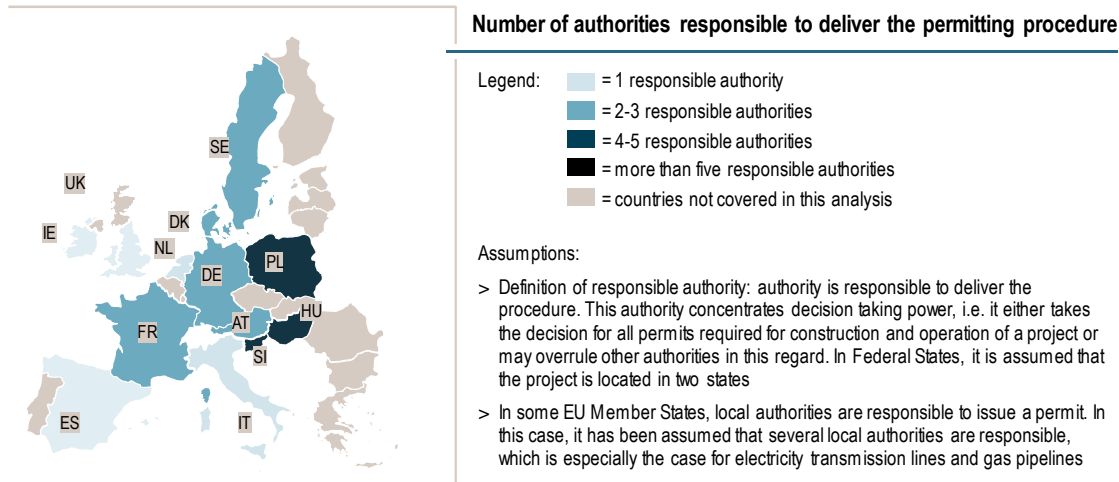
## II. Description of the Permitting Landscape

In many Member States, responsibility for the permitting procedure and its steps is not obvious or transparent. Moreover, in many cases no single authority holds overall responsibility for the permitting procedure. Denmark, England and Wales, Italy and the Netherlands are exceptions in this respect.

In addition to **clearly defining the responsible authority**, the scope of the responsibility should be aligned with the availability of resources for meeting it. This ensures that the responsible authority can provide all the tasks within its scope. Assigning responsibility without making sufficient resources available does not adequately support an effective permitting procedure.

At present, these preconditions are not met in many Member States. This is a key challenge, as shown by the examples below. In the Member States analysed in this study, the average number of authorities responsible for handling the permitting procedure is between two and three, but closer to two. However, the number of authorities responsible for a single process within the permitting procedure differs widely between Member States (see **Figure 10**). Some have a single authority responsible for driving the processes and achieving the desired outcomes, while others have a large number of different authorities responsible for different processes and no definition of overall responsibility for the permitting procedure:





**Figure 10:** Number of authorities responsible for the permitting procedure in selected Member States

**Example 14:** In England and Wales, the Infrastructure Planning Commission (IPC) is the single authority responsible for handling the process for the Development Consent Order resulting in the issuing of a permit to build and operate a specific energy infrastructure project. The IPC acts as a "one stop shop" for handling the Development Consent Order process. Responsibility for handling the process and for achieving the desired result is clearly assigned to this authority. As a consequence, the IPC can monitor the progress of the permitting procedure and intervene if need be. Responsibility for potential delays or lack of quality in the process or its outcome can be clearly assigned either to the applicant or to the authority in charge.

**Example 15:** In Poland, different authorities are responsible for the four processes in the permitting procedure: the Regional Environmental Director is responsible for the EIA Decision process for large energy infrastructure; different local authorities are responsible for the Planning Permission process and the Designation of Land process; and various county administrations are responsible for the Construction Permit processes. As a consequence, more than ten authorities may be responsible for a single process. No institution has overall responsibility for driving the procedure and controlling the quality of its output.

**Example 16:** In Spain, the General Direction for Energy Policy and Mining is responsible for the Administrative Procedure Permit and regional authorities are responsible for the Construction and Operation Permit processes. The division of labour between these authorities is not clear. A local TSO states that imprecise definitions and varying practice with regard to the allocation of responsibilities to different authorities can lead to different interpretations of the same subject matter. The absence of a single body with overall responsibility for the quality and progress of the permitting procedure increases the difficulty of identifying responsibility and avoiding inconsistency in the interpretation of relevant laws. This demonstrates that

where more than one responsible authority exists and responsibilities are not clearly assigned, the procedure itself can become highly complex.

**Responsibility for quality, time or process:** The responsibility of authorities in most Member States focuses on the quality of the result, i.e. the permit. Only in some permitting procedures are authorities also responsible for the duration of the process:

**Example 17:** In Germany, federal state (*Bundesland*) authorities are responsible for the permitting procedure. The focus of these authorities' responsibilities is on achieving a high quality permit which will not be vulnerable to attack through appeals. Appeals usually focus on the decision made by the authority, i.e. the permit itself. Maximum durations are defined for the different processes and process steps, but these are not enforceable. As a consequence, authorities typically focus their activities on a detailed elaboration of the permit and careful documentation of the grounds for their decision. Delays often occur during this process step, the Decision Phase.

**Example 18:** In Hungary, a maximum duration is defined for each process and process step. If this set period is exceeded due to the authority's failure to act, the authority has to repay the fees obtained for handling the process. As a consequence, authorities focus on issuing a high quality permit to prevent the risk of successful appeal. They also have an incentive to issue the permit within the set period.

**Alignment of responsibility, capacity and incentives:** Authorities need sufficient resources to meet their responsibilities. However, resource allocation is not always aligned with the scope of responsibility of an authority:

**Example 19:** In the Netherlands, a single authority is responsible for handling the permitting procedure. As a one stop shop, this authority is responsible for all areas: the coordination of the interface between the developer, competent authorities and stakeholders, the issuing of a high quality permit, and the completion of the procedure within the foreseen time limit. This one stop shop was established by the legislator in 2010 and its resources and expertise are still being developed. Its resources do not yet reflect the scope of its responsibilities, and this is likely to remain the case in the short and medium term. In practice, therefore, the developer is still responsible for coordinating the different authorities and stakeholders.

**Example 20:** In England and Wales, the Infrastructure Planning Commission (IPC) acts as a one stop shop with responsibilities similar to those of its Dutch counterpart. However, unlike in the Netherlands, it has sufficient resources and expertise in house and developers consider it an effective coordinating body.

**Example 21:** In Germany, federal state (*Bundesland*) authorities are responsible for handling the process on a federal state level. However, these authorities often lack

the resources to cover the full scope of their responsibility. Highly specialised expertise is often unavailable in house and they are forced to use other authorities' support or draw on external expertise. This discrepancy between responsibility and resources leads to delays, particularly during process steps involving a large amount of work (e.g. public consultation) or requiring specialised expertise (e.g. the elaboration of a permit).

### III. Description of Challenges to Permitting Procedures

The key challenge is to ensure that responsibility for the permitting procedure is clearly assigned and transparent for each process and process step in the procedure. Ideally, overall responsibility should be assigned to a single authority on the highest possible federal level. If this is not the case, the responsibilities of each authority involved should be precisely defined.

If the goal is to set a maximum time for the entire procedure or individual processes, this should be stated clearly in the definition of the responsibility of the authority and prioritised accordingly. If this is not the case, authorities should focus on higher priority areas of responsibility, such as producing high quality application documents.

Clearly assigning responsibilities and broadly defining the responsibility of authorities only leads to an effective permitting procedure if the responsible authorities have sufficient resources and the requisite expertise. The key challenge is therefore to address all three aspects of operational responsibility within the permitting procedure: clearly defined responsibilities; responsibility for quality, time or process; and proper alignment of responsibility, capacity and incentives.

#### **d. Involving and Informing Stakeholders**

##### I. Definition of the Relevant Analytical Dimension

Involving stakeholders in the permitting processes is vital; indeed, it is mandatory within the regulatory framework of the EU. It can either trigger opposition from interested parties and local residents concerned about the potential impact of the project, or it can help settle conflicts. It can also result in improvements to the technical design of the project or in action to mitigate any possible negative effects.

Stakeholders must be involved in the permission process for a number of reasons:

- Informing the public and dealing with their concerns is necessary for the project to gain acceptance and for the permitting procedure to be in line with democratic principles

- Input from competent interest groups often results in a project that is balanced with respect to environmental concerns and the protection of local residents' interests
- Input from experts can strengthen projects both technically and in terms of their environmental impact as it forces developers to scrutinise the technical design, consider environmental issues and mitigate any adverse effects themselves

From a process analysis view, crucial aspects of stakeholder involvement are:

- The selection of stakeholders to be involved ("who?")
- The timing of stakeholders' involvement ("when?")
- The manner of stakeholders' involvement ("how?")

Who to involve is a key question. Key stakeholder groups include experts in specific technical areas, special interest groups (often registered as NGOs in a certain area of competence) and the general public, especially local residents. Stakeholders can be involved at different stages in the process, either before the core permitting process (e.g. during scoping, spatial planning of the definition of priority projects) or during the permitting process itself. Stakeholders' involvement takes a number of different forms:

- Formal involvement (written comments to be answered in a formalised process) vs. informal involvement
- One-sided communication vs. interactive involvement
- Target group-oriented involvement, with information aimed at the needs of stakeholders, vs. communication of often complicated technical information

Answering the "who", "when" and "how" can help achieve effective stakeholder involvement and ensure a fast permitting process.

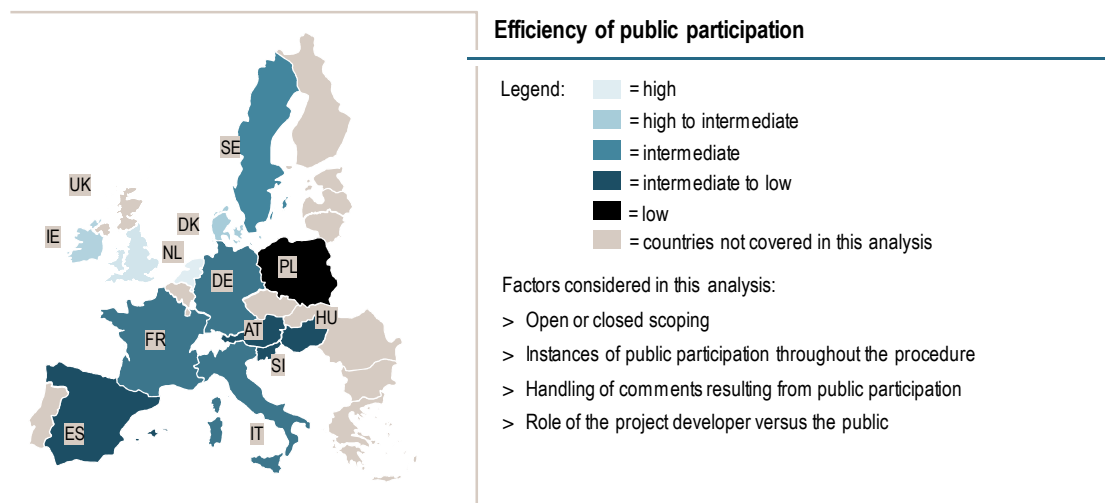
## II. Description of the Permitting Landscape

As stipulated in the "EIA Directive" (Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC),<sup>11</sup> the public must be involved in the permitting procedure for projects requiring an EIA in all Member States. In practice, differences exist in how stakeholders are involved. Our evaluation of the efficiency of

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<sup>11</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (Council Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC), OJ L 175, 5.7.1985, p. 40.

stakeholder involvement in various Member States is shown in the following figure (see **Figure 11**).



**Figure 11:** Efficiency of public participation in selected Member States

The EC report on the application and effectiveness of the EIA Directive shows that there is no standard practice with regard to the involvement of the public in permitting procedures in the EU Member States.<sup>12</sup> It states that:

- There is no common reference point for the beginning of public consultation. In several Member States, the public is already consulted at an early stage (the screening or scoping stages). However, in most cases the public is consulted for the first time on the information gathered pursuant to Article 5, which corresponds to the minimum requirement laid down by the Directive
- The timeframe of the public consultation varies considerably. For the scoping and consultation on the EIA documentation, timeframes in Member States range from 10 to 60 days
- The detailed arrangements for informing and consulting the public, which are determined by the Member States, vary considerably

Below, we analyse the main differences in the involvement of stakeholders in Member States and the impact of these differences on the effectiveness of the permitting procedure. In some Member States, for example, all stakeholders are consulted in a common consultation, while in others, different stakeholder groups are consulted in separate consultations. Current practice in Member States varies widely:

<sup>12</sup> See: Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the EIA Directive" (COM(2009)378), pp. 6-7.

**Example 22:** In Germany, all stakeholders are consulted in joint process steps. In the Scoping and Public Consultation for both the Spatial Planning and the Plan Approval process, stakeholders are invited to participate in a joint Scoping Conference, submit comments and come together for the public hearing. This increases stakeholders' awareness about the concerns of other stakeholders and results in improved coordination between stakeholders. A concern voiced initially by one stakeholder may be adopted by other stakeholders, for example. This could have the advantage that issues which are considered important by more stakeholders are voiced by more people.

**Example 23:** In Italy, scoping is not a mandatory step in the permitting procedure. Where it does take place, it is not open to the public. However, the general public is involved in the subsequent public consultation. The competent authorities are consulted within the framework of a committee of authorities, i.e. separately from the general public.

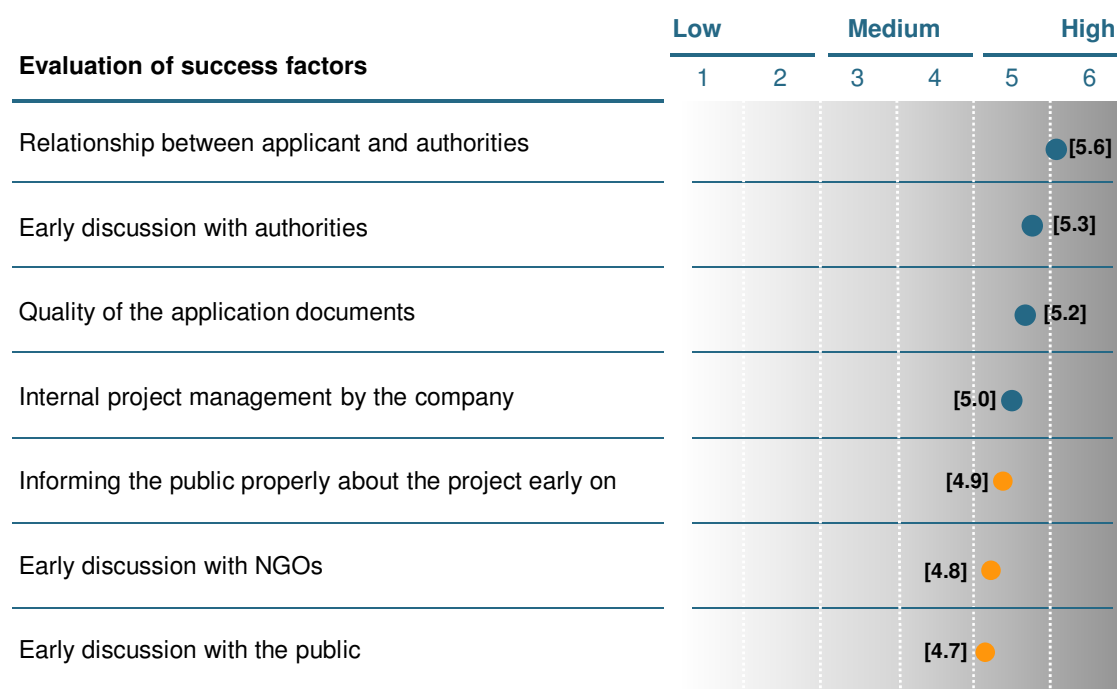
The timing of the involvement of different stakeholder groups also differs between Member States. In some countries, all stakeholders are involved simultaneously in the first process in the procedure; in others, a selected group of stakeholders is involved early on in the procedure:

**Example 24:** In England and Wales, a public consultation involving all stakeholders takes place before the submission of the application documents to the IPC. The developer is thus able to hear stakeholders' concerns at a very early stage in the procedure.

**Example 25:** In Austria, different groups of stakeholders are involved at different stages of the procedure. No stakeholders are involved in the first process. In the second process, only selected stakeholders (e.g. local authorities) are involved. The third process – the Authorisation Permit process – starts with a Scoping exercise, in which only selected stakeholders are involved (competent authorities, the Environmental Advocate). The general public is only involved in the public consultation which forms part of the Authorisation Permit process. A connection may exist between the fact that the general public is involved so late on in the process and the high levels of public opposition to some energy infrastructure projects in Austria.

How stakeholders are involved in the permitting process also differs greatly between Member States. Stakeholders are informed about the possibility of involvement in a number of different ways. In some countries, they are only addressed as part of the formal procedure. In others, developers make a great effort to inform stakeholders about projects or even establish additional dialogue with them outside the formal procedure. In some cases, stakeholders receive target group-specific information; in others, a small general announcement appears in a newspaper. Project developers often see relatively little need to enter into an early dialogue with the public and inform them about the planned project early on. Our interviews with project

developers from different Member States show that they consider early discussions with NGOs and the general public and informing stakeholders early on less important for a successful permitting procedure than other factors (see **Figure 12**).



**Figure 12:** Results of interviews with project developers – Question: What are the most important success factors for a smooth procedure? Average rating by project developers from 13 Member States.

The formal requirements of stakeholder involvement in the framework of the permitting procedure also differs strongly between the Member States. These formal requirements have a major impact on the effectiveness of stakeholder involvement and the degree to which stakeholders participate in a constructive dialogue with the developer and responsible authority:

**Example 26:** In Germany, stakeholders are generally only informed about projects within the formal requirements of the procedure. Stakeholders are informed about a planned project and the possibility of participating in it in the first process (Spatial Planning) by means of a short announcement in a newspaper. This announcement often goes unnoticed by most of the people potentially affected by the project. The participation of stakeholders in this process is therefore very low. Participation by stakeholders only becomes more important at a later stage in the procedure, when environmental concerns are dealt with in a more high profile fashion and NGOs mobilise other stakeholders. In this way, developers miss their chance to proactively address stakeholders and make a good first impression. Instead they are forced to

react to stakeholders who have been mobilised by NGOs and are usually by this point highly critical.

**Example 27:** In the Netherlands, the developer actively enters into dialogue with stakeholders not just within the formal structure of the procedure but also beyond the legal requirements. Stakeholders are informed with target group-specific information about the project and its potential impact. The developer conducts a dialogue with representatives of stakeholders, such as municipalities and special interest groups. Early participation of stakeholders is ensured by the developer's activities outside the formal framework of the procedure.

Landowners are an important group of stakeholders within the permitting procedure. They may be heard in the framework of the consultation phase for the permitting procedure. Negotiations with landowners on the terms of land use are not part of the permitting procedure, but rather the land-securing phase, which in most cases takes place during and after the permitting procedure. As discussions with landowners are an important aspect of the realisation of projects and may also lead to delays, we include them in the discussion in this section. In the land-securing phase, the developer needs to obtain the land or the right to use the land in order to start construction. In most cases, obtaining right of way involves individual negotiations with landowners with regard to ceding the land and/or to compensation. Where no agreement is achieved, the parties can go to court. This means that the developer has to carry out many individual negotiations. Provisions with regards to right of way differ greatly between the Member States:

**Example 28:** In Spain, a fast-track procedure for expropriation exists. The precondition for expropriation is that the project has been declared to be of public interest. The application for a declaration of public interest may be made at the same time as for the administrative permit or the construction permit, or later on. The central government and its regional dependencies are the responsible bodies. If a project is declared to be of public interest, expropriation can take place and the land used. Affected parties have to be informed within one month.

**Example 29:** In Germany, the right to use the property required for the approved project is not covered by the permit. Therefore the developer can start its efforts to obtain land while the permitting procedure is on-going. The developer has to conclude contracts under private law with the affected landowners. In practice, this means that the developer sends numerous specialised negotiators (e.g. engineering offices) to negotiate with landowners. In the case of one onshore gas pipeline project that crossed two federal states, it was reported that the developer had over 20 negotiators working on its behalf for this purpose.

**Example 30:** In Ireland, construction cannot start immediately after obtaining all the required permits: a commencement notification is first needed. The project developer approaches landowners with the aim of concluding an agreement under private law



regarding land use for the project. If landowners refuse to cede or allow the use of their land, the project developer may apply to governmental authorities to intervene in the form of a compulsory acquisition process.

**Example 31:** In Austria, to obtain right of way, the project developer needs to negotiate with every landowner individually. Besides these individual negotiations, the project developer involves the Chamber of Agriculture in agreeing a scale of compensation for landowners for different types of land. The landowners affected are usually farmers, who are represented by Chamber of Agriculture. Although the agreement between the project developer and the Chamber of Agriculture is not binding in character, this practice helps facilitate negotiations between the different parties.

### III. Description of Challenges to Permitting Procedures

While different groups of stakeholders may be involved separately in the procedure, it is essential to ensure that all the relevant stakeholders are addressed at an early stage in the procedure. This is especially true of stakeholders who will become suspicious if not informed early on and who have some way of blocking the project at a later stage.

Looking at the evidence from around Europe, it is clearly not enough to have a legal requirement for stakeholder involvement within the procedure. It must be ensured that stakeholders are actually informed and involved in a target group-specific manner at an early stage in the procedure. Stakeholders must not only have the theoretical possibility of voicing their concerns, but actually be made aware of the project, realise that there is a potential impact on them and recognise that the developer is open to discussion about the project and its potential impact. Early dialogue can be established directly between developer and stakeholders, under the supervision or guidance of the responsible authority if necessary.

Right of way and expropriation is a key challenge to the permitting procedure. Negotiations with landowners about compensation levels are usually very time and resource consuming for the developer, especially given the lack of simple guidelines about compensation levels. Moreover, stakeholder opposition may be increased by the fact that compensation mechanisms target only directly affected landowners and no other affected parties.

#### **e. Input, Output, Documents and Instruments**

##### I. Definition of the Relevant Analytical Dimension

Analysing the inputs and outputs of processes and process steps, their degree of standardisation and the clarity with which they are defined serves two purposes: it

reveals how suitable an input is (i.e. whether it leads to the desired output) and it shows how effectively a process can be steered. The relevant questions here are:

- What level of investment is required to produce the input and output of the process? Is the level of investment proportionate from the perspective of the different stakeholders?
- Are the input and output documents suited to the purpose of the process or process step?
- How complex are the input and output documents? Are documents appropriate for the different target groups?
- Are the inputs and outputs clearly defined, so that the process steps produce the desired result?
- Are the definitions of the inputs and outputs fixed or do they change frequently, leading to a need for frequent adaptation?

Instruments supporting the permitting process include software, guidelines for applicants, detailed checklists and documented standard procedures. These tools help authorities and developers contribute to the process as efficiently as possible. In the permitting procedure, the instruments are typically material which clarifies what is expected of the input and output documents, describes standard procedures or reflects a joint understanding of complex questions by different stakeholders (e.g. the acceptance of certain impacts of the project within specified limits).

Suitable instruments also include tools for keeping an overview of the progress of processes and process steps in the permitting procedure. This typically means monitoring and reporting instruments, and clearly defined measures for intervention in case of a risk of delay.

## II. Description of the Permitting Landscape

A crucial first input into the permitting procedure can be the fact that a project is already identified as a project of public interest. Such prioritisation can take place on a national level (e.g. in Germany in a specific law geared towards the speeding up of project implementation for selected transmission lines) or an EU level (e.g. in the context of the TEN-E framework). A process for giving projects this status exists in many but not all Member States. Typically this status does not have a major impact in terms of the speed of the permitting process; rather it reduces the amount of justification which needs to be provided in the project documentation. Yet it can have an important signalling effect. It can also help in involving the public and improving involvement and resource allocation by authorities.

The other main input into the permitting procedure is the application documents provided by the project developer. The output is the decision by the responsible authority, as expressed by the permit. For processes including a public consultation, the suitability of the application documents may be measured in terms of their use during the public consultation process. The permit itself is also partially drawn up based on the application documents, so the quality of these documents impacts the quality of the permit.

About 80% of application documents are typically environmental documentation and analyses. The EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC),<sup>13</sup> the Habitats Directive (Directive 92/43/EEC, as amended by Directives 97/62/EC and 2006/105/EC and Regulation (EC) No 1882/2003) establishing the Natura 2000 network,<sup>14</sup> and other environmental legislation require the impact of projects on the environment, especially protected areas and species, to be evaluated. In most countries, project developers are responsible for preparing the environmental documentation and submitting it as part of the application document. The responsible authority then verifies the documentation and bases its decision about the project and whether changes, mitigation or compensation measures are required on this evaluation. However, there are exceptions:

**Example 32:** In the Netherlands, the responsible authority for handling the permitting procedure (the Ministry of Economic Affairs, Agriculture and Innovation – Ministerie van Economische Zaken, Landbouw en Innovatie, ELI) is responsible for preparing the Environmental Impact Assessment (EIA). For some energy infrastructure types, the ELI prepares the EIA. In the case of high voltage transmission lines, however, an agreement exists with the project developer TenneT. The latter usually handles the preparation of the EIA, which is then verified by experts from the ELI and taken into account in the decision about the permit.

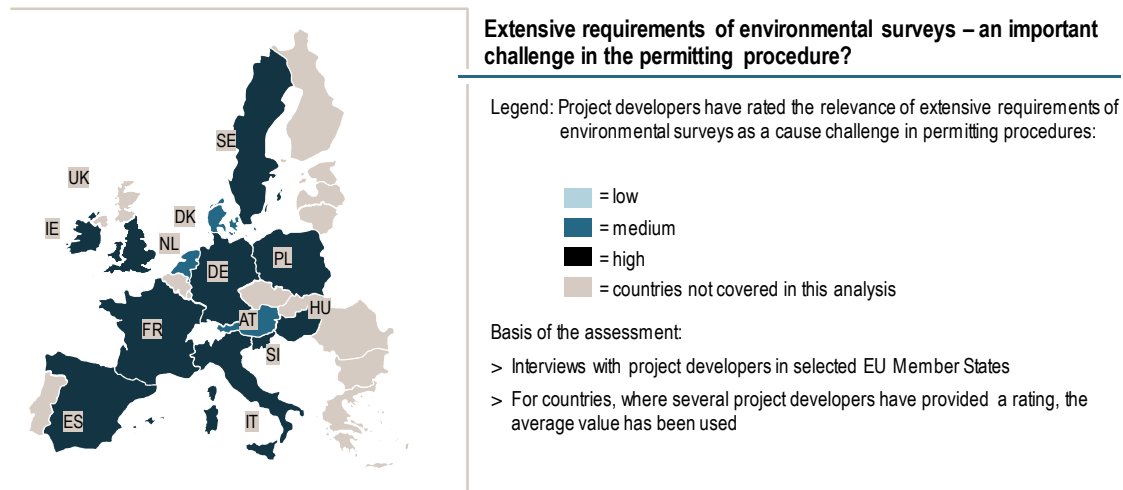
The preparation of environmental documentation usually takes two years or longer. This is due to the fact that surveys of protected areas and species can often only be carried out in certain seasons (e.g. because some species are not present in a certain area in all seasons or can only be observed in specific seasons), thus to obtain a representative set of data, observations need to be carried out over two years. Significant discrepancies or poor quality data often also mean that surveys must be extended into a third year.

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<sup>13</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (Council Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC), OJ L 175, 5.7.1985, p. 40.

<sup>14</sup> Council Directive of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Council Directive 92/43/EEC, as amended by Directives 97/62/EC and 2006/105/EC as well as by Regulation (EC) No 1882/2003), OJ L 206, 22.7.1992, p. 7.

The large number of environmental surveys and analyses required and the long preparation phase means that project developers in almost all the countries in our survey perceive the requirements of environmental surveys and documentation as a key challenge to permitting procedures (see **Figure 13**).



**Figure 13:** Results of interviews with project developers – Question: How relevant are the extensive requirements of environmental surveys as a challenge to the permitting procedure?

Project developers in some countries observe that the requirements for environmental documentation have been increasing over time. This is partly because the responsible authorities feel they need to create more security with regard to their decisions. In many cases, authorities request extensive information so that they can meet any requests by stakeholders during the permitting procedure. Authorities often prefer this to refusing additional information to stakeholders. Moreover, transnational projects typically lead to increasing requirements with regard to environmental surveys in Member States. In international consultations (e.g. consultations over transboundary impacts, as required by the Espoo convention), the application documents provided for procedures in different Member States are made available to authorities and stakeholders from other Member States. This typically leads to an adjustment of the standards to the highest (most detailed, most extensive) level.

The suitability of the application documents for the permitting procedure is closely related to their complexity. The EIA Directive requires the inclusion of a non-technical summary of the EIA so that the assessment can be understood by non-experts. This document is of necessity fairly straightforward. Despite this, the complexity of application documents varies widely between Member States:

**Example 33:** In Denmark, application documents for large energy infrastructure projects are typically 300-1,000 pages long. Their complexity is comparatively low as they primarily aim to inform stakeholders, including non-experts. The TSO considers the Non-Technical Summary to be the most important part of the application

documents. Nevertheless, public opposition to projects is considered one of the main reasons for the delay or failure of energy infrastructure projects. It is thus possible that the complexity of the application documents is too low and their scope too limited to convince stakeholders.

**Example 34:** In Germany, application documents are a minimum of 3,000 pages long and can sometimes be as long as 8,000 pages. The project developer typically focuses its efforts on the detailed technical annexes rather than on providing a Non-Technical Summary which is truly non-technical and easily understood by non-experts. This results in large number of comments being submitted during the public consultation phase, often from people who are confused by the technical details or who use the public consultation to clarify technical points. It would appear, therefore, that the application documents often raise more questions than they answer, partially because of their great complexity and unmanageable length.

One of the key instruments used in permitting procedures is the outline for the application documents, the result of the scoping procedure. Based on this outline, the project developer prepares the application documents. In many countries, however, the scoping is not mandatory and so does not always take place at the beginning of the process. Apart from the scoping, in most countries no additional instruments are available, such as guidelines for the general structure and level of detail of application documents or guidelines for the permitting procedure.

**Example 35:** In Germany, the scoping process is mandatory and involves all stakeholders. This usually results in a clear outline of the required contents of the application documents and serves as a reliable guideline for the developer. Requests by the authority for additional information going significantly beyond the extent of the outline produced during the scoping are rare.

**Example 36:** In Sweden and in Italy, the scoping often takes places, but is not mandatory. Thus developers do not always benefit from having the clear outline of the application documents produced by the scoping.

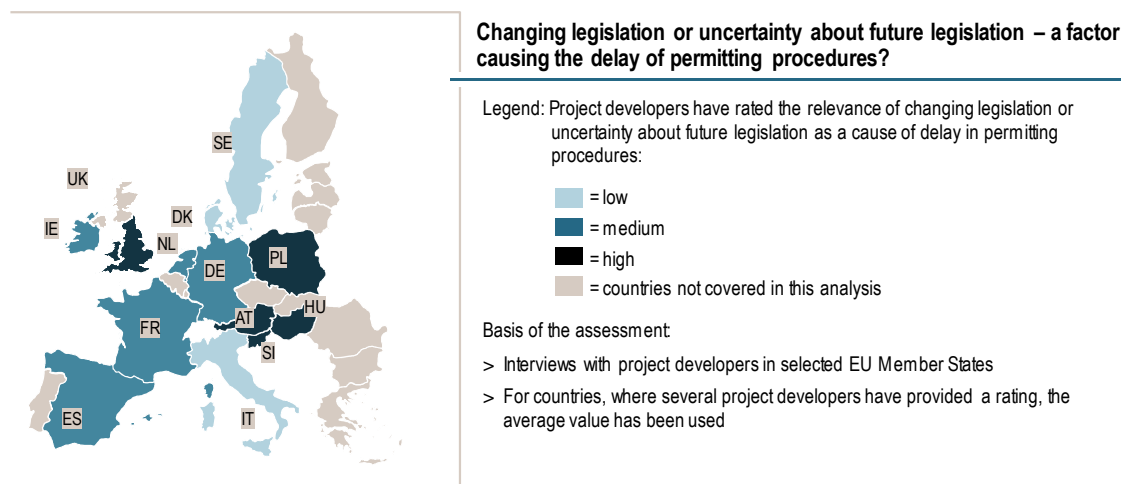
**Example 37:** In Germany, the authority responsible for granting permits for certain offshore installations – the Federal Maritime and Hydrographic Agency (Bundesamt für Seeschifffahrt und Hydrographie) – provides an overview of the typical application process on its website. It also provides more detailed guidelines for project developers on the handling of the permitting procedure. These guidelines are considered useful by developers, but not essential for ensuring a successful permitting procedure. In fact, direct dialogue with the authorities about the contents of the application and the handling of the procedure are considered much more important.

From the perspective of both project developers and authorities, frequently changing requirements with regard to the input and output of permitting procedures is considered a key challenge in some Member States:

**Example 38:** One project developer in Eastern Europe stated that the company needed to employ one member of staff just to stay informed about any changes in the underlying legislation. The same project developer also mentioned that authorities face a similar challenge, as the need to keep up with changes in legislation ties up their resources too.

**Example 39:** In Germany, one project developer mentioned that changes in legislation often result in delays during the preparation of application documents. Changes in legislation that occur during the preparation phase have to be reflected in the application documents. Where changes occur just before the finalisation of the application documents, the impact on the duration of the process are major. For example, if an additional species is added to the Red List during the preparation phase, new surveys have to be carried out, possibly over two seasons.

We asked project developers in different Member States to rate the importance of "changing legislation or uncertainty about future legislation" as a cause of delay in the permitting procedure. The results are presented below (see **Figure 14**).



**Figure 14:** Changing legislation or uncertainty about future legislation as a factor in delay in selected Member States

Besides the application documents, the project developer needs additional, target group-specific documents in order to inform potentially affected stakeholders about the planned project. This is key to ensuring that stakeholders understand the project plans and ensuring an informed, fact-based discussion with those potentially affected. There are no legal provisions for information documents. Practices by different project developers vary widely:

**Example 40:** A regional TSO in Germany carries out broad information campaigns even before the start of the official permitting procedure. The company uses press releases, leaflets and information desks in potentially affected municipalities. Information material is adapted to the target groups, e.g. the residents of potentially affected municipalities. While TSOs reported that public opposition is one of the main reasons for delays of projects, the positive impact of these extensive information campaigns was also emphasised.

**Example 41:** Several TSOs limit their efforts to inform the public to the requirements under the permitting procedure, i.e. application documents made accessible during the public consultation.

Another key instrument for steering processes and process steps is a monitoring and reporting system. This system should provide an overview of the status of the permitting procedure. It should be available for both the developer and the authority responsible for handling the process or procedure. If the system flags up a risk of delay, the developer and authority can intervene. In some Member States, monitoring and reporting instruments are in place; however, in many countries, it appears that no such instrument exists:

**Example 42:** In the Netherlands, the one stop shop at the Ministry of Economic Affairs, Agriculture and Innovation (ELI) agrees on a timeline for the permitting procedure of a specific project together with the project developer. Based on this timeline, the Bureau of Energy Projects, which supports the ELI in the handling of permitting procedures, keeps track of the progress of permitting procedures. For this purpose the Bureau of Energy Projects uses an MS Project tool, regularly providing the ELI with an overview of the status of permitting procedures and any potential delays.

**Example 43:** In England and Wales, the one stop shop (the Infrastructure Planning Commission, IPC) responsible for handling the permitting procedure works with an internal reporting and monitoring system. This system indicates whether permitting procedures are progressing as planned. The IPC uses this tool for internal purposes.

### III. Description of Challenges to Permitting Procedures

Identifying projects of public interest may help to ease permitting procedures by strengthening the justification for the project. Another key challenge is to align the list of prioritised projects on an EU and Member State level.

The EIA Directive provides a useful structure for application documents: they should consist of full overall documentation plus a non-technical summary which can be understood by non-experts. However, this structure is rather general and consequently application documents vary greatly in their level of complexity and scope. Moreover, project developers often state that drawing up the environmental

documentation for the application documents is a major challenge. The scope of the environmental documentation and its level of detail appear to be growing over time. In addition, developers lack detailed guidelines on how application documents should be structured, what scope and level of detail is required and what target groups the documents need to be aimed at. This can be expressed as three key challenges:

- The extent and level of detail required in environmental documentation represents an important challenge for project developers, in addition to increasing the level of complexity of the documentation. Highly complex documentation is less accessible for stakeholders, so increasing the requirements does not generally improve the quality of surveys and application documents. The challenge is to ensure that the right data is provided with the right level of detail – no more and no less.
- The quality of application documents is often an issue.<sup>15</sup> This is the case irrespective of the number of pages and level of complexity. Documents often need to be improved or corrected, which slows down the permitting procedure. High quality application documents are those which provide a simple overview for lay people, contain complete but general explanations and include illustrations to make the relevant issues clear.
- However, high quality application documents alone are insufficient to ensure that stakeholders feel properly informed: target group-specific information must also be provided. This sort of information cannot be contained in the application documents, which must be the same for all stakeholders.

The availability of guidelines is a second-priority challenge, relying on a proper dialogue between authorities and developers.

Another key challenge from the perspective of project developers is the changing legal framework governing the structure and the contents of the application documents and permitting procedure. Delays often occur because new laws or amendments to laws need to be considered at an advanced stage in the proceedings. Establishing a fixed list of requirements for the application documents and the procedure is thus a key challenge.

Another key success factor for ensuring a smooth permitting procedure is having high quality, target group-specific information materials. These materials should be used by the project developer in an information campaign early on in the process. As there is no legal framework obliging developers to provide such information materials, the challenge here is to create an incentive for them to do so.

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<sup>15</sup> See also: Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the EIA Directive" (COM(2009)378), p. 6.



## **f. Resources**

### **I. Definition of the Relevant Analytical Dimension**

Looking at the resources available for handling a process helps us to understand how well the process functions in practice. The two most important aspects here are:

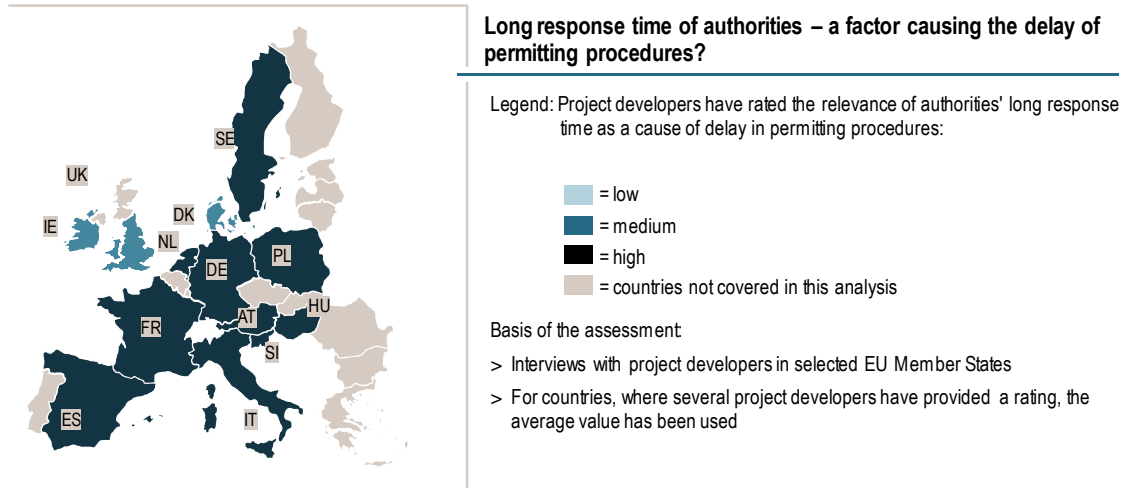
- The availability of sufficient resources, including suitably qualified staff
- The allocation of resources, i.e. the flexibility to react to changes in requirements

Process steps that lack the necessary resources are prone to delay and may be of low or varied quality. Since authorisation processes require a very specific set of qualifications on the part of both the developer and the authorities, the availability of suitably qualified staff is potentially a major issue.

Resource allocation is an issue for both the responsible authority and the developer. For the responsible authority, resource allocation is an issue if the handling of a permitting procedure is just one of its many tasks, and one that it carries out only infrequently. Flexible mechanisms for allocating specialists are therefore a very important aspect of resource allocation. For developers, the successful handling of the permitting procedure within the company depends on sufficient resources being assigned to the task. Moreover, the early involvement of specialists in the permitting process is key for identifying potential key stakeholder concerns and avoiding pitfalls in the permitting procedure by adapting the planning at an early stage.

### **II. Description of the Permitting Landscape**

The responsible authorities lack resources in almost all of the countries analysed. Permitting procedures are often not concluded on time because the responsible authorities lack both the required number of personnel and the relevant in-house expertise – both technical expertise (technical, environmental and legal know-how, etc.) and process-handling expertise (experience with permitting processes, working with stakeholders, communications, etc.). The authorities' lack of resources causes delays in the procedure – due to the resulting long response times, for example. Thus in the interviews, most project developers from different Member States rated long response times by authorities as an important cause of delay (see **Figure 15**). This is a clear indication for the lack of resources available at the responsible authorities.



**Figure 15:** Long response time by authorities as a factor of delay in selected Member States

This issue takes different forms in different Member States:

**Example 44:** In Germany, it is reported that the responsible authorities often lack sufficient resources and the required expertise for handling processes properly. This results in delays to process steps requiring extensive resources (e.g. public consultation) and specialised expertise (e.g. public consultation, decision-taking and drawing up the permit).

**Example 45:** In Austria, the responsible authorities also encounter difficulties with regard to resources. When this happens, they can turn formally to independent external experts for support in evaluating application documents. This allows them to use additional resources on a flexible basis for labour-intensive process steps requiring highly specialised know-how. Financial bottlenecks do not arise, since the project developer has to pay the experts' fees on behalf of the authority. This solution helps improve the authorities' access to technical expertise. However, this is apparently only a partial remedy for the problem: it is reported that insufficient expertise, especially on the part of people in decision-making positions at authorities, is still a key issue in Austria. Moreover, there are still bottlenecks with regard to process-handling expertise.

**Example 46:** In Italy, the Ministry for the Environment is supported by the EIA-SEA Technical Commission. This is an advisory body which serves as the technical advisor for the Ministry on environmental aspects of the permitting procedure. The Commission is asked its opinion in the framework of the Environmental Permit and the IPPC (Integrated Pollution Prevention and Control) verification for large projects. The EIA-SEA Technical commission consists of more than 50 independent experts (i.e. not civil servants) who come together on a regular basis for meetings and to issue their opinion. Members are appointed by the Ministry based on their expertise

in the area of environmental assessments. This Commission is a solution that helps to improve the Ministry's access to expertise. However, there is no flexible access to resources supporting the procedure. Moreover, there is much debate about the members of the EIA-SEA Technical Commission in Italy: some of the members do not appear to fulfil the basic requirements with regard to expertise in environmental matters and there is a suspicion that some appointments have been political.

**Example 47:** In England and Wales, the IPC is a one stop shop responsible for the Development Consent Order process. It is the national authority for handling the permitting processes for large energy infrastructure projects. Resources are less of a concern for the IPC: as a specialised authority, it has the required technical and specialised expertise in-house. It has sufficient funding and can draw on the resources of other authorities lower down the hierarchy if necessary.

Resource allocation also concerns project developers. While some developers in the EU are aware of the resource requirements of a permitting procedure, others attempt to handle the procedure with insufficient resources:

**Example 48:** The permitting department of one Southern European TSO for a long time played a subordinate role in the planning of projects. Until recently, the department consisted of ten employees. Over the past two years, however, it increased the number of employees significantly after the company realised that its past resource allocation had been insufficient.

**Example 49:** In the Netherlands and Hungary, TSOs report that they have very well resourced permitting departments. These departments are involved before the official start of the permitting procedure and ensure that potentially affected stakeholders are fully informed. In-house experts are available for all key aspects of the permitting procedure: for example, the Hungarian TSO has its own ornithological expert. The permitting departments also draw on external experts as required, and they have sufficient in-house expertise to ensure that these experts are properly guided. The TSOs thus feel well equipped to handle broad involvement of the public in addition to the formal procedures.

Many authorities are concerned about the inflexibility of their resources. Flexible resources are vital, especially in the case of authorities who only occasionally deal with permitting processes:

**Example 50:** In Germany, the responsible authorities are the technical authorities at a regional level. These bodies do not specialise in handling permitting processes, and specialised resources are not equally available at the different authorities. Moreover, there is no system for moving resources between authorities flexibly in the case of large projects.

**Example 51:** In Austria, the problem of authorities' access to resources is solved by allowing authorities to draw on independent external experts. If this can be justified within the framework of the permitting procedure, the project developer is asked to pay for the external experts. However, access to external experts is not used sufficiently. Instead, it focuses on technical experts rather than on resources supporting the handling of the procedure. Project developers still report bottlenecks with regard to process-handling expertise within authorities and with regard to technical expertise, especially in the case of individuals in decision-making positions.

In addition to these challenges, developers often have to deal with the inadequate or late involvement of experts in the project planning. In many cases, the project is planned by technical experts. Using experts in the permitting process with additional environmental expertise could help ensure that environmental and social issues are included in the early stages of the project planning. This might well avoid the need to adapt the project later on in the light of stakeholders' concerns about environmental issues. In most cases, permitting experts are not involved in the early planning stages of the project as these stages are considered technical in nature.

### III. Description of Challenges to Permitting Procedures

The key challenge with regard to resources is to ensure that authorities have access to sufficient resources and expertise during resource-intensive process steps – typically the public consultation phase and the decision-taking process by the authorities. Resources can be made available to the responsible authorities on a flexible basis by providing access to independent external experts.

For project developers too, resource allocation is one of the key challenges in ensuring an effective permitting procedure. Target group-specific information for stakeholders, high quality application documents and a well-prepared public consultation are key issues. However, this challenge is more difficult to address than the question of authorities' access to resources.

## **g. Duration**

### I. Definition of the Relevant Analytical Dimension

The duration of the permitting procedure is the most crucial aspect under consideration in this study. The length of time taken to receive authorisation holds back many infrastructure investments. In addition, delays and variation in how long processes take can cause additional costs for the developer. For example, they may mean that operational process steps cannot begin on time, financing arrangements have to be put on hold or cancelled, and resources or equipment are under-utilised.

To some extent, all the factors discussed in earlier section of this study affect the duration of the permitting procedure. Here, however, we focus on aspects which explicitly impact the duration of a process. The key drivers are:

- The existence of legally defined maximum durations for processes and process steps
- The existence of mechanisms for enforcing these maximum durations
- Political reasons, e.g. low priority for energy infrastructure projects

## II. Description of the Permitting Landscape

The duration of the permitting procedure differs widely between Member States. Moreover, in many of the countries analysed, the actual duration usually exceeds the officially defined duration by several years. It is important to note that the actual duration of a permitting procedure within Member States necessarily differs from project to project as well. Permitting procedures take longer for projects which affect a large number of stakeholders (e.g. large transmission lines or pipelines) and cross or run close to a large number of protected areas.

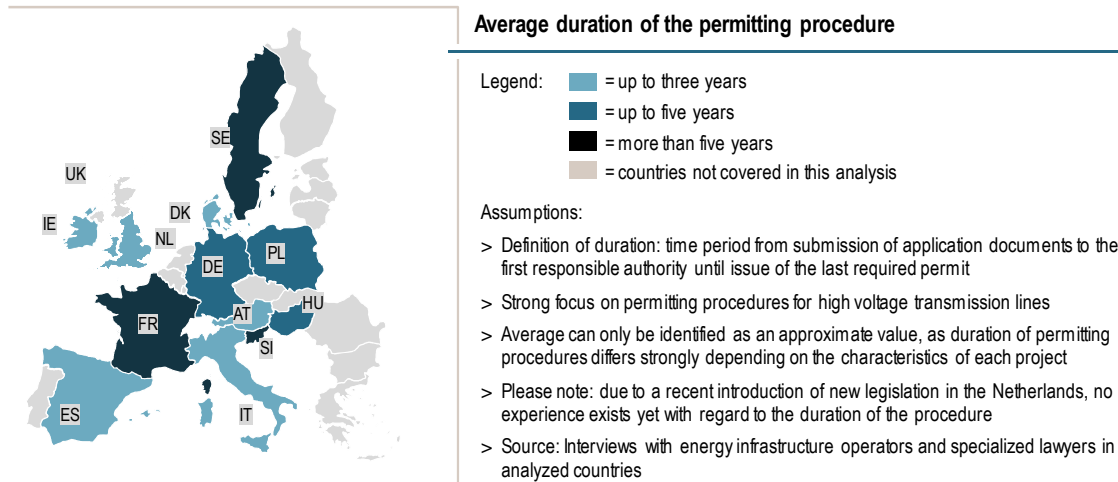
The current average duration of permitting procedures in the Member States analysed in this study, from submission of the application documents to issuing of the permit, is roughly four years.<sup>16</sup> A minimum of two years – and in many cases more – should be added for the phase preceding the submission of the application documents, i.e. the preparation phase. However, durations differ widely between Member States so our average duration figure does not actually tell us very much. Looking at each Member State in turn is more useful.

A rough overview of the approximate duration of the permitting procedure in different countries is given below (see **Figure 16**). For the purpose of this comparison, duration has been defined as the period from the submission of the first application documents to the issuing of the final permit required. The EIA usually forms an integral part of the permitting procedure. According to a recent study for DG Environment,<sup>17</sup> the average duration of the EIA procedure itself is 10 to 11 months.

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<sup>16</sup> This value was calculated by taking the average of the duration of the permitting procedure in the Member States analysed. Information on duration was obtained from project developers. However, project developers themselves pointed out that the duration of permitting procedures vary strongly and any indications of duration are thus of limited validity.

<sup>17</sup> GHK, Collection of information and data to support the Impact Assessment study of the review of the EIA Directive – A study for DG Environment, 30 September 2010.



**Figure 16:** Average actual duration of the permitting procedure in selected Member States

Some Member States fix the duration of the permitting procedure, processes and in some cases even process steps by means of legislation. Others do not. While most of the countries analysed in this study have such fixed durations for processes and process steps, these durations usually do not cover the entire procedure, i.e. they relate only to certain processes and process steps. On average in Member States, 70% of the total procedure has a legally defined duration. The absence of a legally defined duration for some or all processes and process steps often results in long procedures. However, the existence of such legally defined durations does not always guarantee short procedures:

**Example 52:** In England and Wales, the Planning Act of 2008 stipulates that the maximum duration of each process step in the Development Consent Order process is one year. This is very short compared to other countries. In the experience of lawyers and project developers, this limit is respected in most cases, with actual durations of one to one and a half years.

**Example 53:** In Austria, the duration of procedures involving an EIA is fixed by law as nine months for the process under the authority of the first level of jurisdiction and six months for the process under the authority of the second level of jurisdiction. In practice, the actual duration is one and a half to three years.

**Example 54:** In Sweden, there are no legally binding maximum durations. The TSO reports that the permitting procedure usually takes three and a half years from the submission of the application forms to the issuing of the permit. However, the TSO also reports cases of politically sensitive projects for which this process took ten years. The first process in the permitting procedure, the Network Concession process, usually takes two years. Significantly longer durations of this process are the

major driver of the length of permitting procedures in Sweden. The second process in the procedure, the Permit Application, usually takes one to two years.

Procedures with legally defined durations often differ in terms of their enforcement mechanisms. The effectiveness of such enforcement mechanisms is key: thus in none of the analysed procedures where enforcement mechanisms are in place were the defined durations actually respected in practice:

**Example 55:** In Hungary, authorities must repay fees if they exceed maximum durations. There is, however, no independent institution monitoring whether they exceed the maximum durations or not. Applicants need to complain if maximum durations have been exceeded, but they avoid doing so as it would damage their relationship with the permit-granting authorities.

**Example 56:** In Austria, applicants can request that procedures be referred to a higher authority if the responsible authority is causing a delay. This is known as an Administrative Complaint (*Devolutionsantrag*). However, this does not necessarily lead to a speeding up of the procedure. On the contrary, it is more likely to result in additional delays, as the higher authority is unable to handle permitting procedures itself, lacking the relevant staff, expertise and knowledge. Developers therefore usually avoid taking advantage of this option.

Political reasons can strongly impact the duration of permitting procedures. Such reasons can vary from giving low priority to energy infrastructure extensions, to giving high priority to competing issues. For example, concerns for environmental protection may lead to political decisions that block the realisation of planned energy infrastructure:

**Example 57:** In Italy, no approvals for EIAs for offshore facilities are issued at present. In order to protect coastal areas, the Ministry for the Environment has blocked any further issuing of approvals for the EIAs of offshore installations. The last offshore energy infrastructure that obtained a positive Environmental Impact Assessment was the Livorno LNG-Terminal.

### III. Description of Challenges to Permitting Procedures

Defining maximum durations for procedures, processes and process steps is vital. Without this, it is not possible to identify whether the permitting procedure, process or process step is actually delayed or not, since there is nothing to check it against. Without controlling mechanisms – for example, an institution tasked with monitoring the progress of the permitting procedure – defining durations in itself is ineffective. Controlling mechanisms must also include the possibility of intervening where delays arise.

With regard to maximum durations, we have not been able to identify any functioning enforcement mechanism in any of the procedures analysed. The key challenge is therefore to identify an incentive mechanism for authorities. This needs to go hand in hand with sufficient availability of resources for the authorities involved in the permitting procedure.

Political factors are also an important challenge in some countries. However, this only an issue in a few of the Member States.

## **h. Cost Drivers**

### **I. Definition of the Relevant Analytical Dimension**

The final aspect we analyse with respect to the permitting process is cost drivers. The costs of the permitting process and any delays occurring to it are difficult to determine, as cause and effect are often difficult to distinguish. For instance, should the cost of idle construction vehicles be included, or costs of unrealised cash-flows from infrastructure which has not been built?

The major cost drivers in the permitting procedure are:

- The cost of experts and internal resources involved in paperwork
- The costs of stakeholder involvement
- The costs of litigation
- The cost of delays and deviations from the original plan or schedule

### **II. Description of the Permitting Landscape**

Cost drivers in Member States differ. Authorities and developers invest different levels of resources in the handling of processes and process steps. This applies particularly to informing and communicating with stakeholders – a key task of the developer, but one that different developers prioritise differently:

**Example 58:** In the Netherlands and in England and Wales, developers invest substantial resources in proactively informing and talking to stakeholders.

**Example 59:** In Spain, the TSO's investment in dealing with stakeholders has recently increased significantly.

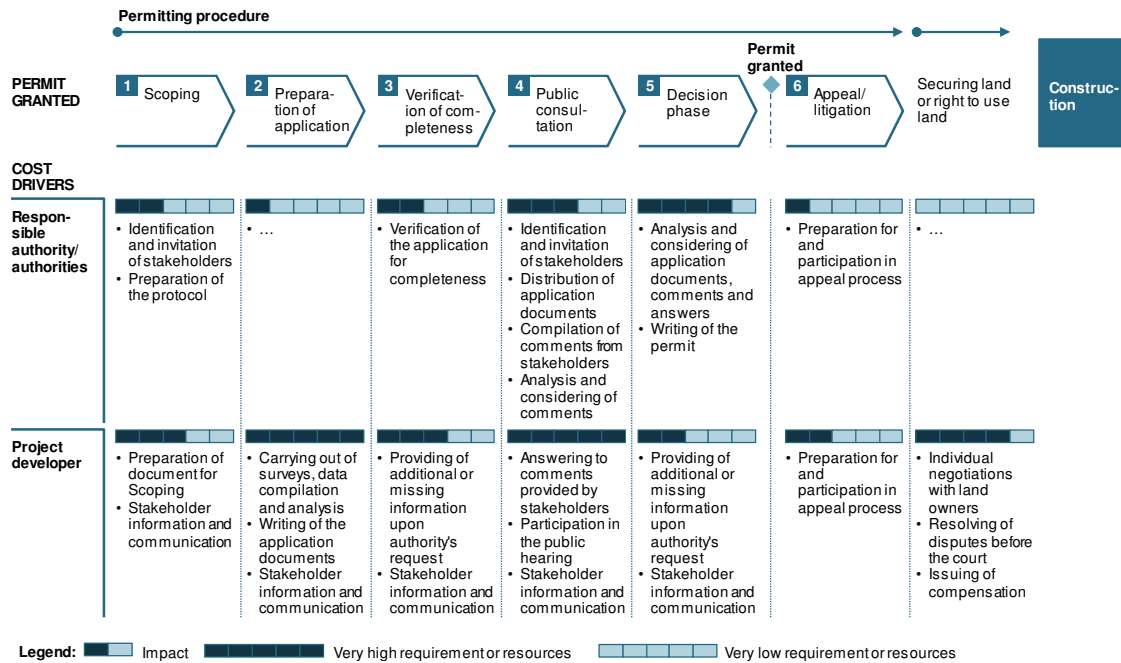
In order to identify cost drivers systematically, we have analysed a standard permitting procedure. The analysis shows that expenses for personnel are generally the main cost driver. In standard permitting procedures, we assume that the developer invests significant resources in informing and communicating with stakeholders, since this is a key success factor for permitting procedures. Besides



the different process steps in the permitting procedure, we can include the procedure for securing land or the right to use it. Cost drivers are assigned either to the project developer or the responsible authority, depending on who has to pay. Our findings are as follows:

- From the point of view of the responsible authority, the main cost driver is the resource requirement during the management of the public consultation and the drawing up of the permit. During the public consultation phase, the authority needs personnel familiar with the handling of this process step, as well as technical experts. The authority must identify and invite relevant stakeholders, distribute the application documents, compile and classify comments received from stakeholders, and analyse these comments for the sake of the subsequent process steps. During the decision phase, the authority particularly needs experts who are able to write a technically and legally valid permit.
- From the point of view of the project developer, it is essential to understand that delays in the permitting procedure lead to an increase in costs at a later stage in the project. If construction cannot start on time, for example, costs occur for unused construction equipment, such as penalties imposed by construction companies. Unrealised cash-flows due to a later start of operation are another factor. As a general rule, such costs are considerably higher than the expenses required to ensure a proper handling of the permitting procedure by the developer. During the permitting procedure itself, the main cost driver is the resource requirement for preparing the application documents, running the public consultation and securing the land or the right to use it. To prepare the application documents and answer comments during public consultation, the developer needs a large number of experts, who are usually hired in. They include environmental specialists, technical specialists and legal specialists. To secure the use of the land, developers usually employ specialised engineering firms to negotiate with individual landowners. Throughout the procedure, a key cost driver for the developer is the cost of communications experts and capacities needed for informing and communicating with stakeholders.

The figure below shows the level of resource requirements during the different process steps in the permitting procedure from the perspective of responsible authorities and project developers (see **Figure 17**):



**Figure 17:** Cost drivers in the permitting procedure

### III. Description of Challenges to Permitting Procedures

The key challenge with regard to the costs of the permitting procedure is not that costs need to be reduced during the procedure – indeed, quite the opposite. The developer's investment in the procedure actually needs to increase in most cases so as to avoid the cost of delays (e.g. idle construction vehicles, unrealised cash-flows from infrastructure which is not built). Developers typically under-invest in the key area of informing and communicating with stakeholders throughout the procedure. Similarly, authorities need increasingly flexible resources to steer the procedures effectively.

## **C.2 Overall Responsibility and Controllability of the Procedure**

In terms of process management, not only the dimensions affecting the individual processes and process steps in the permitting procedure are relevant for speedy permitting, but also the overall process management. Integrated process management typically focuses on three distinct aspects:

- Responsibility for the overall procedure
- Transparency of the procedure
- Instruments for the overall steering of the procedure

### **a. Responsibility for the Overall Procedure**

#### **I. Definition of the Relevant Analytical Dimension**

By "responsibility for the overall procedure" we mean a clear assignment of responsibility for driving the procedure as a whole, regardless of the responsibility for individual processes or process steps. Typically, one institution is made responsible for achieving the overall result within the given time limits and ensuring that the result is of the desired quality.

The more dispersed the responsibilities on the level of processes and process steps, the more important it is that one body has overall responsibility for the permitting procedure or at least coordinates the involvement in the process of other responsible bodies. A multitude of responsibilities and interfaces often means a loss of focus: difficult process steps are repeated where participants cannot agree on what needs to be done.

The permitting procedure is very complex and involves a large number of specialists in widely differing roles. For this reason, defining who holds the overall responsibility is a key driver of success.

#### **II. Description of the Permitting Landscape**

In many Member States, there is no institution which holds overall responsibility for the permitting procedure. In countries where a one stop shop exists, it is usually responsible for the overall procedure. However, some one stop shops are more effective than others:

**Example 60:** In Hungary, there is no institution with overall responsibility for the entire procedure. Seven processes exist, each handled by a different authority. Since there is no public institution monitoring the procedure, the TSO has stepped in and handles coordination between processes and authorities. The actual duration of the permitting procedure as indicated by operators of electricity transmission and gas transport infrastructure is four years from submission of the first application

documents to issuing of the final permit required (not including the duration of the construction phase between different permitting processes). This is in line with the average duration in Member States in our study and can thus be considered relatively short given the large number of authorities involved. This may be partially due to good coordination on the part of developers.

**Example 61:** In England and Wales, the IPC acts as a one stop shop, responsible for handling the entire permitting procedure. Only the operational handling of one process step – the public consultation prior to submission of the application – is left to the developer. Even here, the IPC approves the structure and monitors the process step. This gives the IPC an overview of the progress of all the different processes. The set duration of the permitting procedure is very short (12 months) and is usually respected. This is probably due to a large extent to the existence of a functioning one stop shop.

**Example 62:** In the Netherlands, a single authority is responsible for handling the permitting procedure. This one stop shop was only set up in 2010 and it is still building up its resources and expertise. In practice, developers do not yet see it as responsible for handling the procedure, as they themselves coordinate many of the interfaces between authorities and stakeholders, working in cooperation with the one stop shop. However, the one stop shop is expected to play a stronger role in the future. This shows the importance of giving one stop shops sufficient resources – a major factor in their success.

### III. Description of Challenges to Permitting Procedures

Setting up a one stop shop as the single authority in charge of the whole permitting procedure has the potential to speed up the process and make its duration predictable. It would be challenging for the EU to support the setting up of one stop shops in Member Countries. For one stop shops to be successful, other key determinants must be considered, such as the provision of sufficient resources and expertise. One stop shops at a national level have the greatest potential in terms of effectiveness. In Member States with federal structures (such as Germany), one stop shops could be set up on the federal state level but would require an additional coordinating body on the national level.

#### **b. Transparency of the Procedure**

##### I. Definition of the Relevant Analytical Dimension

To drive complex procedures forward, it is first necessary to know exactly what stage the procedure is at and whether it is on track or delayed. If it is delayed, it is important to know why. Understanding of the situation usually requires indicators showing the

status of the procedure and any problems. Such indicators typically include:

- A standard timeline (e.g. regular milestones, which are either met or not met)
- A process (indicating whether specific "checkpoints" have been passed)
- An indicator for the quality of outputs (e.g. a checklist)

For the body responsible to be able to steer the process effectively and intervene if it deviates from the plan in terms of time, quality or process, valid indicators are needed covering all key aspects of the outcome of the procedure.

## II. Description of the Permitting Landscape

A standard timeline describing the target process is essential for identifying delays in the process. Some Member States have such a standard timeline, others do not. In some countries the total duration of the permitting procedure is fixed, as well as the duration of individual process steps. In others, only the duration of individual process steps is defined:

**Example 63:** In Germany, the overall duration of the procedure is not defined, but the duration of certain process steps has been fixed by the legislator (e.g. three months for the public consultation). Delays often occur in process steps for which no duration has been specified, e.g. the decision phase, during which the authority considers all the arguments and draws up the permit.

**Example 64:** In England and Wales, the Planning Act of 2008 stipulates the duration of each process step in the Development Consent Order process. This adds up to one year for the overall permitting procedure.

The existence of a standard timeline is a necessary precondition for transparency about the progress of permitting procedures, but it is insufficient in itself. In order to assess whether a process or process step has been concluded successfully, a quality check of the results is necessary. If this does not happen, processes might be registered as "concluded" even though their poor quality could cause a delay at a later stage. For example, if the application documents provided by the developer are of poor quality, the permit – which is partially based on the documents – may also show weaknesses, increasing the likelihood of successful appeal.

To date, we have not been able to identify any systematic quality checks of the outcomes of process steps or processes by a higher-ranking institution in Member States.

### III. Description of Challenges to Permitting Procedures

It is crucial to ensure that, in every country, a target process with a standard timeline exists. This will make it possible to monitor the progress of permitting procedures. Each process step (and the periods between process steps and processes) should also be defined. In addition, a formal quality check should be instituted at the end of key processes and process steps.

#### **c. Instruments for Overall Steering of the Procedure**

##### I. Definition of the Relevant Analytical Dimension

It is only possible to steer a large portfolio of processes effectively if a set of instruments exists which allow the process status to be monitored and timely intervention to be taken where necessary. The term "instruments" is used broadly here. Instruments can range from traditional controlling techniques, such as a software tool that summarises all the individual processes in a table or chart and flags up any delayed processes, to an interactive format where the people responsible for processes report on their progress in a set format, discuss areas for improvement and agree further steps.

The more standardised the use of such instruments is, the smoother the intervention in case of a delay will be. For this reason it is generally worth creating an instrument which ensures regular discussion of potential delays, risks and mitigation actions, and allows easy intervention.

##### II. Description of the Permitting Landscape

In our analysis, we have not been able to identify the existence of any such reporting systems.

##### III. Description of Challenges to Permitting Procedures

The EC should push for the establishment of reporting systems in Member States. Data from the national reporting systems should be made available to the EC so it can establish an overview of the progress of permitting procedures. This should include at least all projects of European interest. The key challenge is to establish a reporting system in each Member State, which is capable of transmitting data regularly to the unit responsible in the EC. In this way, projects can be tracked on a European level. Based on such a reporting system, the need for support and its timing can be identified.

### **C.3 Conclusion: Evaluation of Challenges**

Based on our interviews with legal experts and TSOs, we have evaluated the challenges identified above with regard to their impact on the permitting procedure. This evaluation covers both the frequency of the occurrence of the challenge and the magnitude of the delays typically resulting from it (see **Figure 18**).

|  | Dimension of the analysis   | Challenges  | Impact on delays – expert assessment                                      |
|--|---|---|---|
| 1. Overall responsibility and controllability of the procedure | a. Responsibility of the overall procedure  | Responsibility for the overall procedure is not clearly assigned to one single institution  | ●   |
|  | b. Transparency of the procedure  | Transparency on the progress of permitting procedures is insufficient due to the lack of standard timeline to benchmark the progress and of effective monitoring and reporting instruments            | ●   |
|  | c. Instruments for overall steering of the procedure  | Overall steering of the procedure is made difficult by the lack of instruments such as an effective monitoring and reporting and clearly defined measures for intervention in case of a risk of delay | ●   |
| 2. Processes and process steps                                 | a. Number of processes and process steps  | Procedure consists of high number of processes and process steps  | ◐   |
|  | b. Sequence of processes and process steps  | Processes are not parallelised or crucial steps take place too late in the procedure  | ◐   |
|  |   | Responsibility for each process and process step is too distributed or intransparent  | ◐   |
|  | c. Operational responsibility for processes and process steps   | Authorities' responsibility is focused only on process and quality - timing is not included   | ◐   |
|  |   | Stakeholders are not sufficiently informed on the potential effect of the project on them and their possibility to get involved in the procedure  | ◐   |
|  | d. Involvement, information and compensation of stakeholders  | The legal framework foresees the involvement of relevant stakeholders only at a late stage of the procedure   | ●   |
|  |   | Lack of simple guidelines or an orientation with regards to compensation levels leads to an increased effort for the developer when it comes to the negotiation of compensation levels                | ◐   |
|  |   | Compensation mechanisms do not target all individuals or institutions actually suffering a loss due to a project  | ◐   |
|  |   | Missing prioritization of projects  | ◐   |
|  |   | Quality of application documents is insufficient  | ◐   |
|  | e. Input, output, documents and instruments   | No target group specific information in addition to application documents is made available to stakeholders   | ●   |
|  |   | f. Resources  | Authorities have insufficient access to number of resources and expertise |
|  | Developers do not allocate sufficient resources to the handling of the permitting procedure   |   | ◐   |
|  | Developers involve permitting experts only at the late stage of the planning of the project   |   | ◐   |
|  | g. Duration   | There is no clear definition of maximum durations of the procedure, processes, process steps and periods in between   | ◐   |
|  |   | No effective enforcement mechanisms to incentivize authorities to respect time limits are in place  | ◐   |
| h. Cost drivers  | Developers tend to invest fewer resources in the handling of the permitting procedure than in other aspects of the project, e.g. technical planning. This often leads to an overall increased cost for the developer due to significant delays of the project | ◐   |   |

Legend: ○ = no relevance; ◐ = low relevance; ◑ = medium relevance; ◒ = high relevance; ● = very high relevance

Figure 18: Evaluation of challenges



Below we summarise the most significant key challenges, i.e. those with a "high" or "very high" impact on the duration of permitting procedures.

Overall responsibility and controllability of the procedure:

- Both a **lack of clear assignment of responsibility for the overall procedure** and a **lack of transparency about the progress of permitting procedures** are an issue in most Member States. Amongst the countries analysed, England and Wales and the Netherlands are exceptions: in both countries, a one stop shop has been established. The challenges mentioned particularly concern countries in which a multitude of responsibilities and interfaces exist on the level of processes and process steps (e.g. Hungary, Poland or Spain). The lack of clear responsibility leads to inconsistencies between processes and sometimes even between permits. It can result in the developer having to make a great effort to coordinate the different institutions involved. The lack of transparency carries the risk that a delay might become apparent only when it is too late to counteract it. It also makes it extremely difficult to steer the procedure to ensure high quality results within given timeframes.
- **Instruments for the overall steering of the procedure** are found in barely any of the countries in the study. Again, countries with one stop shops, such as the Netherlands and England and Wales, are exceptions here. There is a need for instruments which allow proper monitoring and reporting on the progress of permitting procedures for prioritised energy infrastructure projects, since such instruments make it possible to intervene in case of risk of delay.

Processes and process steps:

- The **late involvement of stakeholders which occurs in some legal frameworks** results in potentially affected stakeholders feeling that their concerns are not taken into account in the planning of the project. This frequently results in strong public opposition to energy infrastructure projects.
- There are major differences with regard to the **level and quality of stakeholder information** in Member States. While some developers invest considerable resources in entering into a dialogue with stakeholders at an early stage, others see stakeholder information as nothing more than an inconvenient requirement of the procedure. Insufficient information and **information not targeted to specific groups** is one of the main factors in strong public opposition to projects.
- **Authorities' lack of resources and expertise** is considered a major cause of delays in permitting procedures in almost all the countries analysed. The authorities in charge of handling permitting procedures, processes and process steps usually require a large number of staff and experts during certain periods, i.e. during process steps such as the public consultation or decision phase.

Inflexible resource allocation between authorities is a key obstacle in the proper handling of permitting procedures.

- In many cases, **developers do not see the need to allocate more resources** to the handling of the permitting procedure. Such developers cannot handle their wide array of tasks satisfactorily. The result is insufficient stakeholder information and **low quality information documents and application documents**. This is one of the key causes of delays in permitting procedures.
- **A lack of legally binding maximum durations** is identified as a key cause of delays by many legal experts and operators in the countries analysed. While defined durations for processes and process steps are in place in most countries, they are generally ineffective. Most operators are highly sceptical about enforcement mechanisms, however, because of the risk of damaging the relationship between developer and authority. No example of successful enforcement was found in our analysis.

These challenges should be addressed as a matter of priority in order to make permitting procedures in the EU more effective. We use the above evaluation as a basis for prioritising measures addressing different challenges in the next section.

## **D. Measures to Speed Up Permitting Procedures**

Based on our identification of key challenges, we developed a series of potential measures to address them. We then discussed these measures with TSOs, legal experts and the EC, and subsequently evaluated them. These measures can be clustered into five groups:

- Improve transparency and manageability (D.1)
- Empower authorities (D.2)
- Optimise permitting procedures (D.3)
- Increase project developers' engagement in permitting procedures (D.4)
- Improve communication and mitigate public opposition (D.5)

The measures are described and evaluated below. For each measure, the analysis is description and evaluation is structured as follows:

### **I. Rationale**

This section describes the logic behind the measure and how the measure would be effective in speeding up permitting procedures. It provides an overview of how the measure addresses the challenges in general and how it responds to specific challenges.

### **II. Implementation**

This section describes how key elements of the measure could be implemented. Where different options for implementation exist, these options are discussed, the preferred option identified and the choice justified.

Implementation is described for both the EU level and the level of Member States. The degree of intervention necessary in existing legislation in Member States is outlined and assessed as the measure's "legal impact".<sup>18</sup> As legal implications for some measures differ widely between Member States, this section concentrates on a general overall assessment, providing an idea of the relative weight of legal impact.

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<sup>18</sup> This qualitative assessment cannot replace a full assessment of potential legal implications with regard to required changes in existing laws and regulations. It represents only a rough guideline for the political evaluation of the effort required to implement the measure.

### III. Evaluation

The third and final section evaluates the proposed measure with regard to its positive impact on permitting procedures (i.e. in increasing the acceptance of projects and speeding up the permitting process) and the effort required to implement the measure (i.e. the level of impact on legislation on a Member State level). Four criteria are used for the evaluation:

- **Impact on acceptance of projects of European interest:** This criterion focuses on the impact the measure has on the acceptance of energy infrastructure projects by stakeholders. Acceptance is key to reducing public opposition and depends on stakeholders being properly informed, their concerns being included in the technical planning early on and the potential impact of the project being mitigated.
- **Impact on the duration of the permitting procedure:** This criterion focuses on the impact the measure has on the overall duration of the permitting procedure. This includes direct and indirect effects on duration. Direct effects arise where the number of processes and process steps in the permitting procedure is reduced or where processes and process steps are allowed to take place in parallel. Indirect effects arise where the measure increases the effectiveness of the procedure and thereby reduces the duration, e.g. by mitigating stakeholder opposition and reducing the number of comments submitted by stakeholders during the public consultation.

The level of difficulty of realising the measure:

- **Legal impact:** This criterion assesses the level of impact the measure has on the legislation of Member States. The impact of a measure on Member States' legislation differs strongly depending on the underlying legal framework in each Member State. Therefore the assessment in this study is limited to an approximation of the level of change to be expected as a result of introducing the measure in Member States (or groups of Member States of a particular type).
- **Impact on costs:** This criterion identifies how costly it is to implement the measure. For this purpose, we identify cost drivers from the perspective of different stakeholder groups (the EC, the public sector including responsible institutions in the Member States, project developers, other involved stakeholders). The assessment provided in this study indicates the level of costs incurred for different stakeholders and then provides an overall assessment of the costs resulting from the introduction of the measure.

## **D.1 Improve Transparency and Manageability**

Speeding up permitting processes requires three key elements at the core of every efficient procedural system: transparency about process status (and possible challenges), manageability of the process (including opportunities to intervene), and responsibility for meeting quality and time targets.

To increase transparency and manageability, we propose six measures:

1. A set of projects of public interest shall be defined in each Member State and on the European level.
2. A detailed plan for the implementation of these projects (including permitting) shall be presented and monitored so that delays can be detected and action taken. This will provide the transparency required to drive implementation forward.
3. Responsibility for keeping an overview of the progress of priority projects shall be assigned to a supervisor in each Member State. This supervisor shall monitor the progress of projects and intervene in case of delays.
4. A supervisor on the European level shall keep an overview of the progress of prioritised energy infrastructure. This should be handled in close cooperation with the institutions responsible for supervising prioritised projects in the Member States.
5. Legally binding target durations for key processes shall be introduced. These will provide a guideline to authorities and a clear threshold for intervention by the supervisor, increasing the manageability of the prioritised project portfolio.
6. The definition of a reference permitting process for prioritised energy infrastructure projects will support the monitoring of, and reporting on, the progress of prioritised energy infrastructure based on standardised process steps and milestones.

We discuss each of these measures in turn below.

### **Measure 1: Definition of Projects of Public Interest based on Projects of European Interest**

#### **I. Rationale**

This measure foresees the identification of projects of European interest on an EU level, as well as the acknowledgement of the status of public interest of these projects on a national level. The implementation of this measure would ensure that

projects which have been prioritised at EU level enjoy special status in the Member States. Their implementation would then be monitored particularly closely by the different Member States.

Defining prioritised projects is a basic requirement for ensuring the political legitimacy of these projects and for creating transparency about the progress of these projects both on a national and a European level. Prioritised projects are subject to the measures described below regarding reporting and monitoring obligations. Projects of public interest that have been endorsed by the legislator can also benefit from a facilitated permitting procedure, as further justification for them within the framework of the permitting procedure is unnecessary, without prejudice to the requirements of specific EU legislation. This speeds up the procedure and reduces uncertainty about the acceptance of the project justification by individual authorities.

This measure answers the following key challenges in particular:

- 1-b Transparency of the procedure: This measure is a basic requirement for creating transparency about the status of selected projects. Based on this measure, monitoring and reporting on the progress of these projects is possible (see Measure 2, "Implementation and Monitoring Plan for prioritised projects").
- 1-c Instruments for overall management of the procedure: This measure provides the basis for instruments for monitoring and managing the procedure.

## **II. Implementation**

In the **design of the measure**, seven key elements should be considered:

- The list of Projects of European Interest should be adopted at a European level and the EC should be accredited with updating the list in agreement with Member States.
- The further development of the list of Projects of European Interest should take place in close coordination of the EC with the Member States.
- The necessity of projects of European interest should be acknowledged by the EU Member States by giving them the status of "projects of public interest".
- Where possible, the necessity of projects which have been awarded the status of national public interest should not be questioned any more within the decision-making process for the permit or within the permitting procedure.
- Acceptance of these projects by stakeholders should be improved by communicating their "public interest" status.

- The definition of projects of public interest must not create any conflict with the Birds Directive (Directive 2009/147/EU) the Habitats Directive (Directive 92/43/EEC, as amended by Directives 97/62/EC and 2006/105/EC, as well as by Regulation (EC) No 1882/2003)<sup>19</sup> or the Water Framework Directive<sup>20</sup> (Directive 2000/60/EC, as amended by Decision 2455/2001/EC and Directives 2008/32/EC and 2009/31/EC).
- Three different categories of EU Member States should be distinguished with regard to the implementation of this measure: 1) Member States where lists of projects of public interest have already been defined by the legislator; 2) Member States that foresee the definition of the public interest status of projects in the framework of the permitting procedure; and 3) Member States where a definition of projects of public interest has not yet occurred.

**The list of projects of European interest should be adopted at a European level based on a selection process for these projects which involves all stakeholders.** The EC should be able to **update the list** of projects of European interest once it has been adopted on a European level.

The list should be developed by means of **close collaboration between the EC, Member States** and other relevant stakeholders. This will facilitate the adoption of projects of European interest on national level. As Article 172(2) TFEU requires the agreement of the Member State concerned when "guidelines and projects of common interests" are decided, the EC should reach an agreement with the Member States in each case.

The necessity of projects of European interest should be acknowledged on a national level by attributing them the **status of "projects of public interest"**. There should be no specifications on how the status of public interest should be defined on a national level, i.e. whether a law should stipulate this status or a separate procedure should be required to define the status of public interest for a project. Besides projects of European interest, additional projects could of course be added to the list of projects of public interest on a national level.

The effect of including a project on the list of projects of public interest should be that **the necessity of the project is established and therefore discussion of the necessity of the project is excluded from the permitting procedure.** Comments received during the public consultation with regard to the necessity of the project

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<sup>19</sup> Council Directive of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Council Directive 92/43/EEC, as amended by Directives 97/62/EC and 2006/105/EC as well as by Regulation (EC) No 1882/2003), OJ L 206, 22.7.1992, p. 7.

<sup>20</sup> Directive of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Directive 2000/60/EC, as amended by Decision 2455/2001/EC and Directives 2008/32/EC and 2009/31/EC), OJ L 327, 22.12.2000, p. 1.

would not need to be addressed by the responsible authority in the decision-making process. The necessity of the project would not be a valid cause for appeal against the permit for construction and operation of the project. This would reduce uncertainty. It would also be especially helpful in Member States where projects have to go through permitting procedures in a number of local/regional government districts and where each district's authority decides whether the project justification is sound or not. In countries where the permitting procedure foresees that a project is awarded the status of a project of public interest only during the permitting procedure on an individual level, this process step may focus on the exact location or routing of the project.

Once the list of projects of public interest has been established, it is crucial to **communicate** it to the broader public. This step is essential in order to realise this measure's potential impact on stakeholder acceptance. Communication should take place on both a European and a Member State level (see also: Measure 18, "Communication of the necessity of infrastructure extension, corridors and projects of European interest").

The definition of projects of European and of national public interest must not conflict with any relevant national or EU law. For example, it should leave enough leeway with regard to location and design of the project so as **not to conflict with the Habitats Directive** (Directive 92/43/EEC, as amended by Directives 97/62/EC and 2006/105/EC as well as by Regulation (EC) No 1882/2003)<sup>21</sup> **or the Water Framework Directive** (Directive 2000/60/EC).<sup>22</sup> Giving a project the status of public interest would not automatically imply that it can be constructed on grounds of overriding public interest on a site protected by the above-mentioned directives, if alternative routes available.

**Three categories of EU Member States** should be distinguished with regard to the implementation of this measure:

- In the **first category** of EU Member States, lists of projects of public interest issued by the legislator already exist. Here, the legislator would have to verify if all projects of European interest relevant for the country are included on the list. If this is not the case, the legislator would have to amend existing legislation to include all relevant projects of European interest on the list.

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<sup>21</sup> Council Directive of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Council Directive 92/43/EEC, as amended by Directives 97/62/EC and 2006/105/EC as well as by Regulation (EC) No 1882/2003), OJ L 206, 22.7.1992, p. 7.

<sup>22</sup> Directive of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Directive 2000/60/EC, as amended by Decision 2455/2001/EC and Directives 2008/32/EC and 2009/31/EC), OJ L 327, 22.12.2000, p. 1.



**Example 65:** In England and Wales, Nationally Significant Infrastructure Projects (NSIPs) are defined by National Policy Statements (NPSs). NPSs express national planning policy on major infrastructure and provide guidance on the parameters within which NSIPs should be approved. NPSs are proposed by the Government and are subject to Parliamentary Scrutiny. NPSs identify criteria for assessing project proposals by developers for NSIPs and the relative weight to be given to each criterion. This also includes potential sites for the project, mitigation measures and which statutory undertakers should be in charge of the development.

**Example 66:** In Germany, electricity transmission lines which are required with "urgent necessity" are identified in the federal law on the development of energy transmission lines ("Energieleitungsausbaugesetz" – EnLAG). For projects covered under this law, the plan no longer needs to be justified in the permitting procedure. While project developers do not see an immediate impact of this law on the duration of the permitting procedure, they nevertheless perceive the inclusion of projects in the law as a considerable simplification of the procedure. For example, questions about the necessity of the project can now be ignored in the public consultation. In some cases, such questions ran into the thousands. The law thus simplifies the procedure for both the responsible authority and project developers.

**Example 67:** In Italy, the Interministerial Committee (CIPE) approves a list of "national strategic works". For projects included on this list, the relevant procedure is established by Legislative Decree 163/2006 (art. 161 and following) and is based on a single procedure (which includes the EIA to be made on the preliminary project within a 60-day procedure) carried out by the Ministry by means of the Conferenza dei Servizi (with a maximum duration of 90 days) and subject to final approval by the CIPE (to be given within 30 days from the conclusion of the Conferenza dei Servizi). Additionally, regions are empowered to establish regional lists of strategic work to be promoted by regional fast track procedures which follow the same principles as the national one. However, it is not very common for infrastructure projects to be included in the list of "national strategic works".

**Example 68:** In Poland, parliament can designate infrastructure projects as being of public interest. Projects have been prioritised by the legislator under the "Act on Projects Pertaining to the Liquid Natural Gas Re-gasification Terminal in Swinoujscie" of 24 April 2009 and the "Act on the Amendment to the Act on the Projects Pertaining to the LNG Terminal in Swinoujscie" of 19 February 2010. The Acts pertain to the LNG Terminal in Swinoujscie itself and to accompanying projects. Facilitations are provided under the fast-track scheme with regards to access to the site (expropriation with finalisation of the location decision), location decision (issuing a permit despite a change of the use of the land or the existence of zoning plans; time limits for the decision), exclusion of land from

agricultural and forest production (e.g. provisions on the protection of agricultural and forest land do not apply to land used for the selected projects), the construction permit (e.g. limited possibility of filing complaints and appeals, simplified and accelerated complaints procedure), and tendering for the project (exemption from the Public Procurement Law Act). Moreover, the Acts limit the number of authorities involved in the procedure on the level of the voivode (regional authority of the government administration in the region).

**Example 69:** In Slovenia, the Law on Detailed Planning of Projects of National Importance ("Zakon o umeščanju prostorskih ureditev državnega pomena v proctor") governs the selection of projects of national importance and the spatial arrangements for these projects. For the selection, the Ministry of Commerce presents a one-year energy initiative based on the National Energy Programme. Adopting the Ministry's decision, the Government of the Republic of Slovenia prepares a detailed plan with projects of national importance. For these projects, the Law on Detailed Planning of Projects of National Importance stipulates the requirements for types and contents of documents, and the method of their preparation for spatial arrangements.

- In the **second category** of EU Member States, no lists of projects of public interest issued by the legislator exist but there is an official procedure in place to give the status of public interest to critical energy infrastructure projects. This process may then be used to confirm the public interest status of projects identified on a European level if it is found that the project in question (including the precise location or routing) may obtain public interest status.

**Example 70:** In France, the declaration of public interest ("Déclaration d'Utilité Publique" – DUP) is the first permit of three required for energy infrastructure projects. The declaration procedure is the main part of the French permitting procedure. Its primary purpose is to recognise formally that a particular project yields public benefits. This recognition is required due to the fact that, under Article 545 of the French Civil Code, nobody may be compelled to transfer ownership of his or her property except for public purposes. If Measure 1 were implemented, this part of the permitting procedure would be dedicated to the precise location/routing of the project.

**Example 71:** In Austria, there is no general decision on federal or state level determining the public interest status of transmission line projects. The public interest of a project can be determined in the Design Approval procedure ("Vorprüfungsverfahren"). The Design Approval is not mandatory and is not part of the official permitting procedure for a project. During this procedure, the general routing of a transmission line is determined. Moreover, the responsible authority (state government – "Landesregierung" or Federal Ministry of Economy, Family and Youth – BMWFJ) may determine if a project is of public interest. If Measure 2 were implemented, this process would not become redundant, but

would not be concerned with the decision on the public interest status of the project anymore.

- In the **third category** of EU Member States, no lists of projects of public interest issued by the national legislator exist and there is no official procedure in place to attribute public interest status to projects. In these countries, the public interest status of the projects would have to be determined either by the legislator, i.e. by adopting a new list of projects of public interest, or in some other fashion.

In all three categories, every project prioritised at the EU level and relevant for the respective Member State should be included in the list of priority projects.

### **Implementation at EU Level**

For the implementation of this measure at EU level, the EC would have to develop and communicate a detailed list of projects of European interest. The development of this list would involve close coordination between Member States, relevant stakeholders, the ENTSO-G/GIE and the ENTSO-E, within the framework of the elaboration of the Ten-Year Network Development Plans (TYNDP). The EC would have to further drive this development and coordination process.

### **Implementation in Member States**

At Member State level, the following action must be taken:

- Assign the status of public interest to the selected projects by including them in a law or by adopting this status in the procedure foreseen for this purpose
- Align the legal status of projects of public interest with options to facilitate the permitting procedure, i.e. no requirement to justify the projects further
- Communicate projects of public interest via press statements and press conferences, as well as through direct communication with the authorities responsible for the permitting procedure

### **Legal Implications in Member States**

The list of projects of European interest can be adopted by an EU Regulation, which would be immediately binding for Member States. To ensure that there is no major interference with national legislation, the list of projects of European interest adopted at EU level should not include precise indications with regard to the location or routing of the project. The list should be drawn up in close coordination with the Member States, as Article 172(2) TFEU requires the agreement of the Member State concerned where "guidelines and projects of common interests" are decided.

The adoption of the list on a Member State level for all projects of European interest affecting the relevant country may be requested from the Member States in the same legal act (e.g. a section of a Regulation that has the character of a Directive). How exactly the status of national public interest is attributed to these projects may be left open in order to ensure that this measure does not interfere significantly with the relevant legislative or administrative procedures in the Member States.

The identification of projects of public interest takes a different form in different Member States. Accordingly, the required adaptation of national legislation also differs. Three categories of Member States should be distinguished:

- **Member States where a list of projects of public interest has already been adopted by the legislator:** If all projects of European interest relevant for the Member State are already included in this list, no action would have to be taken by the national legislator. If certain projects of European interest are not included, the list would have to be revised, i.e. the legislator would have to revise the respective law (see for example (e.g. the "EnLAG" in Germany, where projects of public interest are defined, partially covering projects of European interest).
- **Member States where no such list exists but the definition of projects of public interest is an element of the permitting procedure** (see for example the DUP Procedure in France): The status of public interest for projects of European interest may still be attributed within the framework of the permitting procedure. As projects of European interest would be defined without precise information on the location or the routing of the project, the national procedure determining public interest status may further detail such aspects. In any case, the status of a project of European interest should strongly support a favourable decision on assigning public interest status to the project on a national level.
- **Member States where no such list exists:** A list of projects of public interest including all projects of European interest would have to be established in these Member States. Public interest status could be assigned by a decision of the legislator. Alternatively the list could be established by a national Ministry, say.

We therefore see different levels of adaptation of legislation in Member States required when introducing this measure, as described above. In some Member States, its introduction would require the revision or adoption of a national law in order to add further projects to the list of projects of public interest; in others, projects of European interest would have to be adopted on the national level by a specific process. These requirements are not considered major obstacles to the implementation of this measure.

## Cost Drivers

The main cost drivers from the perspective of the EC are identifying corridors in which additional energy transmission and transport capacities are needed and coordinating these corridors with the Member States. Moreover, projects have to be identified which correspond to these corridors. However, as these tasks are already carried out at a European level, no additional costs would be incurred.

The main cost drivers from the perspective of the public institutions involved in the Member States are:

- Defining projects of public interest. This involves evaluating needs analyses, coordinating with the EC and possibly also considering comments by stakeholders. For this, personnel capacity is required for a limited time period.
- Preparation of a legislative act granting the status of public interest to the selected projects or preparation of a procedure for adopting the public interest status projects. This task also requires a limited amount of personnel capacity over a set time period. This task is part of the usual portfolio of tasks of the legislator or the institution concerned with the procedure for adopting public interest status, so no new workstreams are created.

All the costs mentioned above are one-off costs. No additional costs are expected for the project developer.

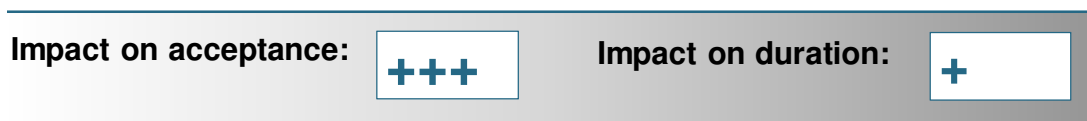
## III. Evaluation

Impact of the measure on the permitting procedure:

- **Impact on acceptance of projects of European interest:** One of the main purposes of this measure is to communicate to all stakeholders involved that the realisation of energy infrastructure projects that have been prioritised on European level is in the public interest and not only in the commercial interest of the companies carrying out the projects. The identification of projects of public interest and the clear communication of their status is expected to have a very strong impact on stakeholder acceptance. The impact on stakeholder acceptance is thus very high.
- **Impact on the duration of the permitting procedure:** This measure has no direct impact on the duration of the permitting procedure. However, it would have a positive indirect effect on the duration of the permitting procedure. Where possible, the measure would make the justification of the necessity of prioritised projects redundant and exclude any discussion on the necessity in the permitting procedure. Moreover, appeals questioning the necessity of the project would not be valid. As a consequence, the work load of both the responsible authority and the project developer would be decreased. This is expected to impact the

duration of the permitting procedure positively. Additionally, increased stakeholder acceptance is expected to have a positive effect on the duration of the procedure, as less stakeholder opposition and fewer comments from stakeholders are expected for prioritised projects. Therefore the overall impact of this measure on the duration is positive and, since there is only an indirect impact, low.

**EVALUATION: Impact on the permitting procedure**



**Figure 19:** Evaluation: Impact of Measure 1 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** The introduction of this measure requires adopting new legislation by Member States or adapting existing legislation or regulations. If introduced as presented above (see the section "Legal Implications in Member States"), the adaptation of an existing law or the adoption of a new law in some Member States would be required. These adaptations are not considered an obstacle for the introduction of this measure. Therefore the legal impact is negative and low.
- **Impact on costs:** This measure results in costs for the EC and the relevant public institutions in the Member States, especially in countries where no projects of public interest have been identified to date. However, the costs are all one-off costs and mostly covered by activities that are already part of the portfolio of tasks of the relevant public institutions. Therefore the impact on costs is negative and low.

**EVALUATION: Difficulty of implementation**



**Figure 20:** Evaluation: Level of difficulty of realising Measure 1

The benefits resulting from this measure with regard to the effectiveness of the permitting procedure outweigh the difficulties that are created by implementing it. The implementation difficulties are very small. Moreover, implementing Measure 1 is crucial for making permitting procedures more effective, as it creates a basis for certain later measures, especially Measure 2, "Implementation and Monitoring Plan", Measure 3 "National Energy Infrastructure Supervision", and Measure 4 "European

Energy Infrastructure Supervision". Therefore the implementation of this measure is strongly recommended.

## **Measure 2: Implementation and Monitoring Plan for prioritised projects**

### **I. Rationale**

This measure envisages the creation of a plan with target timelines for all prioritised projects (see Measure 1, "Definition of projects of public interest"). This plan will form the basis for monitoring and intervention in case of delays. It should be sufficiently detailed that delays in implementation can be detected early.

The progress of prioritised projects should be monitored on a regular basis, i.e. it should be verified whether the actual progress corresponds to the timeline as defined for the Implementation and Monitoring Plan. The results of the monitoring should be aggregated on both a national and an EU level. The implementation and monitoring should allow for early identification of delays or potential delays in the realisation of prioritised energy infrastructure.

The implementation of this measure would ensure transparency about the progress of prioritised projects for the EC. Likewise, Member States would have an overview of all planned projects located fully or partially on their territory. Such an overview is necessary for identifying delays and potential delays at an early stage and coordinating actions aimed at preventing or remedying such delays. The Implementation and Monitoring Plan is the key instrument enabling the EC and Member States to steer the realisation of prioritised energy infrastructure projects effectively.

This measure responds to the following key challenges in particular:

- 1-b Transparency of the procedure: The Implementation and Monitoring Plan enables transparency about the progress of prioritised projects
- 1-c Instruments for the overall steering of the procedure: The Implementation and Monitoring Plan allows the overall steering of the permitting procedure on both a national and an EU level

### **II. Implementation**

In the **design of the measure**, six key elements should be considered:

- The Implementation and Monitoring Plan should comprise a target timeline for each prioritised project, with milestones for each major project step, and a system that helps to identify delays and potential delays in the realisation of prioritised projects.

- For interconnector projects between countries, creating a timeline goes hand-in-hand with coordination between the concerned Member States; initiatives for the development of macro-regional strategies might provide the appropriate forum for coordinating timelines.
- Data should be compiled by an institution at a national level and aggregated by the EC.
- Delivery of data and its aggregation at national and EU level should take place frequently and regularly, ideally quarterly.
- Timely delivery of data is a crucial success factor for this measure. This can be ensured by having a simple standardised format for data transmission, web-based data transmission and incentive mechanisms.
- The Implementation and Monitoring Plan should form the basis for actions taken by the EC or Member States in case of delay or risk of delay to prioritised projects.

The Implementation and Monitoring Plan should include all projects that have obtained prioritised status on European level. For each project, **a target timeline** for realisation is included in this plan. The timeline shows target milestones for each major project step – target dates for the scoping, submission of application and start of permitting procedure, start and end of the public consultation, issuing of the permit, start of construction, etc. The timeline should also show which project phases typically need major resources and specialised expertise and are therefore prone to delay.

This information – target timelines, markers for project phases with a high risk of delay – should be embedded in a monitoring system. The monitoring system would allow for a simple comparison between the target timeline and the data on the actual date of finalisation of a process step and other indicators. It would therefore help identify any delays or potential delays.

The definition of target timelines requires the **coordination of interconnectors' timelines** in different Member States. Key milestones (e.g. issuing of the permit, start of construction) would ideally be timed in the different Member States to ensure the timely realisation of the overall project. Setting a timeline for interconnectors may require coordination by the EC. The institution responsible for the European Energy Infrastructure Supervision (see Measure 4) could support this coordinating process. An appropriate forum for such a joint process may be the initiatives for the development of macro-regional strategies. Several such initiatives in the EU are currently driving the development and implementation of macro-regional strategies, including the Baltic Sea Strategy, the North Sea Strategy, the Danube Basin Strategy and the Mediterranean Sea Strategy. Participating Member States have created these forums to develop joint policy implementation plans, including energy topics.



These forums could be used to support the development of timelines, including milestones for the permitting procedures of transnational projects.

**Data should be compiled and fed into the monitoring system** at the level of the Member States. The institution responsible for data compilation at Member State level should then forward the data to the EC, which should aggregate the data to create an overall picture. A direct reporting line between project developers and the EC is not necessary.

On a national level, a designated institution should be responsible for the timely delivery of data to the EC. This could be the institution in charge of the National Energy Infrastructure Supervision, for example (see Measure 3). This institution should gather data from both the authorities responsible for handling the permitting procedure and from project developers. The advantage of including project developers in data gathering is that they are in most cases involved in the realisation of the project from the investment decision up to the start of operation. This might not always be the case for authorities, who are responsible for just one part of the realisation: the permitting procedure.

To draw the maximum benefit from this monitoring, it is necessary to **update the data regularly**, at least every quarter. The implementation plan needs to monitor the procedure on a relatively detailed level (e.g. the level of process steps) in order to allow for timely intervention in case of delay or risk of delay. Some process steps are shorter than three months, so updating at least quarterly is recommended.

To **ensure timely delivery of data**, the obstacles to data transmission and aggregation should be as small as possible. Thus the format for data should be simple and standardised across Member States. It is necessary to introduce a standardised format on a European level, which is then adopted by the Member States. The standardised format should be as simple as possible in order to avoid creating new work. However, it needs to be sufficiently detailed to show the progress of projects on a process-step level. Data transmission should be organised via a designated IT system – ideally web-based – which may help to speed up data delivery. This would also help to ensure that the data is delivered in the right format. Aggregation would be facilitated significantly by standardised data formats.

Timely delivery of data can be ensured on a national and European level by means of incentive mechanisms and sanctions. In Member States, incentive mechanisms or sanctions for authorities or project developers can be created to ensure that they deliver on time and in the required format. Equally, incentive and sanction mechanisms can be created for institution responsible for data delivery in Member States at European level. If Member States deliver too late, the EC loses the possibility of timely intervention. A simple sanctioning mechanism could be, for example, regular reports on project status and data provision so that the responsible parties would be named publicly if data is not provided in time.

The Implementation and Monitoring Plan gives the institutions at EU level and in the Member States an indication of **when action needs to be taken in case of delay or risk of delay to a prioritised project**. To make sure that the Implementation and Monitoring Plan serves this purpose, a report needs to be issued on a regular basis to the responsible institutions on an EU and Member State level to flag up the potential need for action.

It should be noted that in some Member States, data compilation and aggregation on the progress of procedures already exists. In some cases, multiple systems are even in place requiring authorities and/or project developers to report to different institutions in different formats in parallel. To prevent unnecessary work for project developers and authorities, it is essential **to either use or replace existing systems**. There needs to be a Europe-wide, standardised system, so existing systems in Member States will most likely have to be replaced. This carries the risk that national institutions would have to adapt their monitoring systems, which might lead to opposition to the streamlining of data formats in the first place.

### **Implementation at EU Level**

For the implementation of this measure at EU level, the EC would have to:

- Create a standardised data compilation system, including incentives or sanctions
- Ensure the introduction of the standardised system in Member States
- Set up an IT tool that allows data to update quickly and the status of on-going projects to be reviewed. A tool is needed on both a Member State and a European (EC) level, as data needs to be compatible
- Inform institutions on a national level how the system works
- Assign responsibility to one institution at European level to ensure data compilation and aggregation

### **Implementation in Member States**

For the implementation of this measure at Member State level, the Member States need to:

- Assign responsibility for data compilation and transmission on a national level
- Ensure that data delivery at regular intervals can be handled without significant levels of additional work, i.e. identify synergies with existing reporting systems
- Introduce the standardised data compilation system, including incentives or sanctions. This includes the alignment or replacement of existing systems, if such systems exist
- Inform authorities and project developers how the system works
- Assign responsibility to one institution on a national level to ensure data compilation and aggregation

### **Legal Implications in Member States**

The creation of an Implementation and Monitoring Plan for prioritised projects requires the introduction of reporting commitments from the Member States to the EC (e.g. the European Energy Infrastructure Supervision – see Measure 4), and also from both authorities and project developers to a designated institution handling the Implementation and Monitoring Plan on a national level (e.g. the National Energy Infrastructure Supervision – see Measure 3).

If the reporting obligation from Member States to the EC is introduced via a Regulation, theoretically no further adaptation of national legislation in the Member States will be required. In practice, however, even an EU Regulation would require measures in federalised countries (Belgium, Austria, Germany, Italy, Spain, the UK) to make sure that the regional authorities deliver the required data.

### **Cost Drivers**

The main cost drivers from the perspective of the EC are:

- One-off expenses for developing a standardised data system
- At least one full-time employee engaged in continuous data compilation, including follow-up with institutions on a national level in case of delay, gaps or apparent mistakes, the aggregation of data and the issuing of warning notices in case of delay or risk of delay to projects
- IT support capacity for maintenance and development of the system
- Capacity for information sessions, information material and continuous support for institutions responsible for data aggregation on a national level

The main cost drivers from the perspective of the public institutions involved on a national level, including the responsible authority, are:

- Less than one full-time employee responsible for data compilation on a national level. Staff currently concerned with data compilation can cover this task, possibly also using data that is already available
- Capacity for information sessions and information material for authorities and project developers

The main cost driver from the perspective of project developers is less than one full-time employee for data compilation and transmission.

### **III. Evaluation**

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** The Implementation Plan itself has no impact on acceptance by stakeholders. However, it may serve as a basis for status reports, flagging up the discrepancy between what needs to be completed at a certain point in time to ensure that the system still works in 2020, and what has actually been achieved so far. Such reports help communicate to stakeholders the urgency of energy infrastructure extension. In this way, the Implementation Plan has a positive impact on stakeholder acceptance of prioritised energy infrastructure projects. Therefore the impact on acceptance is positive and low.
- **Impact on duration:** The Implementation and Monitoring Plan has an indirect impact on the duration of the permitting procedure, as it is a necessary precondition for enabling institutions on a European and Member State level to intervene in case of delay or risk of delay to the permitting procedure of a prioritised energy infrastructure project. This measure is the key to preventing delays, but as its impact is indirect only, its impact on duration is expected to be positive and moderate.

**EVALUATION: Impact on the permitting procedure**



**Figure 21:** Evaluation: Impact of Measure 2 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** If the measure is introduced via a Regulation, no further adaptations are needed to the legislation of Member States. The adoption of public interest status for projects of European interest on a national level does not necessarily require the adoption of a new law or the modification of a law on a national level. The establishment of reporting obligations would require no or only minor adaptations of national legislation. Therefore the legal impact of this measure is extremely low and can be considered irrelevant for the purpose of this analysis.
- **Impact on costs:** The set-up and maintenance of the Implementation and Monitoring Plan can be very simple. In terms of personnel, one person on a European level should be sufficient for the aggregation of data. In the Member States, less than one personnel capacity would be required for data compilation and most likely this task could be covered by staff already in charge of compiling similar data, drawing on existing data and reporting lines. Therefore the impact of this measure on cost is extremely low and can be considered irrelevant for the purpose of this analysis.

## EVALUATION: Difficulty of implementation

**Legal impact:**

0

**Impact on costs:**

0

**Figure 22:** Evaluation: Level of difficulty of realising Measure 2

Overall, the measure would be very useful for improving the effectiveness of the permitting procedure. The implementation of this measure is a necessary requirement for early intervention in case of delays to the permitting procedure. While the impact on duration is positive, its impact on costs is negative but very low. Therefore the implementation of this measure is strongly recommended.

## Measure 3: National Energy Infrastructure Supervision

### I. Rationale

The National Energy Infrastructure Supervision (NEIS) is a function on a Member State level. This function should be assigned to an existing institution on a national level, for example a national ministry, the regulator or a similar body. The National Energy Infrastructure Supervision has the task of monitoring the progress of permitting procedures for priority projects based on the Implementation and Monitoring Plan (Measure 2). For this purpose, the institution performing this function keeps an overview of which authority has the responsibility for handling the permitting procedure of prioritised energy infrastructure projects and the current status of the permitting procedure. It should also be able to take action in case of delay or risk of delay to a prioritised energy infrastructure project. The institution is in close contact with the EC over the progress of prioritised energy infrastructure and coordination of any action taken, especially in the case of transnational projects.

The implementation of this function would ensure that responsibilities for the handling and overview of the permitting procedures of prioritised energy infrastructure are always clear, as well as the status of the realisation of projects of European interest. It also ensures that certain actions are taken in case of delay or risk of delay to such projects, and that these actions are coordinated with the EC if need be.

This measure responds to the following key challenges in particular:

- 1-a Responsibility for the overall procedure: While the institution responsible for the NEIS is not responsible for handling the permitting procedure, it oversees the procedure and is responsible for taking action in case of delay or risk of delay. For this purpose, this institution also has to have a clear overview of the responsibility for the handling of the procedure at each moment in the respective Member State.

- 1-b Transparency of the procedure: The function of the NEIS is to keep an overview of responsibilities for the permitting procedures of prioritised projects and the status of these permitting procedures.
- 1-c Instruments for overall steering of the procedure: The function of the NEIS is also to take action where the overall permitting procedure of prioritised energy infrastructure is delayed or at risk of delay. It thereby supports the overall steering of the procedure.

## II. Implementation

In the **design of the measure**, five key elements should be considered:

- The NEIS should be assigned to an existing administrative institution on a national level to avoid creating new institutions.
- The NEIS handles the Implementation and Monitoring Plan on the level of Member States. This means creating a reporting obligation on the part of authorities and TSOs to the institution responsible for the NEIS.
- The institution responsible for the NEIS should be endowed with the possibility to take certain action in case of delay or risk of delay to prioritised energy infrastructure projects.
- The institution should be in close contact with the EC on a regular basis to ensure relevant data and information is transferred to the EC.
- The NEIS should encompass the handling of some support and monitoring functions with regard to the authority in charge of the permitting procedure.

The NEIS should be **assigned to an institution on national level** as it is the task of this institution to keep an overview of the realisation of prioritised energy infrastructure in the Member State in question. This task should be assigned to an existing institution in order to avoid the resource-intensive and time-consuming creation of a new entity. The task of the NEIS is an administrative one and should therefore be assigned to an institution or part of an institution that is not political (i.e. elected) but rather an administrative body which already has important elements of the required experience and expertise. The function can be assigned to different institutions in the different Member States, such as for example an administrative body within a national ministry, the regulator, or the one stop shop, if such an authority exists on a national level (see Measure 7).

The NEIS should also **handle the Implementation and Monitoring Plan** (Measure 2) in the Member State in question. For this purpose, clear reporting lines need to be established between the authority or authorities responsible for the operational

handling of the permitting procedure and this institution, and also between the TSOs committed to the realisation of prioritised energy infrastructure and the institution.

Moreover, the same institution should have **clearly outlined options for action** in case of delay or risk of delay to prioritised energy infrastructure projects. The array of actions may differ considerably depending on the institution assigned this function. However, it should include at least the following:

- Obtain access to information from the authority responsible for handling the permitting procedure and from the TSO to identify the cause of a delay or risk of delay, e.g. via data or interviews with the concerned parties.
- Request the responsible authority to involve independent external experts to support them in the handling of the permitting procedure, especially during project phases characterised by a high work load or the need for specialised expertise (see Measure 7). In such cases, the choice of experts should still be made by the authority responsible for handling the permitting procedure.
- Act as a mediator or appoint a mediator to help coordinate different stakeholders, e.g. the responsible authority and the project developer, the responsible authority and other stakeholders such as NGOs, or the project developer and other stakeholders such as NGOs.
- Request an expert opinion from an independent expert on topics requiring general clarification and affecting different projects, e.g. the impact of magnetic fields on human health.
- Address representatives from national ministries of the EC and request that they intervene.

It should further be noted that the institution with the function of the NEIS has no decision-making power with regard to the permit. While it may intervene in order to ensure timely completion of process steps in the permitting procedure and compliance with quality standards, it may not intervene in the decision-making process for the permit.

The NEIS is also responsible for **liaising with the EC**, including providing the EC with data on request (e.g. for the purpose of the Implementation and Monitoring Plan – Measure 2), supporting the coordination of time schedules for transnational projects between the responsible authorities in the different Member States, and coordinating action taken in case of delay or risk of delay, especially where interconnectors are involved.

The function of the NEIS is also to handle some **support and monitoring functions with regard to the authority in charge of the permitting procedure**. This should include the following elements:

- The authority responsible for the permitting procedure should be able to involve external experts in the permitting procedure (Measure 8). It is important to ensure that these external experts are independent. For this purpose, the NEIS should be able to verify external experts' independence and keep a list of independent external experts that can be accessed by the authority or the project developer on request.
- Where project developers are subject to costs for additional resources, the NEIS should monitor this possibility to ensure that it is not abused either by the project developer or by the authority in charge of the permitting procedure.

### **Implementation at EU Level**

The European Union may create the legal basis (e.g. preparation of a legislative proposal by the EC, adoption of an EU Regulation or Directive) that requests Member States to designate the NEIS function on national level. Alternatively, the EC may prepare a Recommendation or Guidelines laying out recommended elements of the implementation of this measure for the Member States.

### **Implementation in Member States**

For the implementation of this measure, Member States need to:

- Define the organisational set-up of the NEIS, including the organisational design, design of processes and reporting lines, detailed design of instruments, and definition of budget
- Implement the NEIS, for example as a task force in a national ministry, including staffing and training staff, choosing a location, purchasing equipment, etc.

### **Legal Implications in Member States**

To introduce the NEIS, governments would have to pass a relevant ordinance. The precondition for this is that the NEIS is a section of an existing institution, e.g. a national ministry. The preparation and issuing this ordinance should not take longer than six months.

### **Cost Drivers**

The main cost drivers from the perspective of the public institutions involved, including the responsible authority, are:

- Staffing the NEIS: The NEIS can be designed to be lean. The number of staff required depends very much on the number of prioritised projects in a country. However, three to five people should be sufficient, including support functions (secretary).



- Other (non-staff-related) operating costs, including location (zero if the NEIS is incorporated into an existing national ministry), communication and other costs (equipment, transport, etc.).

No additional costs are expected from the perspective of project developers.

### III. Evaluation

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** The existence of the NEIS has no impact on the acceptance of projects by stakeholders.
- **Impact on duration:** The NEIS has an indirect impact on the duration of the permitting procedure. The introduction of the NEIS ensures early identification of delays or risks of delay to prioritised energy infrastructure. This enables early intervention and helps to prevent or remedy delays. The impact on duration is thus positive and moderate.

#### EVALUATION: Impact on the permitting procedure

Impact on acceptance:  Impact on duration:

Figure 23: Evaluation: Impact of Measure 3 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** The institution can be introduced in the Member States by an ordinance issued by the government. Therefore the legal impact is negative and low.
- **Impact on costs:** Costs incurred by this measure involve the public sector. The main cost driver is the personnel costs. The NEIS should be a very lean organisation with no more than five employees in each Member State. The impact on costs is thus negative and low.

#### EVALUATION: Difficulty of implementation

Legal impact:  Impact on costs:

Figure 24: Evaluation: Level of difficulty of realising Measure 3

Overall, the measure is highly relevant for improving the effectiveness and shortening the duration of permitting procedures. The implementation of the NEIS ensures early intervention in case of delay or risk of delay to a permitting procedure for prioritised energy infrastructure. While the impact on duration and effectiveness is positive, the impact on costs is negative but very low. Implementation of this measure is therefore strongly recommended.

## **Measure 4: European Energy Infrastructure Supervision**

### **I. Rationale**

This measure envisages the creation of a European Energy Infrastructure Supervision (EEIS) function at the EC. This function should be covered by an existing institution or body at the Commission. Its goal is to oversee the implementation of priority projects. The tasks of this function include monitoring the progress of prioritised energy infrastructure projects based on the Implementation and Monitoring Plan (Measure 2). In case of delays, the institution covering this function should flag up delays or risks of delay and be able to trigger actions to help prevent or remedy them. In particular, the function will be responsible for coordinating support for transnational projects, especially with regard to the timeline of the permitting procedure in the different Member States involved.

Establishing a supervisory function on EU level, the EC would be able to oversee and manage the realisation of prioritised energy infrastructure and act in cases of delay or high risk of delay. The implementation of this measure would also provide the EC with an overview of responsibilities on a national level for the permitting of the prioritised energy infrastructure and therefore facilitate coordination with the responsible institutions in Member States, especially with regard to transnational projects.

This measure responds to the following key challenges in particular:

- 1-a Responsibility for the overall procedure: The EC takes action through the supervisory function, which has the responsibility to drive the timely finalisation of prioritised energy infrastructure. The function also provides an overview from the perspective of the EC of responsibilities for handling the permitting procedure at a national level.
- 1-b Transparency of the procedure: This measure ensures transparency about the status of the realisation of prioritised energy infrastructure and responsibilities for handling the procedure at a national level from the perspective of the EC.
- 1-c Instruments for overall steering of the procedure: The European Energy Infrastructure Supervision is the key instrument – besides the Implementation

and Monitoring Plan – for the EC to take a more active and effective role in ensuring the realisation of energy infrastructure.

## II. Implementation

In the **design of the measure**, three key elements should be considered:

- The EEIS helps the EC to establish an overview of the status of prioritised energy infrastructure based on the Implementation and Monitoring Plan (Measure 2). For this purpose, the institution responsible for the EEIS aggregates data from the Member States.
- The EEIS should be able to trigger actions in case of delay or risk of delay to prioritised energy infrastructure, e.g. by reporting to the EC and Member States' governments suggesting remedies or raising questions about the cause of the delay.
- The institution responsible for the EEIS should be in constant dialogue with the responsible institutions in the Member States, particularly with the aim of coordinating actions taken in the case of delay or risk of delay to transnational projects. It should also make use of opportunities to facilitate dialogue on good practice with regard to speeding up procedures, overcoming public opposition, and so on.

The EEIS gives the EC **an ongoing overview of the status of prioritised energy infrastructure**. For this purpose, the institution responsible for the EEIS should handle the Implementation and Monitoring Plan on a European level. This should consist of establishing the Implementation and Monitoring Plan in coordination with the institution responsible on a national level (i.e. the institution responsible for the National Energy Infrastructure Supervision, Measure 3). The role of the EEIS should be especially to coordinate the institutions in different Member States responsible for setting timelines for cross-border projects.

The institution responsible for the EEIS should also keep the Implementation and Monitoring Plan up to date. For this purpose, it should obtain data on the progress of the permitting procedure from each responsible institution for the NEIS at regular intervals of no longer than three months. The format should be standardised in each Member State (see also Measure 2). The EEIS then aggregates the data on a European level. This includes checking data for completeness and following up in case of late delivery. The inclusion of the new data in the tool for the Implementation and Monitoring Plan (see Measure 2) allows for an easy analysis of the data by the EEIS with regard to delays or risk of delays.

The EEIS should be able to trigger **actions where a delay or risk of delay is identified**. The initiation of actions should involve two steps:

- Requesting additional data or input, for example in the form of an interview with the institutions responsible for the NEIS in the relevant Member State. This should focus on the actions envisaged by the responsible institutions on a national level.
- If the EEIS finds that no action has been taken on a Member State level or that the action taken is insufficient to remedy a delay, it may suggest additional actions. These can include alternative actions by the institutions on a national level, or actions by different institutions on a European level or by the EEIS itself. It should flag up the need for action and possible intervention in the form of a concise notice sent to the relevant institutions, which should result in an immediate reaction. To ensure this happens, publishing selected notices by the EEIS is a possible option.

The EEIS mainly triggers actions to be taken in case of delay or risk of delay. The focus should be on coordinating actions between the different responsible institutions in the Member States, especially with regard to transnational projects. This could involve creating contacts, supporting exchange of information, calling meetings, and so on. Over time, experience with handling delayed procedures will grow within the EEIS and it could take on a coaching role for national supervisors, advising them on how to deal with delays.

The activities of the EEIS would be based on **constant dialogue with the responsible institutions in the Member States**. This dialogue would focus on data and information gathering from institutions in the Member States, i.e. the National Energy Infrastructure Supervision (NEIS) functions. For this purpose, reporting obligations would have to be created from the Member States to the EEIS at the EC. In case of delay or risk of delay, actions suggested by the EEIS should be linked to actions by the relevant institution in the Member State. This linking would be based on information from the NEIS functions and communication with them, plus communication with other institutions on a national level or the project developer where necessary.

### **Implementation at EU Level**

For the implementation of this measure on European level, the EC would have to:

- Assign the EEIS function to a section of an existing institution at the EC (e.g. a task force of DG Energy).
- Ensure information flow between the EEIS and the NEIS (at Member State level) by instituting a reporting obligation from the NEIS to the EEIS and drawing up reporting standards.

### **Implementation in Member States**

No elements of this measure need to be implemented on the Member State level.

### **Legal Implications in Member States**

The EC can establish this institution on its own behalf. Therefore no legal adaptations are required in the Member States for the implementation of this measure. For ensuring data and information delivery, however, the adoption of a legal act at EU level would be required (see Measure 2, Implementation and Monitoring Plan).

### **Cost Drivers**

The main cost drivers from the perspective of the EC are:

- Staffing the EEIS function. One to two full-time employees should be sufficient for covering the day-to-day work since the data will be delivered in a standardised format by Member States and only needs to be verified, processed and analysed by the EEIS. Actions will be triggered on a case-by-case basis.
- There are no other significant operating costs (such as location costs), as the function would be incorporated into existing institutions on a European level.

No additional costs are expected for other public institutions, including the responsible authority, or for project developers.

### **III. Evaluation**

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** The EEIS has no impact on the acceptance of projects by stakeholders, so impact on acceptance is not relevant for this measure.
- **Impact on duration:** The EEIS has an indirect impact on the duration of the permitting procedure. The introduction of the EEIS ensures the early identification of delays or of risks of delays at a European level. This measure helps to ensure that there is intervention on a national level or, failing this, on a European level to remedy any delay in the realisation of prioritised energy infrastructure. In any case, the spotlight is focused on delays to energy infrastructure, which also helps the responsible institutions tackle delays quickly. Thus the impact on duration is positive and moderate.

**EVALUATION: Impact on the permitting procedure**



**Figure 25:** Evaluation: Impact of Measure 4 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** No adaptation of legislation in Member States is required for the introduction of this measure. To ensure data and information transmission, a legal act at EU level would be required. Therefore the legal impact is negative and low.
- **Impact on costs:** Costs are incurred for the EC by the implementation of this measure. The main cost drivers are personnel costs, but these can be kept quite low. The EEIS can be staffed with just one or two full-time employees. The impact on cost is thus negative and low.

**EVALUATION: Difficulty of implementation**



**Figure 26:** Evaluation: Level of difficulty of realising Measure 4

Overall, the measure is very important for improving the effectiveness and shortening the duration of permitting procedures. The implementation of the EEIS helps to ensure that intervention is effective in cases of project delay or risk of delay. It should be emphasised that the implementation of the EEIS only makes sense in combination with Measure 2, "Implementation and Monitoring Plan", and Measure 3, "National Energy Infrastructure Supervision". These two measures are a necessary precondition for the effective functioning of the EEIS. If these preconditions are met, the impact of the EEIS on duration and the effectiveness of the realisation of prioritised energy infrastructure is positive, while its impact on cost is very low. The implementation of this measure is therefore strongly recommended.

**Measure 5: Legally Defined Target Durations and Effective Implementation**

**I. Rationale**

Legally defined target durations for the permitting procedure should be established by the legislator. In order to be able to monitor and control permitting processes

effectively, it is crucial that target durations are defined for each procedure, process and process steps.

The introduction of this measure makes it possible to monitor and control the progress of the procedure, comparing it with its target duration. Authorities involved in the permitting process can be obliged to report progress not only with regard to legal and procedural aspects, but also with regard to target durations. Defining target durations is a necessary precondition for other measures: Measure 2, "Implementation and Monitoring Plan", Measure 3, "National Energy Infrastructure Supervision", Measure 4, "European Energy Infrastructure Supervision". Without the definition of target durations for each procedure, process and process step, an implementation plan cannot be defined. It would also be impossible to monitor the progress of permitting procedures compared to target timelines. Moreover, the introduction of legally defined target durations and effective enforcement would help project developers gain security in their planning. For example, the risk of having to pay for unused construction equipment because the permitting procedure lasts longer than expected would be reduced.

This measure responds to the following key challenges in particular:

- 2-c Operational responsibility for processes and process steps: The establishment of target durations helps to focus responsibility on the timing of the delivery of the outcome of the permitting procedure. Currently, the focus lies in most cases on process-handling and the quality of the outcome.
- 2-g Duration: This measure establishes a clear definition of target durations for the procedure, processes, process steps and the periods in between them.

## **II. Implementation**

In the **design of the measure**, six key elements should be considered:

- The EC may establish a target duration of the overall procedure or for parts of it.
- In the Member States, the legislators should define the target duration for processes and process steps.
- To increase acceptance and the level of attention paid to target durations, Member States could define target durations in a joint process, e.g. within the framework of regional initiatives.
- Target durations should be defined for the permitting procedure from scoping and submitting the complete application, including all documents and annexes, to the issuing of the permit.

- An enforcement mechanism should be in place, compelling the authority to comply with the target durations. This should include both positive and negative incentives.
- An independent institution should monitor compliance with target durations and be responsible for triggering enforcement mechanisms.

The **EC may establish a target duration for the overall permitting procedure** for prioritised energy infrastructure projects.

**In the Member States, the legislators should define the target duration** for processes and process steps. Defining target durations for the permitting procedure in each Member State is necessary because the exact design of the permitting procedure currently differs greatly between Member States.

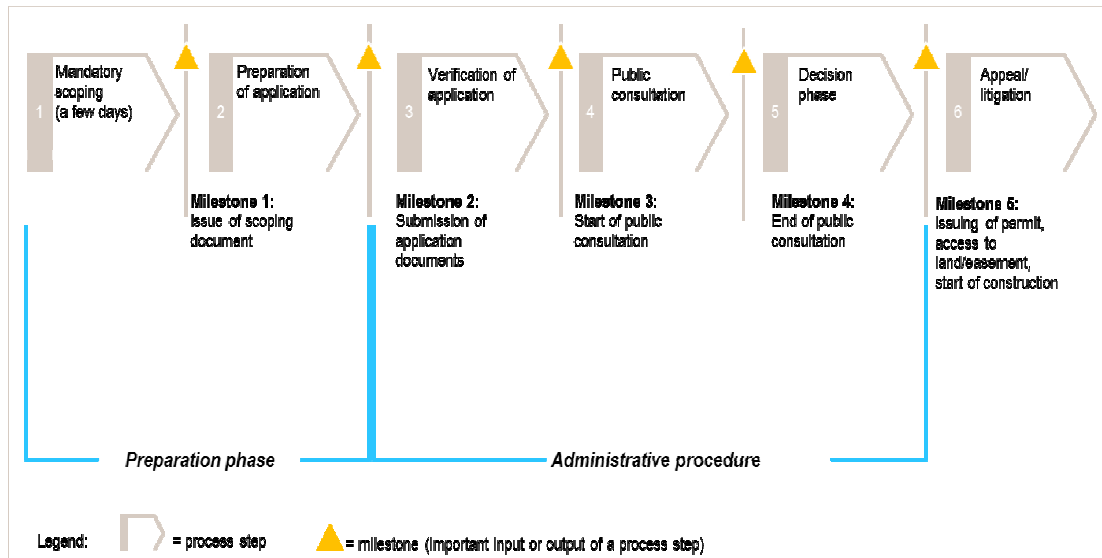
The target duration of the overall procedure could be defined in a **joint process involving different EU Member States**. This would make it possible to promote acceptance of defined target durations and also increase the amount of attention given to compliance with target durations by Member States. Joint definition of target durations is particularly relevant for interconnectors, so an appropriate forum is needed – for example, the initiatives for the development of macro-regional strategies. Several such initiatives in the EU are currently driving the development and implementation of macro-regional strategies, including the Baltic Sea Strategy, the North Sea Strategy, the Danube Basin Strategy and the Mediterranean Sea Strategy. Participating Member States have created these forums to develop joint policy implementation plans, including energy topics. These forums could be used to support the development of target durations for permitting procedures, especially with regard to transnational projects.

**Target durations should be defined for the overall procedure, processes and process steps.** For this purpose, two phases should be distinguished:

- The preparatory phase, from the notification of the project for scoping to the submission of application documents
- The administrative procedure, from submission of the application by the project developer to the issuing of the permit

Figure 27 shows the preparation phase and the administrative procedure schematically for a standard permitting procedure.





**Figure 27:** Different phases of a permitting procedure: preparation phase and administrative procedure

The actual duration of the preparation phase is dependent on both the responsible authority and the project developer. The responsible authority influences the duration by ensuring that the outline of the application documents is sufficiently clear at the outset of this phase, i.e. during the Mandatory Scoping (see Measure 12, "Mandatory Scoping"). This prevents late requests for additional information from the project developer and ensures sufficient advisory support for the project developer during the preparation phase. The project developer is responsible for ensuring high quality application documents in the preparation phase. This phase is concluded when the project developer is in a position to submit high quality, complete application documents to the responsible authority. Therefore the legally defined target duration for this phase of the procedure would create an incentive for both the responsible authority and the project developer.

The actual duration of the administrative procedure is mainly dependent on the responsible authority. The responsible authority is in charge of delivering the result of most process steps during this phase (e.g. response to comments submitted during the public consultation, development of the decision, writing of the permit). The administrative procedure can be delayed by requests for additional information by the responsible authority. However, such requests can also be limited by ensuring sufficient and ideally binding clarification of the required input (i.e. the scope of the permit) during the mandatory scoping and the preparation phase. Responsibility for ensuring sufficiently clear advice on the scope of the application documents at the outset of the procedure also lies with the responsible authority. The project developer's behaviour also impacts the duration of this phase, for example by providing a high quality permit and high quality input to answers to comments from

stakeholders. However, it is primarily the responsible authority which gains an incentive in the form of the legally defined target duration for this phase.

It is not advisable to try to define target durations for the appeal and litigation phase at EU level, as this would be very difficult to implement in some Member States. An alternative would be to eliminate the "suspensive" effect of ongoing appeals for projects of European and national public interest (see Measure 13, "Granting access to necessary land/easements together with the permit"). This would allow the project developer to start construction as soon as the permit has been issued; the lack of a binding target duration for the appeal and litigation phase would have no impact on the duration of the permitting procedure. For the definition of the actual time limits to be set, a reference process can be used (see Measure 6).

**Example 72:** In Germany, the introduction of a target duration for the decision by a court would be viewed as limiting the independence of judges. This would be an infringement of Germany's Basic Law (i.e. constitution). As a consequence, it is highly unlikely that such a measure could be implemented in Germany.

While durations for processes and process steps are already defined in many Member States, the **effective enforcement of target durations** remains a major challenge. Merely defining target durations for the permitting procedure does not necessarily result in compliance with these target durations. Some crucial preconditions need to be fulfilled, particularly the availability of adequate resources for the responsible authority.

The introduction of an **enforcement mechanism** for authorities may support compliance with target durations. While project developers in most cases have a strong financial interest in completing the permitting procedure within the pre-defined target duration, authorities do not have this incentive. However, enforcement mechanisms can only be applied if the responsible authority has sufficient access to resources and expertise (see Measure 8). Where this is not the case, enforcement of target durations may lead to compliance with target durations but also have a negative impact on the quality of the output (e.g. the permit). This is undesirable, as a low quality permit is highly vulnerable to appeals. Enforcement mechanisms could include non-financial and financial incentives:

Non-financial incentives:

- In case of delay to processes or process steps, the responsible authority could be required to justify the delay. The justification would have to be provided to the superior institution, as well as being made public. This enforcement mechanism would put reputational pressure on the responsible institution and help to prevent delays that would be difficult to justify. Moreover, this mechanism would help the superior institution to identify the underlying reasons for delays based on the justification provided by the responsible authority, and also enable it to identify appropriate solutions for delays (negative incentive).

- Additionally, the person in charge at the responsible authority could have to explain delays to the superior institution, e.g. the respective ministry on a national level, or even to the country's parliament (negative incentive).

**Example 73:** In England and Wales, the Chair of the IPC (Infrastructure Planning Commission – the one stop shop in charge of handling of the procedure) has to report to Parliament if there is a delay. This enforcement mechanism creates a significant personal incentive for the Chair of the IPC.

- Finally, non-financial incentives could potentially include an "authority of last resort". If the responsible authority does not deliver a decision within the given timeframe, an authority of last resort could take the decision instead of the responsible authority. This is valid option only if the responsible authority has sufficient access to expertise to take over this task quickly and has been involved in the permitting procedure beforehand – it is important to ensure that the permitting procedure is not slowed down by shifting responsibility to an authority which knows nothing about the subject. The role of the authority of last resort could be fulfilled by the institution in charge of the National Energy Infrastructure Supervision, for example (see Measure 3, "National Energy Infrastructure Supervision"). In this case it should be ensured that this institution has flexible access to expertise (see Measure 8, "Improving authorities' access to experts").

**Example 74:** In the Netherlands, a one stop shop (Ministry of Economic Affairs, Agriculture and Innovation, ELI) is responsible for coordinating the procedure at a national level. Decision-making authority for certain aspects of the project remains with local authorities, e.g. local construction permits are issued by municipalities. If a local authority refuses to issue its permit, the procedure does not grind to a halt, as the ELI can overrule the local authority. As the ELI has been closely involved with the permitting procedure, it can make an informed decision. It can also draw on additional expertise (such as from academics) in making its decision about the local permit. However, a certain hesitation to overrule municipalities has been observed on the part of the ELI in the past year, very likely due to the risk of increasing local opposition.

**Example 75:** In Austria, authorities on the state (and not on the national) level are responsible for taking the decision about the permit application. If there is a delay in the procedure and this delay can be mainly attributed to the authority, the applicant has the possibility of requesting referral to a higher authority (Administrative Complaint – *Devolutionsantrag*). However, this referral does not necessarily speed up the procedure; indeed, it usually results in an additional delay. This is due to the fact that the higher authority is not equipped to handle permitting procedures – staff, expertise and knowledge are not available and the authority has not been closely involved in the handling of the permitting

procedure. This mechanism for enforcing timelines is therefore relatively ineffective and is not usually used by project developers.

These two negative incentive mechanisms are easy to implement as they do not require financial input. They are therefore strongly recommended. Additionally, financial incentive mechanisms could be applied:

Financial incentives:

- Where a delay to the overall procedure is caused by the responsible authority, the authority could have to refund the fees received from the project developer. Depending on the extent of the delay, the responsible authority could even have to refund two or three times the fee (negative incentive).
- Where the responsible authority handles the procedure within the target duration, the project developer could have to pay a premium to the authority, e.g. an additional amount equal to the fee already paid for handling the permitting procedure (positive incentive).

Alternatively, the financial incentives could be limited to a single step. In this scenario, the project developer would only pay the fee if the permitting procedure is concluded on time, otherwise the project developer can withhold the fee. This option is not recommended, however, because the signalling effect of the alternative described above is greater.

The implementation and exact design of enforcement mechanisms for authorities should be left open to the Member States. In particular, the level of any incentives must be adapted to the situation in each Member State, which currently differs considerably (e.g. share of self-financing required from authorities, level of fees).

An **independent institution**, e.g. the National Energy Infrastructure Supervision (Measure 3), **should oversee compliance** with the target durations for procedure, processes and process steps. It is the job of this institution to identify delays and risks of delay, analyse the cause of delays and support the formulation of measures. Where enforcement mechanisms are already in place, this independent institution should also identify responsibility for the delay, i.e. whether the delay has been caused by the responsible authority or the project developer. This monitoring function includes watching out for potential loopholes which authorities may use to justify the extension of target durations, e.g. incompleteness of documentation and requests for additional information from the project developer. If the responsible authority is responsible for causing the delay, the independent institution should trigger the enforcement mechanisms. Equally, if the procedure has been completed within the target duration, the independent institution may commend the responsible authority and request the payment of the premium fee by the project developer. It is important that negative incentives in particular are triggered by an independent third-party

institution, since project developers would very likely be reluctant to request negative incentives as this might damage their relationship with the responsible authority.

**Example 76:** In Hungary, target durations for processes and process steps are foreseen under the Public Administrative Procedure Act. Target durations are legally binding and they are enforced. If authorities do not respect the time limits for making their decision, they have to repay the fee they received earlier from the project developer. If the time for providing the decision is doubled, authorities have to pay double the amount of the fee. The project developer may ask for enforcement. However, this mechanism has two pitfalls:

- The time needed for requesting additional information by the authority is not deducted from the target duration. As a consequence, where there is a risk of delay, the authorities ask the developer to provide additional information as a way of gaining time.
- Project developers are highly reluctant to ask for fees to be repaid in case of delay because they fear a deterioration of their relationship with the authority.

This example shows that compliance with target durations has to be overseen by an independent institution. Enforcement mechanisms should be triggered by this independent institution.

We believe that an overall target duration of four years for the entire permitting procedure, i.e. from scoping to the issuing of the permit, can be implemented realistically under the conditions described above. The phase from the submission of the application documents to the issuing of the permit can be limited to one year.

This overall target duration is considerably shorter than the current average duration of permitting procedures in the Member States analysed: from the submission of application documents to the issuing of the permit, the procedure generally takes around four years.<sup>23</sup> To this duration, a minimum of two years – and in many cases more – has to be added for the phase preceding the submission of the application documents, i.e. the preparation phase. Durations differ widely between Member States (see also Section C.1.g – Duration).

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<sup>23</sup> This value has been calculated by taking the average duration of permitting procedures in each Member State analysed. Information on durations has been obtained from project developers. However, the durations of permitting procedures differ in each Member State significantly between projects depending on the design of the project (e.g. size of the project, number of municipalities affected, number of protected areas, protected species). This makes calculating durations for Member States – and on this basis average durations – very difficult.

### **Implementation at EU Level**

For the implementation of this measure on a European level, the EC would have to establish a target duration for both phases of the overall permitting procedure, i.e. the preparation phase and the administrative procedure. If the EC chooses to support the definition of target durations in a joint process by Member States, e.g. within the framework of initiatives for the development of macro-regional strategies, it would have to initiate and support the discussion of target durations in these forums.

### **Implementation in Member States**

On a Member State level, action would have to be taken in the following areas:

- Define target durations for processes and process steps.
- Possibly use the forum of initiatives for the development of macro-regional strategies to agree on target durations with other Member States, especially with regard to transnational projects.
- Define incentive mechanisms for responsible authorities, including the exact case in which incentive mechanisms apply and the level of the incentives.
- Assign responsibility for monitoring compliance with target durations to an independent institution, including the right to impose penalties on the responsible authority and request payment of premiums from project developers.

### **Legal Implications in Member States**

An EU Regulation could lay down a target duration for the overall permitting procedure of prioritised energy infrastructure projects, as well as the requirement for Member States to lay down the target duration for processes and process steps for the permitting procedures of prioritised energy infrastructure in their own legislation. However, the overall target duration presented on an EU level cannot conflict with the target durations in Member States. If the overall target duration is fixed before the Member States have defined their own target durations, the overall target duration cannot be made legally binding. As a consequence, the legally binding introduction of the overall target duration risks being no more than the lowest common denominator. Alternative ways of introducing the overall target duration may be more effective.

However it is introduced (by EU Regulation, Directive, Recommendation or other means), this measure would result in adaptations of the legislative framework in some EU Member States. As permitting procedures are designed differently in different Member States, the target duration for the various processes and process steps would in any case have to be identified by the legislator of the Member State in question. This is also the case for incentive mechanisms. For a more detailed

analysis of the degree of legal implications in the Member States, three different types of Member States should be distinguished:

- **Member States where target durations for the different phases of the permitting procedure are already defined by law and enforcement mechanisms are in place:** For this type of country, legal action is not required. However, adaptations could be implemented by these Member States to further reflect rules set by the EC, especially with regard to the overall target duration. They could also be based on the outcome of the joint process of EU Member States on the topic of target durations, especially with regard to transnational projects. Therefore legal adaptations with regard to the implementation of enforcement mechanisms may be taken by this group of Member States, but would not necessarily have to be taken by their legislators.
- **Member States where target durations for the different phases of the permitting procedure are already defined by law but no enforcement mechanisms are in place:** For this type of country, the legislator would not need to adapt the legislative framework with regard to target durations. However, it may adapt target durations to better reflect the rules set out by the EC and/or the outcome of a joint process between Member States. The legislator would have to introduce an enforcement mechanism. However, the design of the enforcement mechanism would be decided on at a national (or federal state) level.
- **Member States where no target durations for the different phases, or target durations for only some process steps, are in place:** The legislator in these Member States would have to adopt a law defining target durations and enforcement mechanisms.

In summary, the design of both target durations and enforcement mechanisms would be decided on by the Member States, but would in most cases require adaptations to legislation.

### **Cost Drivers**

The main cost drivers from the perspective of the public institutions involved, including the responsible authority, are:

- **Monitoring compliance with target durations by an independent institution:** This cost is very low because it does not require the building up of an additional institution – the task may be assigned to an existing institution.
- **Implementing enforcement mechanisms:** Non-financial enforcement mechanisms, especially the involvement of an "authority of last resort", would create costs. These costs relate to personnel at an additional authority that would now have to gain in-depth understanding of the issues it has to take the

decision on, and also additional experts to support this authority. As for financial enforcement mechanisms, it may be expected that that the responsible authority will in many cases receive more fees from the project developer, i.e. the regular fee plus the premium fee where it completes the permitting procedure on time. Therefore no additional costs would be created for the authority by the financial enforcement mechanisms

The main cost driver from the perspective of project developers is that this measure would lead to a slight increase in the fees paid to the responsible authority where procedures are completed on time.

### III. Evaluation

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** This measure has no impact on the acceptance of energy infrastructure projects.
- **Impact on duration:** This measure is a major step towards shortening the actual duration of permitting procedures. It allows the verification of the duration compared to a target duration. It also enables enforcement of compliance with the defined target duration of the permitting procedure. The impact on duration is thus positive and high.

#### EVALUATION: Impact on the permitting procedure



**Figure 28:** Evaluation: Impact of Measure 5 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** This measure could be introduced by an EU Regulation. However, the introduction of an overall target duration shorter than target durations defined by some Member States would require legal adaptations in the Member States to ensure compliance with the overall target duration. The introduction of target durations for processes and process steps, and of enforcement mechanisms, would require adaptation of the legislative framework in most EU Member States to transpose target durations and enforcement mechanism into national law. This adaptation is not considered a major obstacle, but it may require a revision of competencies, especially for the successful introduction of enforcement mechanisms. However, if an overall target duration not shorter than the target duration defined by some Member States is



introduced by an EU Regulation, no legal adaptations are expected. Therefore the legal impact is neutral.

- **Impact on costs:** The costs of the permitting procedure increase slightly through the introduction of this measure. This is due in particular to the additional personnel resources that might be required to monitor compliance with target durations and the additional fees that may have to be paid by project developers. However, the additional costs are very low. The impact on costs is thus negative and low.

#### EVALUATION: Difficulty of implementation



**Figure 29:** Evaluation: Level of difficulty of realising Measure 5

Overall, this measure is a key requirement for making permitting procedures in Member States more effective. Without set target durations for procedures, processes and process steps, delays cannot be identified at an early stage in the procedure. As a consequence, early intervention to prevent delays cannot be triggered when needed. The positive impact of this measure on duration is very high and the costs involved are very low. The implementation of this measure is therefore strongly recommended.

### Measure 6: Definition of a Reference Permitting Process for Prioritised Energy Infrastructure Projects

#### I. Rationale

This measure foresees the definition of a reference permitting process. The reference permitting process provides major milestones and the required process steps that a procedure should have. This framework procedure should be defined by the EC. It helps to facilitate monitoring and reporting activities as it provides a common denominator for monitoring and reporting a variety of permitting procedures. It should also serve as a reference point for identifying the target duration of a permitting procedure for prioritised energy infrastructure in the EU.

This measure responds to the following key challenges in particular:

- 1-b Transparency of the procedure: The reference permitting process addresses the challenge of insufficient transparency of the procedure by creating a set of basic milestones which can be used for overall monitoring and reporting by the EC.

1-c Instruments for overall steering of the procedure: By serving as basis for the establishment of an overall reporting and monitoring system on the level of the EU, this measure also addresses the challenge of lack of instruments for the overall steering of the procedure.

2-g Duration: By making it possible to define a target duration for the permitting procedure of prioritised energy infrastructure in the EU, this measure addresses the challenge of long overall durations.

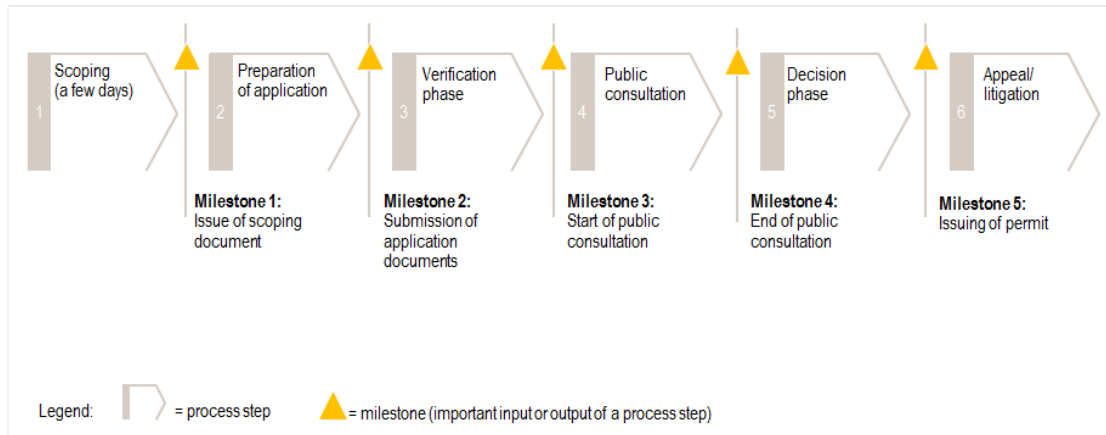
## II. Implementation

In the **design of the measure**, three key elements should be considered:

- The reference permitting process should contain a minimum of five milestones to ensure effective monitoring of the progress of permitting procedures across the EU and early identification of delays or risks of delay.
- The reference permitting process should serve as a basis for identifying the target duration of an effective permitting procedure for prioritised energy infrastructure – an initial assessment shows that the overall target duration is three to four years.
- The reference permitting process should serve as a basis for the Implementation and Monitoring Plan (Measure 2).

The reference permitting process should have a **minimum of five milestones**. With fewer milestones, effective monitoring of the progress of the procedure and early identification of delays or risk of delays would not be possible. This is because the time between the milestones would be much too long to ensure that delays or risks of delays are detected on time. At the same time, the reference permitting process needs to be broad enough to allow for differences in permitting procedures in different Member States, as such differences are sure to remain in future. For this reason, the reference permitting process should not be overly detailed.

Figure 30 outlines a suggested reference permitting process:



**Figure 30:** Suggestion for a reference permitting process

The milestones presented above correspond to the reference process established by the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC).<sup>24</sup> This framework process should be further implemented and integrate all assessments and permits required under the EU legislation (environmental and non-environmental), as well as under national legislation.

The target procedure consists of the following consecutive process steps and milestones:

- **Process step 1 – Scoping phase:** During this process step, a scoping conference takes place. The purpose of this conference is to determine the requirements for and the outline of the application documents. Ideally, key stakeholders (i.e. the responsible authority, the project developer, other competent or affected authorities and representatives from environmental NGOs and relevant interest groups) participate in the conference.
- **MILESTONE 1 – Issuing of scoping document:** The outcome of the scoping is a detailed outline of the application documents. This outline serves the project developer as a guideline for the preparation of the application documents.
- **Process step 2 – Preparation phase:** The project developer prepares the application documents. The responsible authority is available to provide guidance to the project developer. Simultaneously, an information campaign is carried out for potentially affected stakeholders.

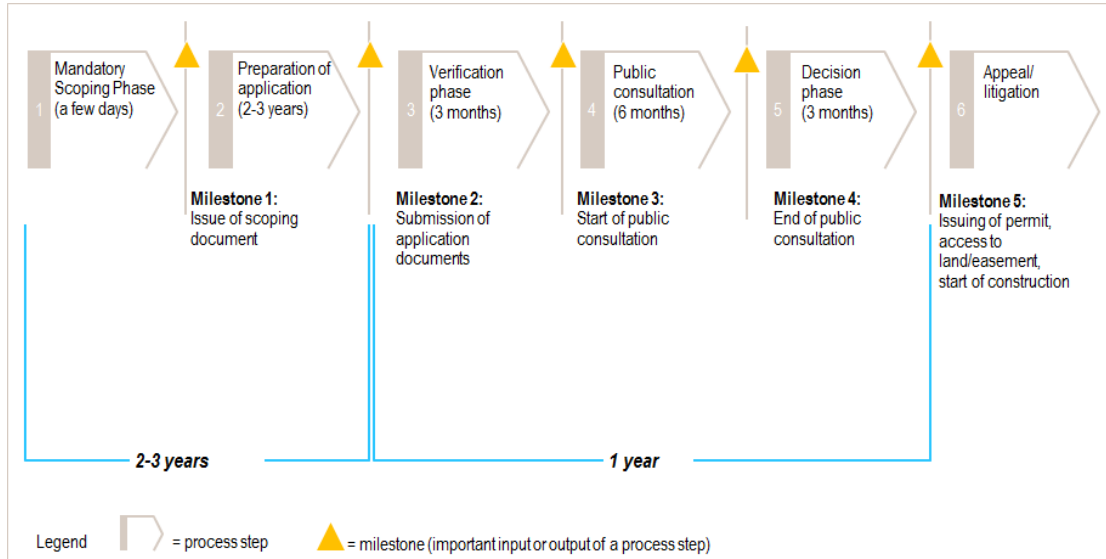
<sup>24</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (Council Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC), OJ L 175, 5.7.1985, p. 40.

- **MILESTONE 2 – Submission of application documents:** The project developer officially submits the application to the responsible authority.
- **Process step 3 – Verification phase:** The responsible authority checks the application documents for completeness. If any information is missing or of insufficient quality, the one stop shop turns to the project developer and requests it to remedy the situation. However, the risk of requests for additional information should be limited by the availability of the one stop shop to guide the project developer during the preparation phase. As soon as the completeness of the documents has been confirmed, the public consultation may start.
- **MILESTONE 3 – Start of public consultation:** Based on the output from the previous process step, i.e. the complete application documents, the public consultation phase is officially initiated by the responsible authority.
- **Process step 4 – Public consultation:** During the public consultation, stakeholders have access to the application documents and may submit comments. Public hearings may also take place. During this process step, the responsible authority successively receives comments from stakeholders and, supported by the project developer, begins responding to them.
- **MILESTONE 4 – End of public consultation:** The responsible authority officially closes the public consultation phase. Comments from stakeholders submitted after the closure of this phase do not need to be considered.
- **Process step 5 – Decision phase:** The responsible authority considers all the input (application documents, comments from stakeholders, responses to comments, etc.) and decides on the application. If the application is approved, the responsible authority draws up the permit.
- **MILESTONE 5 – Granting of permit:** The responsible authority officially issues the permit.
- **Process step 6 – Appeal and litigation:** Within a defined timeframe after the issuing of the permit, certain stakeholders are entitled to appeal against the permit.<sup>25</sup>

The reference permitting process should serve as a basis for **identifying the target duration of an effective permitting procedure for prioritised energy infrastructure**. A suggestion for the target duration is presented in **Figure 31**:

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<sup>25</sup> The timeframe relates to appeals and litigation in Member States and does not include litigation at an international level (e.g. at the Court of Justice of the European Union or the European Court of Human Rights).



**Figure 31:** Target duration of the target process for the permitting procedure

The assessment of the overall target duration is based on the assumption that the permitting procedure either consists of just one process, or existing processes can occur in parallel. It is expected that the process steps can be handled within the following durations (milestones typically have no duration but are short-term events):

- **Process step 1 – Scoping Phase:** This process step typically lasts only few days, i.e. the duration of the scoping conference.
- **Process step 2 – Preparation phase:** This process step typically lasts at least two years. This is due to the fact that some of the environmental surveys for the application documents need to be carried out in two consecutive seasons (regarding plant and animal life) in order to be representative. If a sample from one season fails or is insufficient, the duration may have to be extended by another year, leading to a likely duration of this process step of three years.
- **Process step 3 – Verification phase:** This process step should not take longer than three months. If the single responsible authority has insufficient assessment experts available in-house to assess the completeness of the application documents, the authority should be able to draw on additional experts – either from other authorities or external individuals – to make sure that the three months target duration is not exceeded (see Measure 8). It can, of course, also happen that extensions of the duration of this process steps are caused by the project developer.
- **Process step 4 – Public consultation:** This process step should take no longer than six months. Typically, the public consultation itself as practised today in many EU Member States lasts less than six months.

- **Process step 5 – Decision phase:** This process step requires the responsible authority to evaluate all the available information and make its decision. Resources and experts can theoretically be increased during this process step to ensure timely delivery. Therefore this process step should take no longer than three months.
- **Process step 6 – Appeal and litigation:** Ideally, the appeal and litigation phase is concluded within six months.

**Example 77:** In England and Wales, the part of the permitting procedure from acceptance of the application to issuing of the permit takes 9 to 12 months. This is possible because a large share of the public consultation and stakeholder dialogue is required to be covered by the project developer as part of the procedure before an application can be accepted. Moreover, the IPC in England and Wales is required to reject permit applications which do not fully comply with requirements specified in law and regulations. This ensures that the procedure starts with complete, high quality documents and thus helps to achieve a short duration. Project developers state that the overall procedure including the preparation phase usually takes four years on average.

**Example 78:** In the Netherlands, the part of the permitting procedure from submission of the application to the issuing of the permit has a target duration of 9 to 12 months. This is possible due to the extensive stakeholder dialogue preceding this part of the procedure. Informal consultations between the project developer and local authorities and the one stop shop (ELI) precede the official procedure. The ELI supports this consultation proactively. Project developers indicate that the overall procedure including the preparation phase takes over five years in the Netherlands.

The reference permitting process should serve as a **basis for the Implementation and Monitoring Plan** (Measure 2). Therefore close alignment of the milestones for each Member State with the responsible institution in the respective Member State and the EC is necessary.

### **Implementation at EU Level**

The EC would have to align the reference permitting process with relevant stakeholders, especially the responsible institutions in Member States. To ensure the effectiveness of the reference permitting process in supporting the monitoring and reporting, as well as its contribution to achieving the target duration of permitting procedures in the EU, alignment with Member States is crucial to create acceptance and verify feasibility in each of the Member States. Moreover, the EC would then have to implement the reference permitting process in the Implementation and Monitoring Plan (Measure 2).

### **Implementation in Member States**

Member States have to take actions in the following areas:

- Verify and provide their opinion and agreement on a reference permitting process.
- Provide target durations adapted to the specific permitting landscape on national level.
- To use of the reference permitting process in the framework of the Implementation and Monitoring Plan, Member States would have to define dates for each milestone for each prioritised energy infrastructure project.

### **Legal Implications for Member States**

This measure has no legal implications for Member States. The precondition is that the implementation of the reference permitting process in the Member States is not introduced in a legally binding way on a EU level, but used as a tool to support further harmonisation of procedures and communication about milestones for critical energy infrastructure projects.

### **Cost Drivers**

The main cost driver from the perspective of the EC is the alignment of the reference permitting process with the Member States. This requires consultation with the responsible institution in each Member State.

The main cost driver from the perspective of public institutions involved in the Member States is the alignment of the reference permitting process with the EC. This requires the verification of the reference permitting process by each responsible institution on a national level. This is likely to involve consultation with various stakeholders on a national level, too.

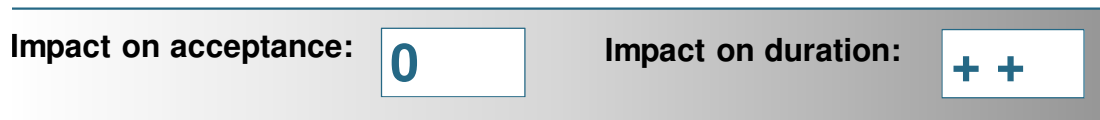
### **III. Evaluation**

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** This measure has no impact on acceptance.
- **Impact on duration:** This measure has a twofold indirect impact on duration. Firstly, it helps to establish an official target duration for permitting procedures for prioritised energy infrastructure projects and thereby encourages Member States to create conditions permitting the completion of permitting procedures within this timeframe. Secondly, it serves as a basis for the implementation and monitoring system and thereby supports the possibility of intervention on a

national level, and support from the EC in case of delay or risk of delay in the permitting procedure. The impact on duration is thus positive and moderate.

**EVALUATION: Impact on the permitting procedure**



**Figure 32:** Evaluation: Impact of Measure 6 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** This measure requires no adaptation of the legislative framework in the different Member States. There is thus no legal impact.
- **Impact on costs:** Costs created by this measure are one-off expenses only and limited to the consultation between the EC and the responsible institutions on the national level. The costs are very low and can be disregarded. The costs are therefore not considered to be relevant here.

**EVALUATION: Difficulty of implementation**



**Figure 33:** Evaluation: Level of difficulty of realising Measure 6

Overall, this measure has an important impact on duration, while requiring only low, one-off expenses. Moreover, the reference permitting process serves as a basis for the Implementation and Monitoring Plan and for the alignment between the EC on the overall duration as well as on key milestones for permitting procedures for prioritised energy infrastructure projects. The implementation of this measure is therefore strongly recommended.



## **D.2 Empower Authorities**

The complexity of the legal, technical and environmental aspects of permitting procedures for authorities is responsible for many delays in Member States. Standards for protecting the environment and involving stakeholders in particular have increased over time, providing a good framework for building infrastructure that is acceptable to the public and affected stakeholders. However, meeting these standards requires a major effort from the authorities driving the permitting process. They need technical expertise, capability for handling documentation and dealing with stakeholders, and experience in facilitating complex procedures – procedures that often go far beyond the traditionally largely technical decisions that many authorities were designed to handle.

In many Member States, the current set-up of permitting authorities is inappropriate both in terms of staffing and specialist expertise. This results in delays to the permitting process, insufficient stakeholder involvement and poor quality permits. As a result, the permits can often be challenged in court later on. To speed up permitting procedures, we propose two crucial measures for empowering authorities. Firstly, the responsibility for driving the permitting procedure and issuing permits should be concentrated in a single agency – a one stop shop. This makes it possible to concentrate staff and expertise. Secondly, access to experts should be made easier by pooling experts and improving access to external experts.

To create an incentive for authorities at sub-national level to ensure effective permitting procedures, an award for territorial entities implementing a smooth permitting procedure could be considered.

### **Measure 7: One stop shop**

#### **I. Rationale**

The one stop shop is an authority responsible for handling the complete permitting procedure for prioritised energy infrastructure. Ideally, the one stop shop has full responsibility for the procedure and for issuing a single permit. The one stop shop should be established at the highest possible federal level in each Member State. If the situation in Member States does not allow for bundled responsibility on a national level, a one stop shop should be established at state level and a "coordinating one stop shop" could be established at national level, i.e. a one stop shop that is responsible for the coordination of the procedure but does not have full responsibility for deciding about the permit. Through this coordination of procedures in the different constituencies, a *de facto* one stop shop could be created. However, this would add an extra layer to the process.

In some Member States, a one stop shop has already been implemented on a national level, including Denmark, England and Wales, and the Netherlands.

However, most of the countries analysed in this study have multiple responsibilities for several procedures. Extreme cases include Poland, where three types of permits typically have to be obtained from ten or more different authorities, and Hungary, where five types of permits have to be obtained from at least three different authorities.

This measure is a response to the fundamental changes in the permitting procedures for energy infrastructure which have taken place in recent years. Until the 1980s, technical competencies were the main requirements for the relevant authorities. This has since changed considerably as consultation and stakeholder involvement has grown in importance. In 1985, for example, the European Council adopted the Directive on Environmental Audits of Certain Public and Private Projects,<sup>26</sup> which foresees increased stakeholder inclusion in the permitting procedure. In 1998, the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the "Aarhus Convention") was adopted, strengthening stakeholder involvement in decision-making procedures related to environmental concerns. More legislation strengthening the accountability of public authorities and the role of the public in decision-making procedures was established following these initiatives. As a consequence, process and stakeholder competencies have become more and more important. The introduction of a one stop shop is an attempt to respond to this change by establishing an institution which bundles technical, process and stakeholder management competencies in a single location. It would also bring about a considerable simplification of the permitting procedure.

This measure responds to the following key challenges in particular:

- 2-a The permitting procedure consists of large number of processes and process steps: The introduction of a one stop shop would lead to the bundling of all processes and process steps previously handled separately into a single procedure.
- 2-b Processes cannot take place in parallel: Bundling all processes into a single procedure resolves this problem.
- 2-c Responsibility for each process and process step is not clearly assigned: A one stop shop is the single authority responsible for the permitting procedure. Responsibility for each process and process step is assigned to this single authority.

## II. Implementation

In the **design of the measure**, six key elements should be considered:

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<sup>26</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC).

- A one stop shop with full responsibility for the procedure and for issuing a single permit should be established at the highest possible federal level in each Member State.
- If the situation does not allow for a bundled responsibility on a national level, for example in federal states, a one stop shop should be established at state level and a coordinating one stop shop should be established at a national level; however, this creates an additional layer.
- Enforcement mechanisms should be applied with regard to the timely delivery of permits by the one stop shop.
- The one stop shop should deal with permitting procedures for as many different types of projects as can be reasonably subsumed under its responsibility.
- For transnational projects, a coordinating one stop shop could also be created. This authority should work in close coordination with the European Energy Infrastructure Supervision (Measure 4).
- The one stop shop should be able to organise committees of different authorities to ensure consistent statements by them.

Where possible, a **one stop shop with full responsibility for process and permits** should be established at a national level. This "fully-fledged one stop shop" would bundle all processes into a single procedure and also bundle decision-making power. As a consequence, the permitting procedure would consist of a single process handled by this authority, and a single permit would be issued at the outset of this process by the fully-fledged one stop shop. The tasks of the one stop shop with full responsibility for process and permits should encompass:

- The fully-fledged one stop shop should be responsible for the operational handling of all processes and process steps subject to time and quality requirements.
- The fully-fledged one stop shop should be responsible for the decision about all aspects of the permit. For the purpose of decision-making, it may draw on input and opinions from other technical or local authorities.
- The authority should serve as the main interface for the project developer with regard to the permitting procedure. This should include providing guidance to the project developer for example during the preparation of application documents, and accompanying the project developer during its interaction with other stakeholders such as other responsible authorities, affected residents, interest groups and environmental NGOs.

- The one stop shop with full responsibility for process and permits **cannot** act as an "authority of last resort". Therefore this task should be covered by a different institution, e.g. the institution responsible for the National Energy Infrastructure Supervision (Measure 3).

The advantages of creating a fully-fledged one stop shop are twofold: Firstly, the complexity of the permitting procedure would be reduced significantly because only one integrated process would be required and competencies for decision-making would be in the hands of a single authority. Secondly, the number of interfaces to be managed during the procedure would be reduced, as the number of processes and responsibilities is reduced. The creation of this type of one stop shop would require the concentration of all know-how required for decision-making on the different and highly diverse aspects of the project at the single responsible authority. Overall, the establishment of a one stop shop with full responsibility for process and permits is recommended wherever possible, as it allows for a further reduction in the complexity of the permitting procedure compared to a coordinating one stop shop.

In federal states, it may be difficult to establish a fully-fledged one stop shop at national level. In such a case, this authority could be established at state level, in combination with the **coordinating one stop shop** at a national level. A coordinating one stop shop may also be relevant for centralised states where the legislator refrains from shifting responsibility for processes and permits to a single authority at a national level. The establishment of this coordinating one stop shop should be the minimum requirement of this measure. The tasks of this coordinating one stop shop should encompass:

- Defining a time schedule for the permitting procedure pertaining to all processes and process steps that would be handled by different authorities.
- Ensuring consistency of the procedure. In particular, this should apply to the requirements for the application documents as stated by different responsible authorities and the permit issued by different responsible authorities. For this purpose, the coordinating one stop shop should bundle relevant documents, especially the scoping document and the permit, into a single, consistent document agreed on by all involved responsible authorities.
- Monitoring the procedure and ensuring that the target durations of all processes and process steps are respected.
- Optionally, the coordinating one stop shop could also take on the role of an "authority of last resort". In this case, the coordinating one stop shop should become involved where responsible authorities do not take their decision within the given target durations or where discrepancies between statements from different responsible authorities cannot be resolved without intervention. For this purpose, the coordinating one stop shop should either support the resolution of conflicts, or it should be able to take decisions in place of other responsible

authorities or overrule decisions by these authorities. Alternatively, this role could also be assumed by another designated competent authority on a national or state level, depending on the requirements of the legislative framework in the Member State in question.

As a consequence, several fully-fledged one stop shops may exist in one federal state, each responsible for bundling the procedure at state level. If a project crosses several states and so several one stop shops are responsible for deciding about the permit for different sections of the project, the coordinating one stop shop would become involved to align and overview the procedures in the different states. However, this additional layer would add to the time needed for the permitting procedure.

**Example 79:** In the Netherlands, the Ministry of Economic Affairs, Agriculture and Innovation (Ministerie van Economische Zaken, Landbouw en Innovatie, ELI) is a one stop shop at a national level responsible for coordinating the permitting procedures of projects of a certain size (e.g. high voltage lines >220 kV; gas and electricity interconnections; gas pipelines >48 inch). As a coordinating one stop shop, the ELI involves other authorities, such as local authorities, which are responsible for taking a decision on different permits required for the project. For major energy infrastructure projects such as high-voltage electricity transmission lines (e.g. 380 kV, 20 km), more than 30 permits are required. These permits include local and regional building permissions, the permissions to cross railways and roads, and numerous other permissions. The different authorities provide their decisions to the ELI, which then integrates them into a single final permit which it issues. If an authority does not deliver its decision within the given timeframe, the ELI is entitled under the *Rijkscoördinatierегeling* to overrule local authorities' decisions.

Besides the intervention of the authority of last resort where a decision by the fully-fledged one stop shop is delayed, **additional enforcement mechanisms** should be applied with regard to the timely delivery of outputs by the one stop shop:

- The one stop shop should have to justify delays to process steps or the procedure and make this justification publicly available.
- An individual high up in the one stop shop should have to report to a superior institution or possibly even to parliament in case of delays.
- In addition, the introduction of financial enforcement mechanisms should be considered (for more details, see also Measure 5 "Legally defined target durations and effective implementation").

The one stop shop (both coordinating one stop shop and fully-fledged one stop shop) should **deal with permitting procedures for as many types of projects as can be reasonably subsumed under its responsibility**. This means that permitting procedures for many different types of infrastructure should be entrusted to the one

stop shop – electricity transmission lines, gas pipelines, gas storage, different types of power generation, roads, railways, airports, etc. This would have the advantage that expertise with regard to the operational handling of the permitting procedure, which is similar in different permitting procedures, could be bundled together in a single institution. This includes operational expertise such as legal insights with regard to the requirements of stakeholder involvement, experience with stakeholder handling in the framework of permitting procedures, and understanding the formalities of the procedure, including quality standards for documents. Assessment expertise can also be bundled within this authority. This includes, for example, technical experts (e.g. on emissions), environmental experts and legal experts, who would support the evaluation of potential impacts and the documentation provided by the project developer and other stakeholders. Sufficient access to resources and expertise is a crucial precondition for the one stop shop.

**Example 80:** In England and Wales, the Infrastructure Planning Commission (IPC) is the one stop shop responsible for handling permitting procedures for nationally significant infrastructure projects. This includes large energy infrastructure projects, such as power transmission lines and gas pipelines, and "large projects that support the economy and vital public services, including railways, large wind farms, power stations, reservoirs, harbours, airports and sewage treatment works" (source: <http://Infrastructure.independent.gov.uk/>). Although the IPC is relatively young (it was instituted by the Planning Act 2008), its staff have expertise and experience in the area of permitting procedures and it has access to a broad range of assessment experts.

The EC should also consider designating **a coordinating one stop shop for transnational projects**. Such a one stop shop is particularly relevant with regard to the Convention on Environmental Impact Assessment in a Transboundary Context ("Espoo Convention"), which requires that potentially affected stakeholders across borders are informed and consulted within the framework of permitting procedures. The coordinating one stop shop could, for example, be identified by the different involved one stop shops at a national level from the different Member States. Its task would be to coordinate procedures for the relevant projects and to help ensure regular exchange between the one stop shops involved, e.g. by organising meetings. The coordinating one stop shop should **obtain support from and work in close coordination with the European Energy Infrastructure Supervision** (Measure 4).

The one stop shop should be able to organise "**committees of authorities**". These are meetings of different authorities which may submit comments and conditions within the framework of the permitting procedure. The purpose here is to align statements by these authorities and prevent inconsistencies, which would otherwise have to be solved by one-by-one coordination either by the responsible authority or by the project developer. At the conclusion of the meeting, the authorities should issue a common statement.

**Example 81:** In Italy, a committee of authorities is organised, i.e. a meeting of all the authorities involved for the purposes of joint analysis of the project. The competent authorities meet to come to a decision regarding the project within the framework of the Environmental Impact Assessment procedure. Most decisions are unanimous. In this way, all possible constraints are taken into account and conditions may be added to the authorisation permit at an early stage of the permitting procedure.

### **Implementation at EU Level**

The EC would have to prepare the legislative proposal and create the legislative framework at an EU level to ensure the introduction of one stop shops in Member States where such an institution does not yet exist. Moreover, the EC should consider different options for supporting Member States in the introduction of the one stop shop, e.g. facilitating the transfer of good practice and know-how from Member States that already have a one stop shop, and by making financial support available for certain Member States (see also Measure 9, "Award for territorial entities for implementing a smooth permitting procedure").

### **Implementation in Member States**

Member States have to take action in two areas to implement a one stop shop:

- The legal basis for the one stop shop (either coordinating one stop shop or one stop shop with full responsibility for process and permit, or both in the case of federal states) would have to be created in most Member States.
- The one stop shop has to be established. This includes defining its organisational design, process design and budget. Here considerable synergies are possible by transforming an existing authority or several existing authorities into the one stop shop. This is particularly useful with regard to the transfer of human resources from the different authorities in charge of handling the procedure to the one stop shop.

### **Legal Implications in Member States**

If this measure is introduced in a legally binding way, it would have to be limited to a request to Member States to introduce a one stop shop and to assign or re-assign responsibilities for this purpose. The law could not designate the responsible authority as this would interfere with the organisational sovereignty of Member States. However, the law could impose an obligation on Member States to introduce a one stop shop and set a date for the completion of the introduction of this measure.

The introduction of the one stop shop and its detailed design would thus have to be handled by the Member States and be translated into national legislation. The legal implications resulting from the introduction of this measure would differ between Member States, depending on three factors:

- Whether a one stop shop is already in place or not
- Whether a coordinating one stop shop or a one stop shop with full responsibility for process and permit should be established
- The number of responsible authorities and the number of processes currently required within the framework of permitting procedures

In Member States where the relevant type of **one stop shop already exists**, no legal implications would result from this measure.

Member States which do not have a one stop shop and opt to introduce a **coordinating one stop shop** would have to adapt their legislation slightly. The legislator would have to create the basis for the establishment of this authority, or alternatively assign the rights and tasks of this authority to an existing institution.

Member States which choose to **introduce a one stop shop with full responsibility for process and permit** would have to make more significant adaptations to their legislation. The decision-making power for permits and operational responsibility for the permitting procedure would have to be reassigned to a new authority. This would require the adaptation of legislation or the enacting of a new law on either a national or, in the case of federal states, a state level. These adaptations may involve a wide range of laws and regulations.

In Member States with a **large number of responsible authorities and a large number of processes**, legal adaptations would be more extensive, as a larger number of responsibilities and processes in different areas of departmental responsibility would have to be adapted. This is especially the case for the introduction of a one stop shop with full responsibility for process and permit.

Based on our assessment of the wide array of legislative frameworks in different Member States, we can make a rough overall assessment of legal impact of this measure. Except for countries where a one stop shop is already in place, the introduction of a fully-fledged one stop shop would require the adaptation of a wide range a national or state legislation. The introduction of a coordinating one stop shop would reduce the legal implications and a moderate amount of legislation would have to be adapted.

### **Cost Drivers**

From the perspective of the public sector, the costs are one-off expenses:

- Transfer of staff from the authorities formerly responsible for handling the procedure, and/or recruitment of additional staff.
- Establishment of the administrative body and its resources and facilities equipment.



In the long term, additional operating costs include:

- Regular payments for administrative staff and new staff who could not be recruited from other public institutions.
- Operational costs, such as rent, equipment and communication.
- Costs for additional activities related to permitting procedures, such as the commissioning of studies and involvement of external experts.

The additional operating costs are expected to be more than outweighed by the savings that result from the creation of the one stop shop. The creation of the one stop shop corresponds to a concentration of resources that were previously distributed between several authorities. Therefore the creation of a one stop shop should make efficiency gains and cost savings possible from the perspective of the public sector in the long run.

**Example 82:** The IPC is responsible for permitting procedures for nationally significant infrastructure projects in England and Wales. The IPC is an example for a one stop shop with full responsibility for process and permit. In the fiscal year 2011-2012, the authority had a **budget of approximately GBP 6.6 m** (equivalent to around **EUR 7.4 m** as per April 1, 2010). This covered the authority's staff (58 employees plus 8 permanent commissioners, and 28 registered commissioners involved on a case-by-case basis) and other expenses. The IPC has so far formally accepted 2 applications and has approximately 50 applications in the very resource-intensive pre-application phase, during which the authority checks the completeness of the public engagement process and the application documents prior to formally starting the procedure. It should be remembered that the IPC was only established recently and is still growing.

In the case of a one stop shop with full responsibility for process and permit, the additional costs may be partially but not fully balanced by savings at the level of the authorities previously involved in the permitting procedure. Staff from these authorities can to some extent be transferred to the one stop shop.

From the perspective of project developers, no additional costs are incurred. On the contrary, the reduction of responsible institutions and procedures would reduce the effort required by project developers for handling the permitting procedures, and so has a positive impact on costs.

### III. Evaluation

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** Concentration of the responsibility for permitting procedures for important infrastructure leads to a concentration of required

competencies with the competent authority. This improves the perception of the responsible authority as a competent decision maker. This may in turn impact on stakeholder acceptance positively, as trust in the authority's competence is potentially increased. Acceptance of permitting procedures – and therefore also of projects – may be positively impacted. However, other aspects, such as close stakeholder dialogue early on and transparency about the project planning and decision-making, are much more important in this respect. The impact on acceptance is therefore positive but low.

- **Impact on duration:** The introduction of a fully-fledged one stop shop means that all previous procedures are bundled into a single procedure. This reduction in the number of procedures helps to shorten the duration of the permitting procedure considerably. In the case of a coordinating one stop shop, the positive impact on the duration of the permitting procedure is still considered to be significant. The impact on duration is therefore positive and high.

#### **EVALUATION: Impact on the permitting procedure**

**Impact on acceptance:**



**Impact on duration:**



**Figure 34:** Evaluation: Impact of Measure 7 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** A broad range of laws would have to be adapted by Member States for the introduction of a fully-fledged one stop shop, i.e. in order to reassign responsibilities for the permitting procedure. This is particularly relevant for countries which currently have a large number of processes handled by different authorities. If the introduction of a coordinating one stop shop is chosen, the range of laws needing to be adapted by Member States is considerably reduced, as the responsibilities for decision-making would not have to be adapted. The legal impact is therefore negative and low.
- **Impact on costs:** While short-term investments are needed by the public institutions in the Member States for redesigning the authority responsible for the permitting procedure, an overall reduction in costs for handling the permitting procedure is expected for both the public sector and the project developer in the medium and long term. The project developer will also benefit from an overall cost reduction in the short term. The impact on costs is therefore positive and moderate.

**EVALUATION: Difficulty of implementation**



**Figure 35:** Evaluation: Level of difficulty of realising Measure 7

Overall, the introduction of a one stop shop would be highly useful for improving the effectiveness of the permitting procedure. The average duration of the permitting procedure in Member States is expected to be shortened and costs are expected to fall for both public sector and project developers in the medium or long term. The implementation of this measure is therefore strongly recommended. This measure should be considered an essential element in any package of measures aiming to make permitting procedures more effective.

**Measure 8: Improving Authorities' Access to Experts**

**I. Rationale**

This measure foresees that authorities responsible for handling the permitting procedure should have facilitated access to support from experts when needed, especially for short-term assignments in peak phases of the permitting procedure. External experts would provide advice and operational support to the responsible authority but not be formally involved in the decision-making itself. Decision-making power remains firmly in the hands of the responsible authority.

This measure addresses a crucial success factor for an effective permitting procedure by improving authorities' flexible access to resources and expertise. In almost all Member States analysed in this study, one of the key issues hampering the effective handling of permitting procedures was the responsible authorities' insufficient access to resources and expertise.

This measure responds to the following key challenges in particular:

- 2-f Resources: This measure aims to remedy the responsible authorities' lack of resources and expertise by providing sufficient flexible access to resources and expertise.
- 2-e Input, output, documents and instruments: This measure would help improve the inputs, outputs and documents used during the permitting procedure. An authority that has sufficient resources is enabled to ensure proper guidance of the project developer. This will indirectly help to increase quality of the application documents, as well as improving the quality of other documents such as information documents for stakeholders used in the procedure. Moreover,

authorities' improved access to resources would help improve the quality of the permit prepared by the authority and thereby reduce the risk of successful appeal.

## II. Implementation

In the **design of the measure**, six key elements should be considered:

- Experts should be available to support complex permitting procedures. This includes both internal experts from other permitting authorities and external experts (consultants, technical specialists).
- Experts should be available for both technical questions and assessments ("assessment experts") and to support the procedure itself ("permitting experts").
- Access to additional resources and expertise should be highly flexible.
- The responsible authority or an independent institution should monitor the impartiality of experts and prevent conflicts of interest.
- An independent institution could also be tasked with supporting the efficient allocation of expert resources.
- An option should exist for passing on the costs of additional experts to project developers.

The responsible authorities' access to resources should be increased. Here **access to both internal and external resources and expertise** is relevant.

Internal experts could be civil servants whose job it is to support permitting procedures and who are seconded to the authority as and when necessary. Alternatively, they could be internal experts who are used as and when necessary, i.e. experts who have the status of civil servants but may have other occupations too.

External experts could be academics, people from independent private institutions and individuals with the required expertise who do not have the status of civil servants. The advantage of meeting a large proportion of the required resources and expertise by using external experts is that they can be engaged as and when needed, and therefore can be used with much more flexibility than civil servants. Moreover, external experts are not on the payroll of the authority or any other public institution involved.

The responsible authorities' access to **two types of experts** – permitting experts and assessment experts – should be ensured:

- **Permitting experts:** These are experts who support the responsible authority in their operational handling of permitting procedures. Permitting experts do not offer support through their expert knowledge with regard to any specific technical area of expertise – birds, noise, electromagnetic emissions or the like. Rather they offer support through their understanding of the handling of the permitting procedure. This includes providing experience with regard to the organisation of stakeholder consultations, the steering of processes of high complexity due to the large number of stakeholders involved, and stakeholder communication. For example, they can organise the announcement of a public consultation and collect and sort comments by stakeholders so that they can be submitted to the competent employees at the authority or to competent assessment experts.
- **Assessment experts:** These are experts with specialist knowledge of technical, legal and environmental aspects relevant to the permitting procedure. They support authorities in assessing documentation, especially environmental studies by applicants and comments by stakeholders.

The resource requirements of permitting procedures fluctuate widely and the range of expertise required is very large. **Access to additional resources for the responsible authority should therefore be highly flexible.** Seconding internal experts or issuing contracts for external experts for very short-term assignments where necessary must be possible, and the process must be fast and straightforward. Quick, short-term access to external experts can be facilitated by the creation of suitable standard framework contracts.

**Example 83:** In Austria, external experts are used to support the evaluation of application documents to make up for authorities' lack of resources and expertise. External experts are staff from other authorities, academics, people from independent private institutions and individuals with the required expertise.

**Example 84:** In England, the IPC (Infrastructure Planning Commission) is able to appoint "independent assessors" to support the handling of the permitting procedure. These are external experts who do not have the status of civil servants. Mostly these experts are assessment experts, as the name implies.

**Example 85:** In the Netherlands, the Bureau of Energy Projects generally provides support to the authority responsible for handling the permitting procedures for large energy infrastructure projects (Ministry of Economic Affairs, Agriculture and Innovation, ELI). This is an example of flexible access to resources organised internally, as the ELI is flexibly supported by civil servants from the Bureau of Energy Projects. Support from the Bureau includes streamlining the overall procedure for energy projects by adjusting the requirements for the application documents in close cooperation with local authorities and technical departments. Additionally, it monitors the time schedule of each of the over 30 energy projects currently falling under the competency of the ELI.

The responsible authority – or alternatively an independent institution – should **monitor the impartiality of experts and prevent conflicts of interest**. This needs to happen on a case-by-case basis, as external experts may have recently worked for a specific project developer, authority or environmental organisation. Ensuring and attesting the external experts' impartiality with regard to the experts' involvement in the permitting procedure for a specific project is key to ensuring that a permitting procedure is not slowed down by questions about experts' impartiality from either the project developer or other stakeholders. A quick, standardised verification process with regard to potential conflicts of interest of experts should be introduced. If this task is assigned to an independent institution, this role could for example be assumed by the same institution that is responsible for the National Energy Infrastructure Supervision (Measure 3).

If an independent institution is involved, it could also be tasked with **supporting the efficient allocation of expert resources**. In this case, it would have the task of establishing and maintaining a list of experts, including information such as their area of expertise, in order to help identify experts for supporting the permitting procedure with the right know-how and expertise. This list should be updated continuously. It could be made available to anyone requesting it, including the responsible authority and the project developer. The independent institution could also be given the power to conclude framework contracts to facilitate quick access to external experts in case of need. The responsible authority should be free to select additional experts not included on the list. Such experts should then be included in the next update of the list.

If an independent institution is involved, the EC could also consider giving project developers the option to address the independent institution in order to signal that the responsible authority is in need of more resources. In addition, the independent institution itself could be used to monitor the resources of the responsible institution and prompt the latter to involve additional external experts in the handling of a permitting procedure if it foresees the risk of a bottleneck and the responsible authority does not take any action itself.

To facilitate the involvement of additional experts by the responsible authority, there should be an option for the **costs of external experts** to be passed on to the project developer. This option should be formalised in law to make it fully accessible to authorities.

Alternatively, costs could be covered entirely by the institutions involved, e.g. the responsible authority. This would have the advantage that the risk that stakeholders doubt external experts' impartiality is lower. We advise against this option, however, because it would increase the responsible authority's reluctance to involve external experts and therefore minimise the impact of this measure on the effectiveness of the permitting procedure.

### **Implementation at EU Level**

The European Union should create a legal basis (e.g. preparation of a legislative proposal by the EC, adoption of an EU Regulation or Directive) giving the authorities responsible for the handling of permitting procedures of prioritised energy infrastructure the possibility of drawing on additional experts. Alternatively, the EC could prepare a Recommendation or Guidelines laying out good practice or recommended elements of the implementation of this measure for the Member States.

### **Implementation in Member States**

Member States have to take action in the following areas:

- The independent institution needs to be established or the tasks of the independent institution assigned to an existing body.
- Requirements for external experts, especially with regard to their impartiality, need to be specified.
- Processes need to be defined with regard to the interfaces between the independent institution and the responsible authority and other relevant institutions, and possibly also between the independent institution and the project developer.
- A list of independent experts needs to be drawn up and maintained. This includes identifying categories of required expertise, the names of experts, contact data and their areas of expertise.
- Legal provisions must be implemented allowing the costs of external experts to be passed on to the project developer.

### **Legal Implications for Member States**

The Member States would have to formalise authorities' access to external experts and the option of the project developer covering their costs by adapting national legislation or passing new legislation. These adaptations concern a small range of national legislation and are not considered a major obstacle.

If this measure were to be introduced by a Regulation, in most cases no further adaptation of the legal framework of the Member States would be required.

### **Cost Drivers**

The main cost driver from the perspective of the public institutions involved, including the responsible authority, is the establishment and maintenance of the independent

institution, i.e. staff costs (salaries, training), cost of equipment (location, technical equipment) and operating costs (communication, office supplies, etc.).

The main cost driver from the perspective of the project developer is payments for the external experts involved (per diems, depending on the number and expertise of experts involved and how long they are involved for).

### III. Evaluation

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** Access to resources and expertise improves the perception of the responsible authority as a competent decision-maker. This is likely to impact on stakeholder acceptance positively, as trust in the authority's competence may be increased. Moreover, if authorities have sufficient access to resources and expertise, this helps to improve the quality of the application documents and other documentation used for stakeholder information (through the responsible authority's improved guidance of the project developer) and the quality of the permit. Acceptance of permitting procedures – and therefore also of projects – is positively impacted. The impact on acceptance is therefore positive and moderate.
- **Impact on duration:** One key issue causing delays to permitting procedures in Member States is authorities' lack of resources. This measure addresses this key challenge. The impact on duration is thus positive and high.

#### EVALUATION: Impact on the permitting procedure

Impact on acceptance:

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Impact on duration:

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**Figure 36:** Evaluation: Impact of Measure 8 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** A small subsection of national legislation would have to be adapted in most Member States in order to formalise authorities' access to external experts and the possibility of project developers covering their costs. This is not considered an obstacle. Moreover, the formalised option of involving additional experts for handling the permitting procedure already exists in some Member States (e.g. Austria, England and Wales, the Netherlands). Therefore the legal impact of this measure is extremely low and can be considered irrelevant for the purpose of this analysis.



- **Impact on costs:** The costs of the permitting procedure are increased by this measure for both the public institutions involved, including the responsible authority, and the project developer. As personnel is one of the main cost drivers in handling permitting procedures and this measure foresees a significant increase in resources in some stages of the procedure, the impact on costs is negative and moderate.

#### **EVALUATION: Difficulty of implementation**



**Figure 37:** Evaluation: Level of difficulty of realising Measure 8

Overall, this measure is highly relevant for improving the effectiveness of the permitting procedure. Lack of resources and expertise on the part of the responsible authority is one of the key challenges facing the permitting procedure in most Member States. Therefore the implementation of this measure is strongly recommended, despite the expected increase in costs for both authorities and project developers. This measure should be considered an essential element in any package of measures aiming to make permitting procedures more effective.

#### **Measure 9: Award for Territorial Entities for Implementing a Smooth Permitting Procedure**

##### **I. Rationale**

This measure foresees that municipalities and other territorial entities at sub-national level can compete for an award for implementing a smooth permitting and consultation process for prioritised energy infrastructure. The award would be provided to a maximum of ten territorial entities having handled the permitting process within a given time limit and in an exemplary fashion, i.e. with effective stakeholder involvement and using innovative approaches.

This measure would provide an additional incentive for authorities responsible for handling part of the permitting procedure of prioritised energy infrastructure effectively. Therefore this measure addresses a crucial success factor for an effective permitting procedure by improving the amount of attention and resources authorities dedicate to the permitting procedures for prioritised energy infrastructure projects. One of the key issues hampering the effective handling of permitting procedures is the responsible authorities' insufficient access to resources and expertise. This measure would provide a financial reward to selected authorities that increased the amount of resources dedicated to the handling of permitting procedures.

This measure responds to the following key challenges in particular:

- 2-f Resources: This measure creates an incentive for authorities to dedicate additional resources to the handling of permitting procedures. Authorities have the prospect of obtaining a financial reward, i.e. for selected authorities the additional efforts would pay off.
- 2-g Duration: Authorities' compliance with target durations of a permitting procedure could be improved by this measure without having to resort to enforcement mechanisms. Therefore this measure may be seen at least partially as an alternative to enforcement mechanisms. Experience shows that enforcement mechanisms are very difficult to implement successfully.

## II. Implementation

In the **design of the measure**, eight key elements should be considered:

- The EC should provide guidelines on the effective handling of complex permitting procedures by authorities as basis for the Award for territorial entities for implementing a smooth permitting procedure.
- The evaluation criteria for the award should include innovative good practice in the context of restricted availability of resources.
- The award should be made accessible to individual territorial entities.
- The award should encompass non-financial incentives from which the staff member of authorities would benefit directly.
- An award committee consisting of various stakeholders (representatives of Member States, regulators, environmental NGOs, etc.) should select the winners
- The complexity of the permitting procedure should be accounted for in the selection of winners.
- The effectiveness of consultation and stakeholder involvement should also be accounted for in the selection of winners.

The EC should provide **guidelines on effective handling of complex permitting procedures by authorities** as a basis for the Award for territorial entities for implementing a smooth permitting procedure. This is crucial to ensure that the incentive provided by this measure has the right effect, i.e. authorities take the desired actions to bring about an effective improvement in informing and consulting stakeholders. Moreover, guidelines are necessary in order to ensure an objective evaluation of participants. The guidelines would serve as yardstick against which the performance of the authorities would be measured.

The evaluation criteria for the award should not just include elements that depend on the amount of resources dedicated to the handling of the permitting procedure, but also **focus on innovative good practice in the context of restricted availability of resources**. If such elements are not included in the evaluation criteria, authorities in Member States with restricted resources would have very limited chance of winning the Award and for them the Award would not act as an incentive. There would also be a risk that this measure would not impact authorities' handling of permitting procedures where it is most needed, i.e. in locations where authorities lack resources to even become eligible for the award. The explicit inclusion of innovative ideas under budgetary restrictions would help counter this risk. Therefore it is strongly recommended to take such aspects into account in the detailed design of this measure.

The award should be made **accessible to individual permit-granting authorities**. This should include authorities on a municipal, district and regional level, but also on a national level, especially in the case of permitting procedures for interconnectors. However, the award would have a different impact on different types of authorities. While municipalities usually decide themselves about budgetary matters, regional and national authorities do not. As a consequence, a financial award would have the greatest impact on municipalities.

Dedicating funds to an authority for having handled a permitting procedure professionally may not be sufficient to motivate the authorities' staff to create effective permitting procedures. Staff members at authorities often do not directly benefit from having obtained an award. One reason is that it is often not possible to promote staff members who helped win an award for procedural reasons. Therefore **the award should encompass additional non-financial incentives**. For example, staff at winning authorities could be invited to participate in conferences and training sessions at a European level. Such incentives have the additional advantage that these events would bring together staff from different authorities and allow for the exchange of experience and good practice. Creating personal links between staff from responsible authorities across Europe may also help cooperation over permitting procedures for transnational projects.

Award-winners should be selected by an **award committee with representatives from different stakeholders**, such as Member States, regulators, environmental NGOs and others. The involvement of an award committee in the selection process would have two main advantages: (1) various stakeholders' perspectives on expectations with regard to effective consultation and stakeholder involvement would be included in the decision-making process; (2) the legitimacy and acceptance of the choice of winners from the point of view of all stakeholder groups involved in the permitting procedure would be increased.

The purpose of this award to make financial rewards accessible to authorities that need them most and to induce change where it is most required. It should be ensured that the award for a smooth permitting procedure and consultation process is not

granted to authorities which only need to make a minor effort due to their effective set-up, but rather to authorities working within complex legal frameworks. Therefore the **complexity of the permitting procedure** should be accounted for in the selection of winners. Two types of complexity should be distinguished:

- Complexity of the procedure: In some Member States, the legislative framework prescribes a complex procedure, i.e. a procedure with many different processes and many different responsible authorities. This set-up is a challenge for the responsible authorities. This is particularly true for the authority in charge of coordinating this procedure.
- Complexity of the project: A project may be complex for three reasons: (1) it crosses a relatively large number of sensitive areas, such as protected areas or settlements; (2) it crosses a large number of Member States; (3) it involves a large number of stakeholders on the side of the project developer – this may be especially relevant for transnational projects with different developers responsible for realisation in different Member States.

This distinction shows that the realisation of a project can be complex for different reasons, not necessarily related to the design of the permitting procedure. Accordingly, a one stop shop should also be eligible for the award if it is in charge of coordinating the complex permitting procedure for a transnational project.

Special attention should be given to the **effectiveness of consultation and stakeholder involvement** in the permitting procedure in the selection of winners. Effective consultation and stakeholder involvement is important to mitigate public opposition – one of the main obstacles with regard to the timely finalisation of prioritised energy infrastructure projects (see **Figure 7**). Authorities play a main role in ensuring effective consultation and stakeholder involvement. This also includes guiding the project developer in its task of establishing an effective dialogue with stakeholders early on. To verify the quality of consultation and stakeholder involvement, statements from stakeholders that were involved in the permitting procedure should be presented by the territorial entity in its application for the Award.

Restrictions on providing funds for operational activities to authorities should be established by EU financial regulation.

### **Implementation at EU Level**

The EC would have to set up and organise the Award. This includes setting the criteria for participation in the competition and for winning the Award, defining the composition and selection of members of the Award Committee and handling the Award from an operational perspective. Moreover, the EC would have to ensure that information about the Award was provided to eligible territorial entities.

### **Implementation at Member State Level**

Member States should support the dissemination of information about the Award to eligible authorities. Eligible authorities that decide to submit an application for the Award would have to compile the application, including input from various stakeholders on their performance in the handling of the permitting procedure.

### **Legal Implications in Member States**

The introduction of the Award would not require adaptation of legislation in Member States.

### **Cost Drivers**

The main cost drivers from the perspective of the EC are:

- The set-up of the award, including detailed definition of requirements, creation of the organisational basis and putting together the Award Committee, are one-off costs and would be very low.
- The EC would have to make funds available for the Award. In order to ensure that this measure impacts on territorial entities, each winner should be awarded a minimum of EUR 1 million. At least five territorial entities should receive the Award annually, so costs of EUR 5 million annually would be created from the perspective of the EC.
- The costs of the operational handling mainly relate to the evaluation of applications by the Award Committee and any administrative support need by the Award Committee.

No additional costs would be incurred by public institutions, including the responsible authority (the costs of preparing applications for the Award would be small). On the contrary, selected authorities would benefit from substantial additional income. Likewise, no additional costs would be incurred to project developers or other stakeholders.

### **III. Evaluation**

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** This measure would help to improve consultation processes and stakeholder involvement. By improving stakeholder involvement in the permitting procedure, the acceptance of the project that is the subject of the permitting procedure would also be increased. This measure would help to increase accounting for stakeholders' concerns in the design of the project (especially mitigation measures). Furthermore, by making the decision on the

project and its design more inclusive, it would improve stakeholders' acceptance of the project. Therefore this measure would have a positive impact on acceptance. However, it would only reach a limited number of authorities, which would most likely only be responsible for a small section of the project and the procedure. Therefore its impact is considered to be low.

- **Impact on duration:** This measure does not have a direct impact on the duration of the permitting procedure. However, by creating incentives for improved consultation and stakeholder information, this measure would help to mitigate stakeholder opposition and thereby impact the duration of procedures positively. Nevertheless, this measure would only reach a small number of authorities, which would most likely only be responsible for a small part of the project and the procedure. Its impact is therefore considered to be low.

#### EVALUATION: Impact on the permitting procedure

Impact on acceptance:

+

Impact on duration:

+

Figure 38: Evaluation: Impact of Measure 9 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** As the introduction of this measure would not require the adaptation of legislation in Member States, legal impact is not relevant for this measure.
- **Impact on costs:** Costs resulting from the introduction of this measure would be incurred for the EC only. These costs would amount to a minimum of EUR 5 million each year for the Award, plus costs for the set-up and operational handling of the Award. As there are no additional costs from the perspective of any other stakeholders, the impact on cost is considered negative and low.

#### EVALUATION: Difficulty of implementation

Legal impact:

0

Impact on costs:

-

Figure 39: Evaluation: Level of difficulty of realising Measure 9

Overall, this measure is expected to have a positive impact on the effectiveness of the permitting procedure. The difficulties associated with its implementation are small. However, this measure does not address the problem at stake in its entirety. To effectively enable authorities to improve their handling of permitting procedures, authorities would require an increase of up-front funding, especially up-front

commitment of resources and expertise for the handling of peak phases of the permitting procedures. However, this measure only provides funds to selected authorities after funding has already been dedicated to the permitting procedure. Therefore this measure should not be regarded as a solution to the key problem affecting permitting procedures on the part of authorities: insufficient dedication of resources and expertise. Rather, this measure could act as an additional lever for improving authorities' handling of permitting procedures for critical energy infrastructure projects.

This measure would have a strong signalling effect about the importance of authorities' role in permitting procedures and create an incentive for authorities to dedicate the required resources and expertise. Its implementation is therefore recommended.

### **D.3 Optimise Permitting Procedures**

Making procedures more transparent and manageable and empowering permitting authorities will help speed up permitting procedures. However, there is also room for improvement in many national procedures. Comparing the different permitting procedures in Member States, we find that some procedures are much more complex than others and that some countries have identified smart solutions for making processes easier, reducing their duration and allowing them to occur in parallel without reducing quality. After careful evaluation of the permitting procedures in many Member States, we identify five measures that would have a significant impact on permitting durations:

1. Decrease uncertainty about the legal environment during permitting procedures by "freezing" the legal framework for a certain period of time during ongoing procedures.
2. Integrate spatial planning into the permitting procedure – an effective way to shorten the procedure considerably.
3. Introduce mandatory scoping at the beginning of the procedure, providing a sound basis for the subsequent, increasing the quality of documentation and improving acceptance by stakeholders.
4. Grant land access or easement together with the permit – another key driver for quicker permitting processes.
5. Limit legal recourse to one level of jurisdiction for priority projects.

Of course, making changes to permitting procedures can have a fundamental effect on certain legal areas in Member States, be it the distinction between public and private law or the set-up of the court system. However, we believe that these five measures are worth considering and implementation should be taken as far as possible in each Member State.

#### **Measure 10: Freeze the Legal Framework for the Duration of the Permitting Procedure**

##### **I. Rationale**

This measure foresees that the legal basis applicable during the permitting procedure should be "frozen" at the moment of the official scoping. Changes to laws should not be taken into account in the subsequent procedure. This freeze would apply for the process from the scoping to the issuing of the final permit. It would only be valid for a defined maximum duration. Thus if the permitting procedure is considerably delayed



and delays are caused by the developer, the freeze would lose its applicability after a certain point in time.

The implementation of this measure addresses an important challenge for many project developers in Member States: the frequent change of laws applicable to the permitting procedure. Such changes can even impact on an ongoing permitting procedure in some cases and require late adaptations during the procedure. This is especially relevant in the phase between the scoping and the issuing of the permit, i.e. during the preparation of application documents. This often leads to delays in the preparation phase because project documents need to be revised over and over again, or even during the later stages of the procedure. Freezing the legal framework for the duration of the permitting procedure would help to eliminate the risk of delays.

This measure responds to the following key challenges in particular:

2-e Input, output, documents and instruments: This measure enables a freezing of the required input for the permitting procedure by fixing the legal framework for the duration of the procedure. As a consequence, requirements for inputs to be delivered by the project developer cannot alter due to changes in legislation that take place during the procedure. This measure thus addresses the challenge of changing legislation during the permitting procedure.

## **II. Implementation**

In the **design of the measure**, four key elements should be considered:

- The legal framework should be frozen from the point when the scoping ends
- A target should be set for how long the legal situation should remain frozen
- The legal situation should be unfrozen if the project changes
- Mandatory scoping (Measure 12) is a precondition for this measure

The legal situation in question should include all relevant **laws and regulations that are applicable at the conclusion of the mandatory scoping** (Measure 12). This is recommended because many delays in the permitting procedure relating to changing legislation occur while the project developer is preparing the application documents. A change in applicable legislation during this process step could, for example, result in the requirement for additional surveys. Surveys of certain species of animals or birds can only be carried out in specific seasons and, in order to be representative, they may have to be carried out over two or more seasons. As a consequence, legal changes that occur in the middle of the preparation of the application documents can delay the submission of the application by over a year. We therefore recommend freezing the legal framework at the closure of the scoping (e.g. the issuing of the scoping document, see Measure 12, "Mandatory Scoping"), which takes place at the

beginning of the preparation of the application documents. However, to avoid abuse of this measure, the laws and regulations to be frozen would have to be defined in detail.

The **duration of the freeze of the legal framework should be limited**. The legal situation should be applicable for the entire duration of the permitting procedure. Process steps whose duration is entirely in the hands of the project developer should benefit from the freezing of the legal situation for the target duration. This is relevant for the process step concerned with the preparation of the application documents, for instance. Limiting the duration of this process step is necessary to avoid this measure serving as a means for project developers to circumvent forthcoming legislation. Without such limitation, project developers could have an incentive to initiate the permitting procedures for all forthcoming projects immediately, only to start the projects many years later. As the preparation of application documents usually takes one to two years if no additional legislation intervenes, this target duration may be limited to three years, say. The exact duration can be defined later, following further analysis.

The legal situation should be **unfrozen if major changes are made to the project**. This includes, for example, a significant change in the routing or location of a project. In such cases, major adaptations of the application documents and underlying surveys are required, and this is an opportunity to reflect relevant legislation that has been adopted in the meantime.

**Mandatory scoping** (Measure 12) **is a precondition** for the implementation of this measure. Without mandatory scoping, the starting point of the freezing of the legal framework is difficult to identify. A formal criterion is necessary which provides legal certainty about the date on which the freezing of the legal framework begins. This has been confirmed by the European Court of Justice, which has in the past, in the absence of any other formal reference point, accepted only the official lodging of the application as a reference point for determining the applicability of a law. Thus in its decision on case C-431/92, Commission of the European Communities vs. Federal Republic of Germany, the court ruled that "informal contacts and meetings between the competent authority and the developer, even relating to the content and proposal to lodge an application for consent for a project, cannot be treated for the purposes of applying the directive as a definite indication of the date on which the procedure was initiated. The date when the application for consent was formally lodged thus constitutes the sole criterion which may be used. Such criterion accords with the principle of legal certainty and is designed to safeguard the effectiveness of the directive" (paragraph 32).<sup>27</sup>

Making the starting point later in the procedure, e.g. at the date when the application is officially lodged, would make the measure considerably less effective. This is

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<sup>27</sup> The European Court of Justice's standpoint has been confirmed in the cases C-81/96, C-301/95 and C-150/97 and with regard to the Habitats Directive in the case C-209/04.

because it would not have any impact on the phase in which the developer prepares the application documents. Establishing the scoping as the formal point for the start of the freeze of the legal framework would provide legal certainty and mean that the freeze applied throughout the preparation of application documents.

### **Implementation at EU Level**

The European Union should create the legal basis (e.g. preparation of a legislative proposal by the EC, adoption of an EU Regulation or Directive) for freezing the legal framework for the duration of the permitting procedure. Alternatively, the EC may prepare a Recommendation or Guidelines laying out recommended elements of the implementation of this measure for Member States.

### **Implementation on Member State level**

In the Member States, authorities responsible for handling the permitting procedure would have to ensure that the legislation applicable for the permitting procedure for a specific project is registered at the outset of the procedure, e.g. during the Mandatory Scoping (Measure 12). Moreover, the duration of the permitting procedure would have to be monitored at the level of the Member States to ensure that the freezing of the applicable legal framework for each procedure is not maintained longer than initially foreseen.

### **Legal Implications in Member States**

For the implementation of this measure on a national level, national legislation on permitting procedures would have to be adapted or a new law introducing the freezing of the legal framework and related requirements would have to be adopted. Some Member States may already have such legislation in place.

If this measure is introduced via a legal act on a European level (i.e. an EU Regulation), no further action would be required by the legislator of the Member States.

### **Cost Drivers**

There are no cost drivers from the perspective of the EC.

Likewise, there are no cost drivers from the perspective of the public institutions involved on a national level, including the responsible authority. On the contrary, the resources which would be required without this measure can be saved.

There are no cost drivers from the perspective of the project developer, either. On the contrary, resource-intensive and costly repetitions of surveys, revisions of application documents and repetition of processes and process steps of the permitting procedure can be avoided.

### III. Evaluation

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** Not including new legislation in an ongoing permitting procedure may decrease stakeholders' acceptance of the legitimacy of the procedure. However, as new legislation often concerns details of the procedure, which are work and resource intensive to include, the impact of this on stakeholders' acceptance is expected to be low. The impact on acceptance is thus negative but low.
- **Impact on duration:** The actual duration of permitting procedures may be considerably shortened in countries where such legislation is not yet in place. In these countries, the measure would make it possible to shorten the time required by the project developer for drawing up the application documents, as well as avoiding time otherwise lost in repeating processes or process steps due to new or updated legislation. The impact on duration is thus both positive and moderate.

#### EVALUATION: Impact on the permitting procedure

Impact on acceptance:



Impact on duration:



Figure 40: Evaluation: Impact of Measure 10 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** If this measure is introduced by an EU Regulation, no adaptation of national legislation would be required. If it is introduced by other means, smaller-scale adaptations of national laws governing the permitting procedure or the introduction of new laws enacting this measure may be required. In some Member States, similar laws may already be in place. The legal impact is therefore negative and very low.
- **Impact on costs:** Few additional short-term costs are created. The costs are limited to preparing adaptations of national legislation, if required. There are important cost savings on the part the responsible authorities and project developer. The impact on costs is therefore positive and moderate.

## EVALUATION: Difficulty of implementation

**Legal impact:**

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**Impact on costs:**

+ +

**Figure 41:** Evaluation: Level of difficulty of realising Measure 10

Overall, this measure is highly relevant for Member States where no such law is in place at present. It has a significant impact on the duration of the permitting procedure and a positive impact on costs. Its introduction is not expected to face any major legal obstacles. We therefore strongly recommend the introduction of this measure.

## Measure 11: Integration of Spatial Planning into the Permitting Procedure

### I. Rationale

This measure foresees that spatial planning is covered in the overall permitting procedure, i.e. there is no separate spatial planning procedure at least for projects of European interest. Required decisions with regard to spatial planning should be integrated into the processes concerned with the permit for the construction and operation of the project.

The implementation of this measure would help to reduce the number of processes required for obtaining all the permits for the construction and operation of energy infrastructure projects. It would also lead to a greater concentration of responsibility, since integrating spatial planning into the permitting procedure means that the same authority is responsible for the procedure on spatial planning and the procedures for other aspects. This is particularly relevant for Member States where the spatial planning process and the processes for other permits are handled separately and by different authorities.

This measure responds to the following key challenges in particular:

- 2-a Number of processes and process steps: The measure leads to a reduction of the number of processes that have to be handled separately and usually successively.
- 2-b Sequence of processes and process steps: The integration of spatial planning into the permitting procedure allows parallel handling of issues otherwise handled successively.
- 2-c Operational responsibility for processes and process steps: The integration of spatial planning into the permitting procedure leads to a concentration of responsibility for handling the procedure.

## II. Implementation

In the **design of the measure**, two key elements should be considered:

- Spatial planning should be performed in the same process required for obtaining the permit to construct and operate the project.
- Large corridors for prioritised energy infrastructure projects can be established by law to facilitate the decision about spatial planning.

Ideally, the permitting procedure should consist of **a single process** for the decision about the permit or permits required for construction and operation of the project (see Measure 7, "One stop shop"). Relevant spatial planning decisions required for the project should be included in this single process.

Where several processes are required for the decisions about the construction and operation of the project, spatial planning should be integrated into the earliest process.

The decision about spatial planning can be further facilitated by **defining more general corridors for prioritised energy infrastructure in a national law**. Such a law may only provide for very rough corridors and it should not go into a level of detail sufficient to make the discussion of spatial planning issues within the framework of the permitting procedure unnecessary. It is important to keep the final decision about the more detailed spatial planning – including potential routing alternatives, at least on a smaller scale – within the permitting procedure. The inclusion of spatial planning issues within the permitting procedure ensures stakeholder consultation and participation with regard to spatial planning aspects. To cover such detailed spatial planning concerns in a law would most likely create frustration on the part of local stakeholders due to non-participatory, top-down decisions about the exact location of projects. It would thereby increase public opposition, especially from local populations. For this reason, we recommended including only very rough corridors for energy infrastructure in the law.

### Implementation at EU Level

The European Union should create a legal basis (e.g. preparation of a legislative proposal by the EC, adoption of an EU Regulation or Directive) for introducing the integration of spatial planning into the permitting procedure of Member States. Alternatively, the EC may prepare a Recommendation or Guidelines laying out recommended elements of the implementation of this measure for Member States. This may also include additional recommendations on how to implement this measure where the integration of spatial planning has a particularly far-reaching impact on the design of the permitting procedure for prioritised energy infrastructure.

### **Implementation at Member State Level**

For the implementation of this measure, Member States need to:

- Adapt the legal framework governing spatial planning and permitting procedures for prioritised energy infrastructure.
- Potentially identify rough corridors for prioritised energy infrastructure projects.

### **Legal Implications in Member States**

Measure 11 is relevant only for selected Member States. Examples include: Austria, with its Design Approval, which is not mandatory, however; Germany, where the abolition of the spatial planning process is currently being discussed by stakeholders; and Poland, where the planning permission based on the spatial planning and Development Act could be integrated with the EIA process. For the Member States concerned, introducing this measure would result in an adaptation of national or state laws governing spatial planning. In these Member States, the legislative framework governing the design of permitting procedures of prioritised energy infrastructure would have to be adapted.

### **Cost Drivers**

There are no cost drivers from the perspective of the EC.

The main cost drivers from the perspective of the public institutions involved on a national level, including the responsible authority, are:

- Drawing up and adopting a new law or adapting existing laws governing spatial planning and permitting for prioritised energy infrastructure.
- Potentially identifying rough corridors for prioritised energy infrastructure projects. This may involve commissioning an extensive study and perhaps involving stakeholders in identifying and deciding about such corridors (e.g. consultation via the Internet, discussions with stakeholder representatives).
- More importantly, however, the authority previously in charge of the spatial planning process does not need to handle this process anymore. This will result in major savings, especially with regard to personnel resources at this authority.

There are no cost drivers from the perspective of the project developer. On the contrary, the project developer benefits from major savings. These savings relate to in-house and external personnel capacities for writing application documents. Separate application documents currently need to be prepared for a separate spatial planning process; the integration of the processes makes these documents redundant. However, some additional sections on spatial planning issues would still

need to be integrated into the application documents for the overall procedure. Savings also relate to in-house management capacities. If spatial planning is integrated, less personnel will be needed to manage fewer procedures.

The main cost driver from the perspective of other involved stakeholders is:

- Concerned stakeholders such as the residents of potentially affected municipalities and environmental NGOs will no longer need to be involved in multiple processes. The bundling of processes thus allows these stakeholders to realise savings.

### III. Evaluation

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** Most separate spatial planning processes in Member States foresee consultation with stakeholders. As a consequence, the abolition of this as a separate process reduces the number of different stakeholder consultations. However, it has no impact on the scope of topics on which stakeholders are consulted as spatial planning concerns are still discussed within the framework of the overall permitting procedure. The impact on acceptance is thus negative but low.
- **Impact on duration:** Integration of spatial planning decisions into the successive processes of the permitting procedure shortens the duration of the procedure considerably. The impact on duration is thus positive and high.

#### EVALUATION: Impact on the permitting procedure

Impact on acceptance:



Impact on duration:



**Figure 42:** Evaluation: Impact of Measure 11 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** In the Member States concerned, national or state legislation governing spatial planning and the permitting procedure would have to be adapted. This would result in a modification of the permitting procedure, e.g. the abolition of a separate process and, in the case of full integration into another procedure, possibly also a shift of competencies between authorities. Therefore the legal impact of this measure is negative and high.
- **Impact on costs:** For all parties involved (public institutions including the responsible authority, project developers, other stakeholders) this measure leads



to savings on resources, especially personnel. However, experts on spatial planning who would previously have been involved by the concerned parties in the spatial planning process will now be needed to almost the same extent in the overall permitting procedure. The impact on costs is thus positive and moderate.

**EVALUATION: Difficulty of implementation**



**Figure 43:** Evaluation: Level of difficulty of realising Measure 11

Overall, the implementation of this measure is highly relevant for shortening the duration of the permitting procedure. Moreover, the impact on costs for all stakeholders is positive. We therefore strongly recommend implementing this measure. The integration of spatial planning should ideally be implemented together with the introduction of the one stop shop (see Measure 7, "One stop shop").

**Measure 12: Mandatory Scoping**

**I. Rationale**

The scoping is established as an optional process step in the EIA procedure by the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC).<sup>28</sup> This measure foresees that the scoping would be established as a mandatory, rather than optional, process step in the permitting procedure. Moreover, the focus of the scoping should be extended to cover the requirements of the Environmental Impact Assessment and other application documents that may be required. The outcome of the scoping is a clear outline of what needs to be covered in the application documents. The scoping should take place at the beginning of the process, which is concerned with the investigation of the preferred route.

The implementation of this measure ensures that stakeholder concerns are articulated at an early stage in the procedure. The project developer has the opportunity to hear stakeholders' concerns and take these into account in the planning of the project. Moreover, the inclusion of stakeholders' concerns in the list of requirements for the application documents helps to ensure that the project developer considers stakeholders' concerns in the planning of the project.

<sup>28</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (Council Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC), OJ L 175, 5.7.1985, p. 40.

The result of the scoping should be a detailed outline for the application documents, which in turn provide reliable and detailed guidance for the project developer. This helps to ensure a certain level of quality in the application documents, especially with regard to the inclusion of stakeholders' concerns. Good application documents that reflect a serious examination of stakeholders' concerns by the project developer have a mitigating impact on public opposition. Similarly, comprehensive application documents minimise the risk of a large number of requests for additional information during later stages of the permitting procedure.

This measure responds to the following key challenges in particular:

- 2-d Involvement, information and compensation of stakeholders: Mandatory scoping ensures that stakeholders are involved at an early stage of the procedure and that their concerns are articulated and made formally available to the project developer.
- 2-e Input, output, documents and instruments: This measure helps to increase the quality of application documents by clearly listing the requirements for these documents before the project developer actually starts development.

## **II. Implementation**

In the **design of the measure**, six key elements should be considered:

- The scoping should become a mandatory process step in the permitting procedure.
- The scoping should determine the contents of application documents to be provided by the project developer.
- The scoping should take place while the detailed location or routing of the project is still under investigation.
- The selection of stakeholders invited to participate in the scoping should ensure that all potential concerns to be investigated in the application documents are taken into account.
- The outcome of the scoping should be a clear, detailed outline for the project developer, providing effective and reliable guidance for the preparation of the application documents.
- Requests for additional information above and beyond the information requirements defined during the scoping should be avoided unless they are justified by unexpected new findings and can be justified by the responsible authority.

Scoping was introduced by Directive 97/11/EC.<sup>29</sup> This Directive does not stipulate scoping as a mandatory measure. Member States are allowed to make scoping a mandatory process step in the EIA procedure, but they may also choose the minimum requirement "that competent authorities [...] provide a Scoping Opinion if requested by a developer. The Scoping Opinion should identify the content and extent of the information to be elaborated and supplied by the developer to the competent authority". For this reason, practice with regard to scoping varies widely between Member States. To ensure that scoping is practised in all Member States, the scoping should be introduced as a **mandatory process step** in the permitting procedure for prioritised energy infrastructure.

**Example 86:** In Sweden, Italy and England and Wales, scoping for the establishment of the Environmental Impact Assessment often takes place, but it is not mandatory. Thus developers do not always benefit from having a clear outline of the application documents such as that which would be produced by the scoping.

In Austria, scoping is mandatory but only available to selected stakeholders, including the project developer, the responsible authority and other competent authorities.

In the Netherlands, scoping is mandatory and available to all stakeholders, i.e. not only interested parties.

Currently, scoping is a process step within the EIA procedure. Its purpose is to determine "the content and extent of the matters which should be covered in the environmental information to be submitted to a competent authority for projects which are subject to EIA".<sup>30</sup> However, it is recommended that the scoping be extended to topics other than the environmental documentation. While environmental concerns usually make up the largest share of stakeholders' concerns, stakeholders may also be concerned with other topics, such as safety. The **inclusion of the scope of all application documents to be submitted by the project developer in the scoping** would ensure that all potential stakeholder concerns, not only those to do with environmental issues, are brought to the attention of the project developer and considered in the application documents. Moreover, the project developer would have the advantage of certainty about the requirements of other application documents.

Identifying the **best date for mandatory scoping within the permitting procedure** is crucial. On the one hand, the planning of the project should not be too far advanced so relevant stakeholder concerns can still make a difference. On the other hand, the planning should be sufficiently advanced that a concrete project can be discussed during the scoping and a reasonable scope defined for investigation in the

<sup>29</sup> Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, OJ L 73, 14.3.1997, p. 5.

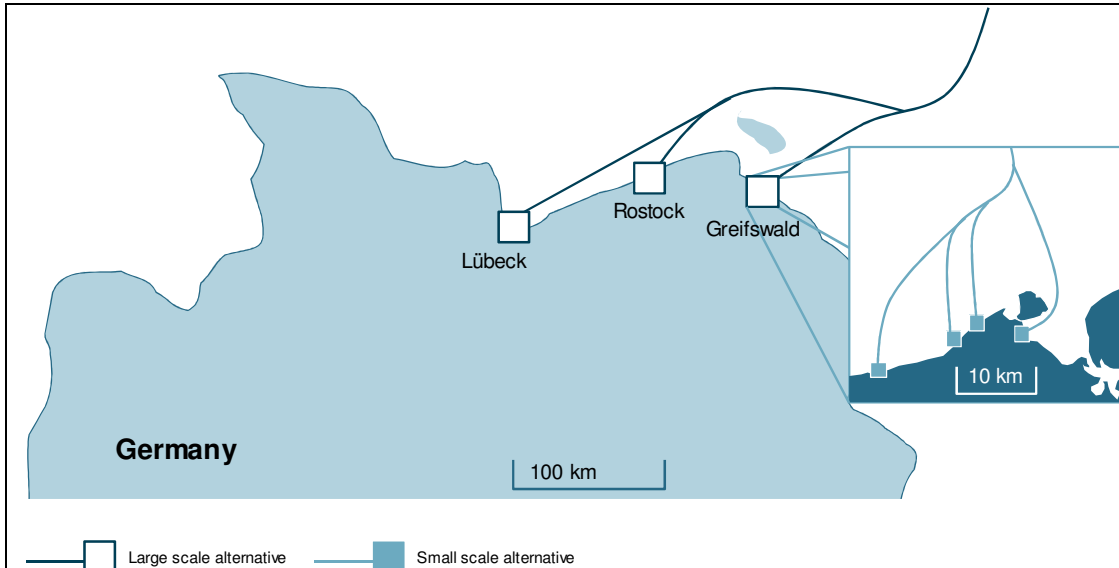
<sup>30</sup> "Guidance on EIA Scoping", Office for Official Publications of the European Communities, June 2001.

application. Therefore, the best moment for mandatory scoping is when large-scale alternatives have already been excluded, and small-scale alternatives are still under discussion. By "large-scale alternatives" we mean alternative routes or locations that are located more than 15 km from the "base case" location or route (usually the preferred alternative from the point of view of the project developer) or other alternatives. "Small-scale alternatives" are alternatives less than 15 km from the base case or other relevant alternatives.

The inclusion of large-scale alternatives in the mandatory scoping is not recommended as they are often very different with regard to the location and subjects of protection which they potentially affect (e.g. protected areas, settlements). As a consequence, a complete set of application documents with all required underlying environmental studies would be required for the in-depth investigation of each alternative. Moreover, discussion of large-scale route or location alternatives which will be excluded at a later stage of the planning of the project would raise concerns with a large number of stakeholders – stakeholders who in any case will not ultimately be affected by the project.

It is, however, crucial that the mandatory scoping takes place when small-scale alternatives are still under investigation. At this point in time, findings from the scoping or the environmental surveys can still lead relatively easily to project adaptations. If the technical planning of the project of the preferred alternative were already advanced during the mandatory scoping, adaptations to the routing to accommodate environmental or stakeholders' concerns would be more costly: the money already spent on the detailed planning of the original route would have been wasted. Holding the mandatory scoping when small-scale alternatives are still open from the point of view of the project developer increases the likelihood that the developer will use location or route alternatives to mitigate project impacts.

**Example 87:** In the case of the permitting procedure of the Nord Stream offshore gas pipeline in the Baltic Sea, for example, both large-scale and small-scale alternatives were included in the scoping (see **Figure 44**). However, large-scale alternatives were investigated in a considerably lower level of detail than small-scale alternatives. Moreover, discussions with stakeholders and comments by stakeholders focused strongly on small-scale alternatives and mitigation measures, while large-scale alternatives received almost no attention.



**Figure 44:** Permitting procedure for the Nord Stream Pipeline: investigation of large-scale and small-scale alternatives as defined during the scoping (schematic presentation based on application documents for the Nord Stream Gas Pipeline in Germany).

As far as the **participants in the scoping** are concerned, the minimum requirement should be that, besides the responsible authority and the project developer, other public agencies are involved: competent authorities and institutional stakeholders such as registered and competent environmental NGOs, and representatives of interest groups. This is the minimum requirement ensuring that stakeholders' concerns are included to an appropriate extent and covered effectively in the application documents.

Another option would be to invite the general public to attend the scoping. This is certainly the best way to ensure full inclusion of all stakeholder concerns. However, there is a great risk that the scoping would become more emotional and less focused on facts, and the scoping effort would become too large. Moreover, involving representatives of interest groups should be sufficient to ensure that the concerns of interest groups are taken into consideration. We therefore suggest limiting the participants in the scoping to a selected group of stakeholders, e.g. concerned authorities, environmental NGOs and representatives of citizens' initiatives. The decision on the inclusion of stakeholders may be prescribed by law or the responsible authority may take the decision on a case-by-case basis, possibly also based on a minimum requirement prescribed by law.

**Example 88:** In Austria, only the third process of the permitting procedure – the Authorisation Permit process – starts with a scoping. Only competent authorities are involved; other potentially affected stakeholders are neither involved nor represented. As a consequence, potentially affected stakeholders are consulted on application

documents which were prepared based on a scoping in which they had no say. This creates a risk that excluded stakeholders find that their concerns are not reflected in the application documents. This may be related to the very high levels of public opposition to energy infrastructure projects in Austria.

The **result of the scoping** is the scoping document, which serves as an outline for the project developer and as effective and reliable guidance for the preparation of the application documents. Scoping is current practice in many Member States and hence perceived as very useful by project developers. However, room for improvement remains:

- More guidance could be provided with regard to the level of detail in application documents, for example by publishing good practice examples for application documents.
- It should be ensured that any request for investigation which was not made during the scoping and accepted in the outline for the application documents does not then need to be investigated in the application documents.

**Requests for additional information above and beyond the information requirements defined during the scoping** should be avoided unless they are justified by new circumstances which could not have reasonably been foreseen during the scoping procedure. This provision aims to prevent frequent requests for additional information that is not justified but often leads to delays in the permitting procedure. The scoping document should serve as a yardstick for what information has to be provided by the developer and what requests for additional information are justified. New insights might lead to justified additional information requests by the responsible authority, not yet covered by the scoping document. However, such additional information requests should have to be justified by the responsible authority, and this justification should be made available to the project developer. This provision risks leading to overtly extensive scoping documents, as the responsible authority may aim to ensure that future requests for additional information will be covered by the scoping document. To prevent overtly extensive scoping documents, the EC should provide detailed guidelines that show what level of detail is considered best practice for scoping documents.

### **Implementation at EU Level**

The EC would have to prepare the legislative proposal and create the legislative framework at an EU level to ensure the introduction of this measure. Moreover, the EC should consider accompanying this measure with additional support for Member States in which the scoping does not yet exist on a mandatory basis with the inclusion of all relevant stakeholder groups, e.g. by providing best practice and information material on the implementation of this measure to the concerned Member States. Such information material should aim in particular to clarify the required level of detail for the scoping document.

## **Implementation in Member States**

Member States employ a wide range of different practices at present. Three types of Member States may be distinguished:

- No scoping required (e.g. Sweden, Italy, England): Scoping is not mandatory and would have to be introduced as a mandatory process step. This means that for each prioritised project, one additional meeting would have to take place mandatorily compared to the current situation.
- Scoping is mandatory but only open to selected stakeholders (e.g. Austria): Depending on what stakeholders are to be allowed access to the scoping, the range of participants may have to be enlarged.
- Scoping is mandatory and open to everybody (e.g. Netherlands): No adaptation would be required.

## **Legal Implications in Member States**

Currently, the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC)<sup>31</sup> foresees the scoping as an optional process step within the EIA procedure. The mandatory scoping applicable to all aspects of the permitting procedure may be introduced through an EU Regulation. If this measure is implemented by a Regulation, no further adaptation or detailing of national legislation in Member States would be required.

If the measure is introduced in a different manner, e.g. through a Recommendation or Guidelines, minor adaptations to national legislation would be required in order to implement the measure in the Member States.

## **Cost Drivers**

No major cost drivers exist from the perspective of the EC.

The main cost drivers from the perspective of public institutions involved, including the responsible authority, are:

- Identifying and inviting stakeholders to the meeting. This involves at least placing an advertisement in regional newspapers. However, ideally key stakeholders would receive more personalised invitations to ensure that they are informed about the possibility of participating in the scoping.

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<sup>31</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (Council Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC), OJ L 175, 5.7.1985, p. 40.

- Preparing, executing and documenting the scoping meeting, including preparing materials by the representatives of different authorities and preparing materials and carrying out the logistical organisation by the responsible authority.

The main cost drivers from the perspective of the project developer are:

- Preparing and participating in the meeting, including drawing up explanatory documents, creating presentations, etc.

### III. Evaluation

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** A mandatory scoping aims to ensure that stakeholders' concerns are reflected in the application documents and, if appropriate, reflected in the planning of the project. This can increase stakeholder acceptance of permitting procedures and projects significantly. The impact of this measure on acceptance is thus positive and high.
- **Impact on duration:** Inclusion of all stakeholder concerns in the scoping and detailed documentation in the outline of application documents of relevant concerns ensures that no more (or significantly fewer) concerns are raised at a later stage in the procedure. This is an important precondition for preventing delays to the permitting procedure. The impact on duration is thus positive and high.

#### EVALUATION: Impact on the permitting procedure

Impact on acceptance:

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Impact on duration:

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**Figure 45:** Evaluation: Impact of Measure 12 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** The introduction of the mandatory scoping on a European level by a Regulation as described above would not require the adaptation of national legislation. If the measure is introduced in a different way (e.g. through a Recommendation), minor adaptations to national legislation would be required. It will be recalled that many member States have already gone further than the minimum requirements of the EIA Directive, making scoping mandatory with regard to the scope of the Environmental Impact Assessment and providing for public consultation during scoping. The legal impact is therefore neutral.



- **Impact on costs:** Making the scoping mandatory means that in some Member States one additional meeting (including preparation and follow-up) needs to be held for each prioritised energy infrastructure project. In most Member States, the scoping is already in place for the Environmental Impact Assessment and would only have to be extended to cover other aspects of the permitting procedure, including non-environmental aspects, and to ensure that representatives of relevant stakeholder groups can participate. The additional costs created by this measure are extremely low and may be considered irrelevant.

#### **EVALUATION: Difficulty of implementation**



**Figure 46:** Evaluation: Level of difficulty of realising Measure 12

Overall, the measure is highly relevant. It has a particularly big impact on stakeholder acceptance and therefore addresses one of the main concerns of project developers during the permitting procedure: public opposition. It ensures better stakeholder involvement and also increases the likelihood that stakeholder concerns are reflected in the planning of the project. Moreover, both the costs and the legal impact are low. The implementation of this measure is therefore highly recommended.

### **Measure 13: Granting Access to Necessary Land/Easements together with the Permit**

#### **I. Rationale**

This measure foresees that the permit would allow the project developer to start construction as soon as it is enforceable, i.e. where no appeal with suspensive effect arises within a defined time period after the granting of the permit. The project developer would obtain the right to use the land required for the project as soon as the permit is enforceable, irrespective of any pending final negotiations, decisions or rulings on expropriation. No additional separate process for expropriation would have to be started in order to obtain right of way or easement after the issuing of the permit.

This measure is not linked to the negotiation of compensation levels, which in many countries must be carried out separately from the permitting procedure and is subject to private rather than public law. Decision about compensation levels may follow the start of construction.

This measure would shorten the duration of the overall permitting procedure by enabling different process steps to be carried out in parallel. In some Member States, outstanding agreements with landowners affected by an energy infrastructure project may delay the permitting procedure. This is because agreement with landowners under private law (or at least evidence of having tried sufficiently to reach agreement) is a precondition for easement of the issuing of the permit. Particularly in these countries, this measure would speed up the procedure by allowing the start of construction to occur in parallel with negotiations about compensation levels.

This measure responds to the following key challenges in particular:

- 2-a Number of processes and process steps: This measure reduces the number of process steps by eliminating processes for obtaining land rights after the permit has been issued.
- 2-b Sequence of processes and process steps: This measure enables process steps to occur in parallel. Negotiation of compensation levels for affected landowners can continue while construction is taking place.

## **II. Implementation**

In the **design of the measure**, three key elements should be considered:

- Permission to construct should be granted together with the permit for projects of public interest.
- Negotiations about compensation may take place in parallel to or following construction.
- The right to access property to carry out preparatory works should be granted at an early stage of the procedure.

Granting the right to start construction together with the permit should be implemented for **projects of public interest**. Acceptance for this measure will be considerably greater for projects of public interest. Therefore this measure may be limited to this type of project.

As soon as the project developer has an enforceable permit, the company may decide to start construction. Any **decisions about compensation levels** can be made in parallel or after construction has been concluded. In this way, the level of compensation is left open to further discussion between the project developer and the landowners and a decision may be taken within the framework of negotiations between project developer and landowners or by a court.

Before the official start of the permitting procedure, the project developer usually needs access to the land on which the project is to be constructed. This access is

necessary for carrying out **preparatory works**, i.e. surveys required for the preparation of the application documents. In some countries, accessing the land requires either a separate agreement under private law with the landowners, or a separate process exists for establishing the project developer's right to access the land. However, we suggest considering providing project developers for projects of public interest with the right to access the land for surveys at an early stage of the procedure. This could be established officially at the same time as the scoping. In this case, compensation for landowners for any damage can be handled separately while project developers already have the right to access the land. Restrictions on land use for preparatory works are rare, so compensation should be a subordinate topic at this stage of the procedure.

**Example 89:** In the Netherlands, agreements with landowners allowing the project developer to access land for preparatory works (i.e. surveys) need to be reached individually. This is a concern because of the increased risk of delay in preparing the application documents. Moreover, expropriation is not covered in the permitting procedure for projects of national interest. Easement or right of way has to be obtained by the project developer in a separate legal process, from a different institution than that responsible for the permitting procedure. Thus the permitting procedure is handled by the Dutch Ministry of Economic Affairs, Agriculture and Innovation, while expropriation is handled by the Ministry of Infrastructure and the Environment.

**Example 90:** In Austria, the project developer has to request approval to be allowed to access land in order to carry out preparatory works. This is known as a Preparatory Work Approval. The project developer asks for easement to start preparatory works (e.g. test drilling, topographical surveys) on the land foreseen for the project. The responsible authority is the state government for projects located within a single state or the Federal Ministry of Economy, Family and Youth for projects located in two or more states. The Preparatory Work Approval is usually limited to allowing the project developer to access the land in order to carry out the required surveys. It has a regulatory effect on the landowner and is not subject to an EIA. Despite legal provision for compensation, there is usually no compensation for landowners in practice.

### **Implementation at EU Level**

The European Union may create the legal basis (e.g. preparation of a legislative proposal by the EC, adoption of an EU Regulation or Directive) to ensure that access to necessary land/easements is granted together with the permit in countries, where no major conflict with existing legislation is created by this measure. Alternatively, the EC may prepare a Recommendation or Guidelines laying out recommended elements of the implementation of this measure by Member States.

### **Implementation in Member States**

Some Member States have to take action to create a legal basis for granting the right of construction.

### **Legal Implications in Member States**

The impact of this measure on national legislation strongly depends on property rights in the Member States.

In many Member States, this measure is already in place. In Spain, for example, right of way is granted together with the permit for projects of public interest. In England and Wales, a compulsory purchase order is granted as part of the consent by the Infrastructure Planning Commission. In other countries, the legal framework requires agreement between the project developer and the property owner, or a court decision before construction starts. In Germany, for example, property rights are protected by the Basic Law (i.e. the constitution). This measure would require adaptation of the Basic Law and is therefore unlikely to be successful.

The legal implications thus differ strongly between Member States. In some countries they are small, while in others they form a major obstacle to this measure.

### **Cost Drivers**

The main cost drivers from the perspective of the public institutions involved, including the responsible authority, are:

- Adapting the legal framework – a one-off cost limited to additional activity by the legislator, usually covered by the regular tasks of the legislator.
- These costs are more than outweighed by the savings for public institutions as a result of this measure. In Member States where access to the necessary land and easement is currently handled in a separate procedure, the costs for handling this separate procedure would be saved.

No cost drivers exist from the perspective of the project developer. On the contrary, savings would be realised by project developers in countries where this measure resulted in a reduction of the permitting procedure by one separate process.

Likewise, there are no cost drivers from the perspective of other stakeholders. It is not expected that the level of compensation would be influenced to any significant extent by this measure.

### **III. Evaluation**

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** Affected landowners almost always perceive the installation of an energy infrastructure project on their land as an infringement. Allowing project developers in charge of the realisation of prioritised energy infrastructure to start construction as soon as the permit has been issued without the need to handle a separate procedure concerned with expropriation may have a slightly negative impact on the perception of affected landowners, which was negative to start with. This measure should not have a major effect on the opinion of other stakeholders. If there is an indirect effect, it is expected to be very small. The impact on acceptance is thus negative but low.
- **Impact on duration:** This measure ensures that construction is not delayed by ongoing negotiations, arbitrations or decisions about compensation levels. Construction may start as soon as an enforceable permit is in place. However, it should be borne in mind that the effect this measure would have in shortening the right of way phase may be partially offset by an ongoing appeal without suspensive effect, or if project developers decide to refrain from starting construction due to financial risks in the case of a successful appeal. Despite this, most project developers that we spoke to confirmed that this measure would lead to speeding up of the procedure from their perspective. The impact on duration is therefore positive and low.

#### **EVALUATION: Impact on the permitting procedure**

**Impact on acceptance:**



**Impact on duration:**



**Figure 47:** Evaluation: Impact of Measure 13 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** The legal impact differs strongly between different Member States. In some countries, this measure is already in place and no legal adaptations would be required; in others, major adaptation of the legal framework would be required. The legal impact is thus considered to be negative and strong.
- **Impact on costs:** The measure would lead to savings by both the public institutions involved in the Member States and by project developers. These savings only affect Member States where granting access to land and easement together with the permit is not yet in place and where it can be effectively introduced. The impact on costs is therefore positive and low.

**EVALUATION: Difficulty of implementation**



**Figure 48:** Evaluation: Level of difficulty of realising Measure 13

Overall, this measure would be very useful for shortening the duration of permitting procedures. However, implementation might not be possible in some Member States due to its relatively high impact. The implementation of this measure is thus recommended, but with a clear focus on achieving implementation in Member States where no major legal barriers exist, such as changes required to the constitution.

**Measure 14: Limiting Legal Recourse to a Single Level of Jurisdiction**

**I. Rationale**

This measure envisages the limitation of legal recourse for the permit or procedure for prioritised projects to a single level of jurisdiction. This means that there would be only one court responsible for appeals against permits. The decision taken by this court would be final, i.e. no revision of it would be possible. Moreover, appeals would not have a "suspensive" effect, so the project developer could start construction as soon as the permit was issued, irrespective of whether an appeal process was ongoing or not.

The implementation of this measure would shorten the overall duration of the permitting procedure by reducing the total number of process steps. In some Member States several levels of jurisdiction for appeal exist. Moreover, ongoing appeals may have a "suspensive" effect, i.e. the project developer may not start construction until the final decision is made about the appeal. This measure would shorten the appeal procedure and reduce its delaying impact on the start of construction by allowing the project developer to start construction immediately following the issuing of the permit.

This measure responds to the following key challenges in particular:

- 2-a Number of processes and process steps: This measure reduces the number of process steps by cutting the number of levels of jurisdiction for appeals to just one.
- 2-b Sequence of processes and process steps: This measure enables process steps to occur in parallel. Appeal procedures may take place while construction is ongoing.

## II. Implementation

In the **design of the measure**, two key elements should be considered:

- The responsible court should be the highest court possible.
- An appeal against a decision about projects of European or national interest should not have a suspensive effect on the permit.

As the decision taken by the single level of jurisdiction is final, the **responsible court should be as high as possible**. This is linked to the limitation of the appeal to a single level of jurisdiction. A precondition for this is the availability of resources at the highest court. If assigning decision-making to the highest court would lead to long decision-making processes, it would be worth considering assigning responsibility to a lower court that is able to act more quickly. This element of Measure 14 would also be in line with the recommendation of Article 2 par. 2a of the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC),<sup>32</sup> which states that "Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control".

Appeals against projects of European or public interest should **not have a suspensive effect**. In such cases, appeals should have no impact on the enforceability of the permit. The project developer may thus start construction immediately after the permit has been issued, in spite of any ongoing appeal. As appeals can take several months or years, the impact of an appeal on the duration of the realisation of a prioritised project can be minimised considerably in this way. This element is therefore crucial to ensure the positive effect of this measure on the duration of prioritised projects.

However, it should be pointed out that doing away with the suspensive effect of appeals does not in itself fully ensure that project developers will actually start construction immediately after the permit has been issued. An ongoing appeal increases the financial risks for the project developer: if the appeal is successful and the project is already fully or partly completed, major financial damage may result from requirements to modify or remove the project. For this reason, many project developers wait until the conclusion of the appeal before they start construction, even if the appeal has no suspensive effect.

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<sup>32</sup> Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (Council Directive 85/337/EEC, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC), OJ L 175, 5.7.1985, p. 40.

### **Implementation at EU Level**

The European Union may create the legal basis (e.g. preparation of a legislative proposal by the EC, adoption of an EU Regulation or Directive) to ensure the limitation of legal recourse with regard to the permit for prioritised energy infrastructure in countries where no major conflict with existing legislation is created by this measure. Alternatively, the EC may prepare a Recommendation or Guidelines laying out recommended elements of the implementation of this measure for Member States.

### **Implementation at Member State Level**

For the implementation of this measure, the Member States need to:

- Adapt their legislative framework governing appeals against projects of European and national interest, or enact a new law limiting appeal to a single level of jurisdiction for such projects.
- Identify the responsible court and implement this measure for new appeals.

### **Legal Implications in Member States**

The principle of having only one level of jurisdiction for appeals against permits of prioritised energy infrastructure projects can be laid down in an EU Regulation. This Regulation may also state that applications to the court shall, in principle, not have a suspensive effect. If such a clause is introduced through a Regulation, care should be taken to impose on Member States the obligation to provide for such a system within a certain period of time. The Regulation may also include the provision that this measure should be introduced without prejudice to guarantees provided by the constitution of the Member State in question.

However the measure is implemented (through an EU Regulation, Recommendation or by other means), it will require the adaptation of national legislation, i.e. the laws governing the judicial system of Member States. The level of legal impact of this measure depends on the laws governing the administrative courts in the 27 Member States. In our investigation no Member State was identified in which responsibilities and the number of instances were set out by the constitution; however, if such a situation does exist, it would be an obstacle for the implementation of this measure as adaptation of the constitution would be required.

Four categories of Member States may be distinguished for the purpose of this analysis:

- Member States in which only one instance is responsible for the decision about an appeal with regard to permits for prioritised energy infrastructure and there is



no suspensive effect resulting from an appeal: No adaptation of national legislation would be required.

- Member States in which only one instance is responsible for the decision about an appeal with regard to permits for prioritised energy infrastructure and an appeal may have a suspensive effect: This suspensive effect would have to be removed; for this purpose, national legislation would have to be adapted.
- Member States in which several instances are responsible for the decision about an appeal with regard to permits for prioritised energy infrastructure and there is no suspensive effect resulting from an appeal: The number of responsible instances would have to be reduced to a single responsible instance.
- Member States in which several instances are responsible for the decision about an appeal with regard to permits for prioritised energy infrastructure and an appeal may have a suspensive effect: The number of responsible instances would have to be reduced to a single responsible instance and the suspensive effect would have to be removed.

In most EU Member States, the introduction of this measure would require adaptation of laws governing the judicial system. The measure thus has a moderate impact on Member States' legislation. However, there are precedents in Member States. In Germany, for example, the law on traffic infrastructure ("Verkehrswegegesetz") foresees a single level of jurisdiction for selected infrastructure projects.

### **Cost Drivers**

There are no cost drivers from the perspective of the EC.

No additional costs are created from the perspective of the public institutions involved on a national level, including the responsible authority. On the contrary, there are cost savings as several judicial procedures are abolished. This means that the staff of one, two or even three courts no longer need to be involved in issues, and experts who might otherwise be drawn on in the course of investigations are no longer required.

No additional costs arise for project developers. On the contrary, project developers save money that would otherwise be spent on appeals, including legal support (in-house or external) and staff input.

No additional costs arise from the perspective of other stakeholders either, e.g. individuals or bodies lodging appeals. On the contrary, costs are saved as a final decision is obtained from the highest court after just one procedure.

### **III. Evaluation**

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** The limitation of options for appeal may have a negative impact on stakeholders' acceptance of energy infrastructure projects. However, as the decision is taken by the highest court, it is expected that the outcome of this judicial procedure would be widely accepted. The impact on acceptance is thus negative but low.
- **Impact on duration:** In some Member States, the long duration of the realisation of energy infrastructure is due to lengthy litigation phases, especially when these have a suspensive effect.

**Example 91:** In Finland, the long duration of permitting procedures is in many cases a result of lengthy appeal processes. The permit is not enforceable as long as there is an appeal pending. A decision by the courts (several levels of jurisdiction may be involved) may take years. As a consequence, the realisation of energy infrastructure often faces major delays.

This measure allows for construction to begin right after the issuing of the permit. It thus ensures that ongoing appeals do not delay prioritised energy infrastructure projects. In our investigation, many project developers stated that they would not start construction where there was an ongoing appeal, even if this appeal had no suspensive effect, due to the related financial risks. In such a case, the reduction of responsible instances to one single court would help to speed up the appeal process and thereby result in construction starting earlier. The impact of this measure on duration is thus positive and moderate.

#### **EVALUATION: Impact on the permitting procedure**

**Impact on acceptance:**



**Impact on duration:**



**Figure 49:** Evaluation: Impact of Measure 14 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** This measure requires an adaptation of laws governing the judicial system in Member States. A moderately wide range of legislation would have to be adapted in most Member States. Precedents for such a case exist. The legal impact is thus negative and strong.
- **Impact on costs:** This measure allows all stakeholders to save costs. The impact on costs is thus both positive and high.

**EVALUATION: Difficulty of implementation**



**Figure 50:** Evaluation: Level of difficulty of realising Measure 14

Overall, this measure would have a significant impact on the duration of the realisation of critical energy infrastructure projects. The presentation of this measure to EU Member States is therefore recommended.

#### **D.4 Improve Project Developers' Planning and Involvement in Permitting Procedures**

Project developers play a crucial role in permitting procedures. They plan the project, prepare the permitting documents and communicate with stakeholders. In public debate it is often stated that delays are due to the authorities; however, project developers can also do a great deal to avoid delays before starting the permitting procedure, as well as during the procedure itself.

Like the authorities, developers also need to take into account the strict requirements with regard to environmental protection and stakeholder involvement. Ensuring the planning procedure not only optimises technical and economic viability but also public acceptance and environmental concerns is one area where improvement is possible. Another is assuming responsibility for the early involvement of stakeholders and taking their feedback into account.

We propose three measures:

1. Drawing up principles for sustainable and inclusive planning and permitting procedures, reflecting established good practice and providing a solid basis for the effective handling of the permitting procedure by project developers. These Principles should be developed with the participation of stakeholders to give them a broad basis and ensure their acceptance from the start.
2. Compliance with these Principles should be made a criterion for receiving funding from the EU, be it for feasibility studies, construction or money from the EIB (European Investment Bank) or EBRD (European Bank for Reconstruction and Development).
3. The related information campaign would be the responsibility of the project developer, but can be overseen by the permitting authority. Completing the campaign should be a requirement for the submission of application documents.

#### **Measure 15: Developing Principles for Sustainable and Inclusive Project Planning and Permitting Procedures for Prioritised Energy Infrastructure Projects**

##### **I. Rationale**

Project developers play an important role when it comes to the effectiveness and speed of the permitting procedure. The technical planning – often completed before the stakeholder dialogue or environmental assessments – is a main driver of how much opposition arises from stakeholders and the public, and how much the environment is affected by the planned project. The openness of project developers in discussions with stakeholders is also critical for completing permitting procedures

on time. Too often, stakeholders are only involved because of the formal requirement to do so: their input is not used to shape the project early on in a way that would facilitate the permitting procedure. Moreover, the permitting authorities and project developers often lack experts with the ability to drive complex processes forward. Capacity requirements are underestimated, resulting in poor quality documents, often containing mistakes. This then gives rise to more delay and extra work.

The way project developers behave cannot be directly influenced by the EC or by Member State's governments. However, we suggest developing a set of principles that bring together proven good practice for planning and permitting procedures that are sustainable and inclusive, and which provide a good basis for effective handling of the permitting procedure. Developing principles outside the EU and Member States' legal frameworks would be an effective way of influencing project developers' behaviour. In so doing, it is crucial to give such principles a broad basis and create acceptance for them from the start.

To ensure acceptance, the Principles should be drawn up in collaboration with a respected neutral institution, NGOs and industry partners. Commitment to and compliance with the Principles could be made a precondition for access to preferred funding from European sources.

This measure responds to the following key challenges in particular:

- 2-d Involvement, information and compensation of stakeholders: The Principles for inclusive permitting procedures for prioritised energy infrastructure projects aim to support a shift in project developers' approaches. Their objective is to achieve a better information policy with regard to stakeholders, focused on target group-specific and target group-appropriate information. This measure thus helps to remedy the current situation in which stakeholders are insufficiently informed about the potential effect of the project on them and their options for involvement in the procedure. Moreover, project developers are encouraged in this way to take stakeholder concerns into account at an early stage of the procedure. This measure thus also addresses the challenge of late involvement by stakeholders.
- 2-e Input, output, documents and instruments: This measure helps to increase project developers' awareness of the quality requirements for permitting procedures. It also provides clear guidance for project developers on the requirements and scope of application documents. The measure thus helps to improve the quality of application documents.
- 2-h Cost drivers: The Principles aim to increase project developers' awareness of the qualitative and resource requirements of permitting procedures. The measure thus addresses the challenge of project developers' tendency to invest fewer resources in the handling of the permitting procedure than in other aspects of the project, e.g. the technical planning.

## II. Implementation

In the **design of the measure**, three key elements should be considered:

- The Principles for inclusive permitting procedures for prioritised energy infrastructure projects should cover all aspects of good practice.
- The EC should work with a respected foundation and/or industry and NGO partners on drawing up the Principles, creating broad acceptance from the beginning; financing institutions such as the EIB or EBRD should also take part in the process.
- The Principles should be presented by high level representatives from the EC and partners from companies and civil society in the framework of a special event. This would increase the level of awareness and popularity of the Principles and demonstrate broad acceptance by stakeholders.

The Principles should **cover all aspects of good practice by project developers with respect to the permitting procedure**. This should include:

- Taking into account a pre-assessment of potential environmental impacts in the early planning of the project.
- Considering stakeholder concerns early on in the project planning by seeking out dialogue with stakeholder groups, e.g. environmental NGOs and interest groups, at an early stage of the process.
- Dedicating sufficient in-house resources with enough environmental and communications expertise to establish an early and effective stakeholder dialogue.
- A concept for stakeholder involvement devised by the project developer, including a company-internal mechanism that tracks the concept and ensures that it receives sufficient resources to be implemented.
- An internal system tracking comments from stakeholders, showing if the comments were considered relevant and, if so, how they were reflected in the planning process, application documents and communications strategy. This system should help compile comments received at informal meetings with stakeholders before the official start of the permitting procedure and comments received within the framework of the permitting procedure.
- A system that helps to ensure that concessions made by the project developer during the communication and dialogue with stakeholders are actually reflected in the planning and implementation of the project. This system should collect

details of these concessions and show how they are included in the project planning.

- Especially for transnational projects, a system that supports close coordination with other project developers.
- Especially for transnational projects, a concept for stakeholder involvement with regard to transboundary issues and stakeholder consultations on potential transboundary effects, devised by the project developer.

Within the framework of drawing up these Principles, a collection of good practices should be made available to project developers. This would serve as a hands-on set of examples of how to fulfil the requirements of the Principles.

The Principles **should be developed in a joint effort by the EC, industry partners, financing partners and NGOs**. Input from member states should be taken into account. The effort could be sponsored and facilitated by a foundation or neutral institution, e.g. the EIB or EBRD. The principles should earn broad respect from the beginning and should be comparable to the World Bank's "Equator Principles" on financing infrastructure.

To increase the degree of awareness and thereby the impact of the Principles on project developers' approach to permitting procedures, the **Principles should be presented publicly at an event** attended by high level representatives from the EC, selected sponsors of the initiative, industry partners, NGOs and other relevant stakeholders. Broad participation in the event by the different institutions subscribing to the Principles will help to communicate the Principles' broad acceptance by stakeholders.

We suggest linking the creation of the Principles in the medium term to the issuing of a **certificate for successful project developers**, i.e. project developers who fully comply with the Principles or who have contributed key good practice examples, or a large number of examples, to the Principles.

### **Implementation at EU Level**

For the implementation of this measure, the EC would have to:

- Design the Principles for inclusive permitting procedures for prioritised energy infrastructure projects.
- Compile a list of good practice examples.
- Translate the documents into the languages of the Member States.

- Ensure broad distribution to the NEIS, responsible authorities and project developers in the Member States.

### **Implementation in Member States**

No action would be required by Member States. However, Member States could support the implementation of the Principles by helping to increase project developers' awareness of them and by signalling that they expect project developers to employ them. Authorities responsible for the handling of the permitting procedure, who are in close, ongoing contact with the project developers, could take on this role.

### **Legal Implications in Member States**

No adaptation of legislation would be required by Member States.

### **Cost Drivers**

The main cost drivers from the perspective of the EC are:

- Drawing up the Principles, including developing an appropriate format for both the website and other distribution channels (one-off costs).
- Developing a list of best practices for project developers (one-off cost).
- Translating the Principles and related documents (one-off cost).

There are no cost drivers from the perspective of the other public institutions involved, including the responsible authority.

The main cost driver from the perspective of the project developer is as follows:

- Where project developers do not currently have an appropriate approach to permitting procedures, they may wish to consider investing in ramping up their capability based on the Principles.

## **III. Evaluation**

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** This measure forms the basis for increased effort by project developers in their handling of the permitting procedure, especially with regard to taking into account stakeholders' concerns and environmental issues in the project planning and ensuring effective stakeholder dialogue before and during the permitting procedure. The awareness of those project developers who have not paid sufficient attention to these tasks in the past may be increased. Therefore the impact of this measure on acceptance is positive. However,



without further incentive mechanisms, the effect of this measure is expected to be low.

- **Impact on duration:** This measure does not have a direct impact on the duration of the permitting procedure. However, an indirect impact on duration is expected due to increased stakeholder acceptance. Increased stakeholder acceptance may lead to less public opposition and therefore a smaller number of comments needing to be dealt with during the public consultation, and a reduced likelihood of appeal. Moreover, this measure would make prevent extra loops during the permitting procedure, for example due to the introduction of "new" concerns in the course of the permitting procedure resulting in new documents to be provided by the developer and potentially modifications to the projects. The impact on duration is thus positive and moderate.

**EVALUATION: Impact on the permitting procedure**

**Impact on acceptance:**

+

**Impact on duration:**

++

**Figure 51:** Evaluation: Impact of Measure 15 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** The measure requires no adaptation of legislation by Member States. There is thus no legal impact.
- **Impact on costs:** The measure creates one-off costs for the EC which are considered to be very low. Costs for project developers may be incurred due to adaptation of their approach to stakeholder inclusion and especially the handling of the permitting procedure. However, these costs are expected to be more than outweighed by the savings that result from a shorter, more effective permitting procedure. Overall, no additional costs are thus expected through the introduction of this measure.

**EVALUATION: Difficulty of implementation**

**Legal impact:**

0

**Impact on costs:**

0

**Figure 52:** Evaluation: Level of difficulty of realising Measure 15

Overall, this measure creates a positive impact while having no legal impact and no general impact on costs. While the positive impact on acceptance and duration is low, this measure is a precondition for the following measure (Measure 16, "Linking access to EIB, EBRD and EU funds to compliance with permitting principles"). In

combination with Measure 16, the positive impact of this measure is expected to be considerably increased. This measure is also a precondition for the successful implementation of Measure 17 ("Creating incentives for developers for stakeholder dialogue"). Therefore, despite its low direct impact, we strongly recommend implementing this measure.

**Measure 16: Linking Access to EIB, EBRD and EU Funds to Compliance with Principles for Sustainable and Inclusive Project Planning and Permitting Procedures for Prioritised Energy Infrastructure Projects**

**I. Rationale**

This measure involves linking project developers' access to EIB (European Investment Bank) loans, EBRD (European Bank for Reconstruction and Development) loans and EU funds with their commitment to and/or compliance with the principles for inclusive permitting procedures for prioritised energy infrastructure projects ("the Principles" – see Measure 15).

The implementation of this measure would help to ensure the implementation of the Principles. By implementing the Principles, project developers are compelled to take responsibility for early and effective stakeholder involvement, take stakeholders' concerns and environmental issues into account in the early planning stages of the project, and dedicate sufficient resources to handling the permitting procedure. The enforcement of the Principles by linking them to access to funds will help motivate project developers to increase their level of professionalism in their handling of the permitting procedure, particularly with regard to stakeholder dialogue and informing stakeholders. A positive impact is thus expected on the effectiveness and duration of the permitting procedures for prioritised energy infrastructure.

This measure responds to the following key challenges in particular:

- 2-d Involvement, information and compensation of stakeholders: By supporting the implementation of the Principles, this measure supports better involvement and informing of stakeholders before and during the permitting procedure. The challenges of insufficient, inappropriate and late involvement of relevant stakeholders in the procedure is thus addressed.
- 2-e Input, output, documents and instruments: This measure helps to ensure that project developers make a greater effort to develop application documents that are appropriate for stakeholder involvement and which reflect all the relevant concerns of stakeholders. It thus helps to improve the quality of application documents.
- 2-h Cost drivers: Linking access to EIB loans, EBRD loans and EU funds to compliance with permitting principles urges project developers to ramp up their

resources and competencies with regard to the permitting procedure. Therefore this measure addresses the challenge of project developers' tendency to invest fewer resources in the handling of the permitting procedure than in other aspects of the project, e.g. the technical planning.

## **II. Implementation**

In the design of the measure, **access to EU funds and EIB and EBRD loans** should be made dependent on the project developer's evaluations within the framework of the Principles (Measure 15), thereby increasing the impact of the Principles.

In order to increase the impact of this measure, the availability of EU funds should be linked to respect of the Principles. The use of EU funds could be explicitly extended to support project developers in improving their performance in the permitting procedure, for example by providing partial funding for public information campaigns or specifically for producing supporting material for such campaigns.

Equally, access to EIB and EBRD loans should be linked to the project developers' performance with regard to the Principles. Compliance with the Principles should become part of the application procedure for funding. Project developers would have to prove that they comply with the Principles and structure their planning, stakeholder involvement, environmental assessments and public consultation accordingly.

### **Implementation at EU Level**

For the implementation of this measure, the EC would have to:

- For project developers requesting access to EU funds, verify their compliance with the Principles.
- Establish the use of EU funds to support project developers in improving their performance in the permitting procedure.
- Verify and consider possibilities for sharing data or assessments with regard to project developers' compliance with the Principles with the EIB and EBRD.

### **Implementation in Member States**

Member States must take no action.

### **Legal Implications in Member States**

This measure requires no adaptation of legislation in Member States.

### **Cost Drivers**

The main cost driver from the perspective of the EC is:

- Gathering data for the verification of project developers' compliance with the Principles.

There are no cost drivers from the perspective of the other public institutions involved, including the responsible authority.

The main cost drivers from the perspective of the project developer are as follows:

- Responding to additional data and information requests by the EC, EIB and EBRD. This is only relevant for project developers who issue funding requests to these institutions.
- Project developers who wish to obtain funding from the EC, EIB or EBRD may have to invest in ensuring compliance with the Principles. However, this is expected to have a positive effect on overall expenses for the realisation of the project as it minimises delays to the permitting procedure. The measure is thus not expected to have an impact on project developers' expenses in this regard.

### **III. Evaluation**

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** This measure leads to the enforcement of the implementation of the Principles. This ensures greater effort by project developers in their handling of the permitting procedure, especially project developers who request funding from the EC, EIB and/or EBRD. This will lead to improved handling of the permitting procedure by project developers – especially with regard to taking into account stakeholders' concerns and environmental issues in the project planning and ensuring effective stakeholder dialogue before and during the permitting procedure. The impact of this measure on acceptance is therefore considered positive and moderate.
- **Impact on duration:** The measure has no direct impact on the duration of the permitting procedure. However, an indirect impact on the duration is expected in the form of increased stakeholder acceptance. Increased stakeholder acceptance may lead to less public opposition and therefore to a smaller number of comments during the public consultation and less likelihood of appeal. The impact on duration is thus positive and moderate.

**EVALUATION: Impact on the permitting procedure**



**Figure 53:** Evaluation: Impact of Measure 16 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** This measure requires no adaptation of legislation in Member States, so there is no legal impact.
- **Impact on costs:** This measure results in additional costs for the EC and for project developers. The costs from the perspective of the EC are low, as they are limited to additional data-gathering for the evaluation of project developers requesting access to EU funds. From the perspective of project developers, providing additional data is the key cost driver. The impact on costs is thus negative but low.

**EVALUATION: Difficulty of implementation**



**Figure 54:** Evaluation: Level of difficulty of realising Measure 16

Overall, this measure is highly relevant for improving the effectiveness of the permitting procedure. It drives project developers to dedicate more resources and build up competencies with regard to the permitting phase, especially in terms of stakeholder dialogue. This measure is one of the few levers available that is aimed directly at project developers. While it will not affect all relevant project developers, its impact will be broad as it targets all project developers requesting funds from the EC, EIB and/or EBRD. The measure involves only low-level costs. We therefore strongly recommend its implementation.

**Measure 17: Creating Incentives for Developers to Take Responsibility for Effective Stakeholder Dialogue within the Procedure**

**I. Rationale**

In this measure, project developers would be required to conduct an extensive information campaign for the public before submitting the application documents. This information campaign would be the responsibility of the project developer, but could be overseen by the permitting authority. The latter should have the right to request

changes or approve the concept for the information campaign and monitor its implementation. The completion of this campaign would be a requirement for the submission of application documents.

This measure makes it possible to ensure that project developers take responsibility for informing stakeholders and creating a dialogue with them early on and in an effective manner. Our analysis of the permitting procedures in different Member States shows that public opposition and delays to the permitting procedure often result from insufficient involvement of project developers in the permitting procedure. This is particularly relevant with regard to their readiness to enter into an early dialogue with stakeholders and to take stakeholders' concerns into account in the early planning stages of the project. This measure aims to urge project developers who do not do so at present to dedicate more resources to informing stakeholders in an appropriate manner and entering into effective dialogue with them at an early stage in the process.

This measure responds to the following key challenges in particular:

- 2-d Involvement, information and compensation of stakeholders: Obliging project developers to engage in early and effective informing of stakeholders and dialogue with them helps to ensure that stakeholders receive sufficient, timely and target group-specific information. This helps tackle existing gaps with regard to informing stakeholders about the potential effect the project may have on them and their options for getting involved in the procedure.
- 2-e Input, output, documents and instruments: The measure ensures that target group-specific information and application documents are made available to stakeholders by project developers. In this way it addresses the problem of insufficient or non-existent target group-specific information.
- 2-f Resources: This measure helps to ensure that developers dedicate sufficient resources to handling the permitting procedure, including in-house and external expertise. It thus addresses the challenge of insufficient resource allocation by project developers.

## **II. Implementation**

In the **design of this measure**, six key elements need to be considered:

- The public information campaign should be a formal requirement within the permitting procedure, but it should not take the form of an early public consultation.
- Stakeholders should not be able to submit official comments during the public information campaign – submission of comments should be clearly restricted to public consultation.

- The project developer should provide a summary of findings from the early information campaign.
- Information to be used during the public information campaign must be prepared in a target group-specific way.
- The concept provided by the project developer should include elements encouraging exchange and discussion between the project developer and stakeholders.
- Member States may wish to accompany the project developer's information campaign by a communication campaign on the necessity of prioritised energy infrastructure.

The early information campaign carried out by the project developer should be a **formal requirement of the permitting procedure**. This process step, which is to be completed before the official start of the permitting procedure by the project developer, should have to be approved by the responsible authority. Both the implementation concept and the actual handling of the implementation by the project developer should be subject to approval (or disapproval) by the responsible authority. The public information campaign should clearly focus in terms of geographical coverage on areas where there are directly affected communities. The project developer should provide the responsible authority with a document outlining the findings from the public information campaign. This document is a precondition for the official start of the permitting procedure (i.e. submission of the application documents to the responsible authority). The document should be submitted together with the application documents.

Alternatively, the project developer could be required to carry out a fully-fledged public consultation under the supervision of the responsible authority. The main difference between an information campaign and a public consultation is that, in the latter, stakeholders may submit comments which the project developer has to answer, at least in the document provided to the responsible authority at the end of the consultation.

**Example 92:** In England and Wales, the project developer is required to carry out a full public consultation before submission of the application documents to the IPC (Infrastructure Planning Commission, the responsible authority). For this purpose, the developer submits a proposal for the design of the public consultation to the IPC. The IPC may modify or approve the proposal. While the developer is fully in charge of the operational handling of this process step, the IPC monitors the proper handling of the public consultation. Statements received from the public during the public consultation have to be included by the project developer in the application documents. This measure leads to an early, close dialogue between project developer and stakeholders.

We suggest that project developers should carry out an information campaign rather than a public consultation before submitting the application. There are several reasons for our recommendation:

- Having two public consultations – one before submission of the application and one during the permitting procedure – results in a doubling of process steps.
- Early information and discussion between project developer and stakeholders has a different purpose from that of public consultation. The information campaign allows for a discussion of the project on a more general level and therefore leaves more room open for considering alternatives or adapting the project in line with stakeholders' concerns. The public consultation aims to validate a project based on very precise application documents. As a consequence, an information campaign can be carried out more easily at an early stage of the planning because fully elaborated application documents are not yet required.
- The information campaign aims to provide target group-specific information, while the public consultation makes the application documents available to everybody.

We thus recommend an information campaign rather than an additional public consultation. This means that there should be **no option for stakeholders to submit official comments outside the public consultation**. That is to say that comments should not be accepted by the responsible authority outside this process step. This should apply to the public information campaign and all other process steps in the permitting procedure. This provision is crucial to ensure that additional comments do not prevent the authority from completing process steps within the given timeframe.

**Example 93:** In Austria, stakeholders that are party to the proceedings have the right to submit objections at every stage of the procedure. The applicant then responds to the comments and stakeholders can comment on the response – and so on, back and forth. Although the leading authority can declare the public consultation closed towards the end of the permitting procedure, i.e. during decision-making on the permit application, this option is used very cautiously. As a consequence, as long as stakeholders still submit objections, they are usually taken into account. This is a major factor in creating delays to permitting procedures for critical energy infrastructure in Austria.

Before submitting the application documents, the project developer should provide a **summary of key findings** from the earlier information campaign. The information campaign can continue after the submission of this document to the responsible authority, but the document provided by the project developer should be seen as a precondition for the start of the official permitting procedure. The results of the public information campaign, including the main concerns voiced by stakeholders, should be documented and the developer should explain if and how they are taken into account



in the technical planning. The information campaign does not necessarily need to lead to adaptations of the project, but if such adaptations have taken place as a result of the public information campaign, this should be reflected in the document.

It is vital that information provided during the public information campaign is **target group-specific**. This means that information is prepared in a way that stakeholders can easily understand. It makes no sense to provide complex technical documents to the public: texts should be easily accessible, with pictures explaining the project and its impact. Moreover, different target groups – affected landowners, people living close by and potentially concerned with health impacts, NGOs and individuals with environmental concerns – should be differentiated in terms of their concerns. This also has the advantage that the project developer has to think about the different types of concerns stakeholders may have at a relatively early stage in the planning.

**Example 94:** In Germany, project developers often hold "information trade shows". They rent a large venue in a potentially affected community and set up different stands for different topics, e.g. land use and compensation issues, impacts of electromagnetic radiation, impacts on the environment. People can come to these events and get information specifically pertaining to their area of concern. Project developers report that this type of event usually enables constructive discussions with different stakeholder groups.

It is crucial that the information campaign is not only aimed at providing information to stakeholders but also at encouraging the project developer to enter into **dialogue with stakeholders** at an early stage of the planning. The concept provided by the project developer should thus include forums for discussion between the project developer and the stakeholders or stakeholder groups – e.g. workshops or meetings with municipalities, environmental NGOs, interest groups and other groups of stakeholders.

Member States can also consider accompanying the project developer's information campaign with a **communication campaign on the necessity of prioritised energy infrastructure**. Such a communication campaign would have to be carried out by the government of the Member State. Governmental institutions are in a position to demonstrate in a credible and legitimate way the necessity of prioritised energy infrastructure from a public interest perspective. The responsible authority cannot do so as it must take a neutral position in the permitting procedure. The project developer cannot obtain the same degree of credibility with stakeholders, such as potentially affected residents. The Member States may therefore consider carrying out a communication campaign on the need for the project and its public interest status at a local level in the same phase as the project developer carries out the public information campaign (see also Measure 18, "A communication strategy focusing on the necessity and benefits of extending energy infrastructure in the EU").

### **Implementation at EU Level**

The EC would have to prepare the legislative proposal and create the legislative framework at EU level to ensure the introduction of this measure. Moreover, the EU would need to take action in the following areas:

- Identify good practice for the public information campaign and make this data accessible to the responsible authorities in the Member States.
- Provide guidelines on what form a public information campaign should take.

### **Implementation in Member States**

Member States would have to ensure that the mandatory information campaign precedes the permitting procedure. For this purpose, they may have to adapt the respective legislation (see below, "Legal Implications in Member States") and they would have to ensure the responsible authorities' availability for overseeing the mandatory information campaign. To make sure that the responsible authority can fulfil its task of overseeing the information campaign and guiding the project developer in setting up and handling the information campaign, the Member States need to ensure sufficient resources and know-how on the part of the responsible authority. Some specific training of personnel at the responsible authority may be required. Moreover, Member States may consider accompanying the public information campaign carried out by the project developer with a communication campaign on the necessity of the project from a public interest point of view. In such a case, the communication campaign would have to be implemented by the government of the Member State in question, possibly drawing on input from the EC (see also Measure 18, "A communication strategy focusing on the necessity and benefits of extending energy infrastructure in the EU").

### **Legal Implications in Member States**

Depending on how this measure is introduced, Member States may have to create a legal basis for making the information campaign a precondition for the start of the permitting procedure.

If the measure is implemented by means of an EU Regulation, no adaptation of the legislation of the Member States is required. Introducing the measure in a different manner would require minor adaptations to laws governing the permitting procedure or the adoption of a new law for this purpose. The range of affected legislation is narrow and so this is not considered an obstacle.

### **III. Evaluation**

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** This measure ensures that stakeholders are informed and that their concerns are taken seriously. Moreover, early, target group-specific stakeholder information prevents fears building up on the part of stakeholders: it allows the project developer to counteract any potential concerns with a clear presentation of facts and findings. The impact of this measure on acceptance is thus both positive and high.
- **Impact on duration:** This measure does not directly impact the duration of the permitting procedure. However, it is expected that early informing of stakeholders would have an impact on the number of comments submitted at a later stage and the likelihood of an appeal, which would have a positive impact on duration. The impact on duration is thus positive and low.

#### EVALUATION: Impact on the permitting procedure

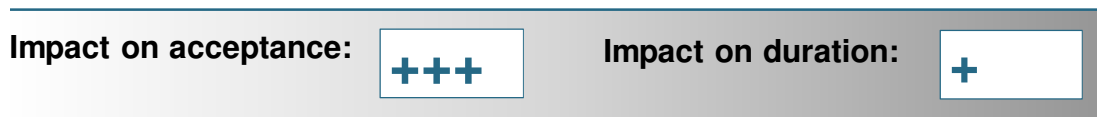


Figure 55: Evaluation: Impact of Measure 17 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** Minor adaptations to legislation in the Member States would be required for the introduction of this measure. If the measure is introduced by means of a Regulation, no further adaptation or detailing of the legislation is needed. The legal impact is therefore negative but very low and hence may be considered irrelevant for the purposes of this analysis.
- **Impact on costs:** This measure leads to additional costs for the EC, the responsible authority and the project developer. The main burden of additional costs is borne by project developers who do not currently dedicate sufficient resources to informing the public. Overall, the additional cost is limited to a maximum of five to eight extra members of staff at project developers for carrying out information campaigns (only for developers who do not dedicate sufficient resources at present). Therefore the impact on costs is considered negative and low.

#### EVALUATION: Difficulty of implementation



Figure 56: Evaluation: Level of difficulty of realising Measure 17

Overall, the measure is highly relevant for improving the effectiveness of the permitting procedure. It would make a major contribution to improving stakeholder acceptance and ensuring that the project developer thinks about stakeholders' concerns at an early stage of the project planning. The costs are moderate and are mainly incurred by project developers who do not at present carry out public information campaigns. Project developers who are already in the best practice category with regard to public information will not face significant additional costs. We therefore strongly recommend implementing this measure.

## **D.5 Improve Communication and Mitigate Public Opposition**

Lack of acceptance by stakeholders is one of the main reasons for delays. Many infrastructure projects are seen as purely commercial ventures in the interest of the project developer rather than supporting broader social goals such as security of supply, transmission of renewable energy or increasing the competitiveness of the energy market. To increase public acceptance, better communication is needed about the necessity of improving energy infrastructure and the benefits of such projects. Clearer communication by the EU and national institutions would strengthen the permitting authorities and encourage them to take bolder – and potentially faster – decisions to approve energy infrastructure projects.

Public acceptance relies on the proper involvement of stakeholders and other interest groups. We discuss the introduction of an environmental advocate to support stakeholders in their dealings with projects in Measure 19, further below, and find the measure unconvincing. Instead, we suggest early and thorough stakeholder involvement by project developers, as described in section D.4.

Another measure discussed below (see Measure 20) is compensating municipalities for projects running through their areas. In theory, compensation could provide incentives to support projects and influence local stakeholders. However, an evaluation of actual projects shows that municipalities typically pocket the money and fail to contribute to the developer's effort to convince local stakeholders. This measure is therefore also evaluated as ineffective.

### **Measure 18: A Communication Strategy Focusing on the Necessity and Benefits of Extending Energy Infrastructure in the EU**

#### **I. Rationale**

This measure envisages the creation of a communication strategy that aims to show the necessity and benefits of extending energy infrastructure in the EU. The communication strategy should establish the link between energy infrastructure extensions (especially prioritised projects), security of supply and the integration of renewable energy into the EU energy mix. It should aim at three different target groups: the general public, stakeholders directly affected by prioritised projects on a local level, and the authorities responsible for the permitting procedure for prioritised energy infrastructure.

The implementation of this measure is expected to have a strong mitigating impact on public opposition to prioritised projects. It would therefore also have an indirect impact on the duration and effectiveness of permitting procedures. Public opposition is one of the main concerns of project developers today. Besides "nimbyism" (a "not-in-my-back-yard" attitude) on the part of stakeholders, a major reason for public opposition is that people are insufficiently or incorrectly informed about planned

projects. The involvement of the EC in communication with stakeholders on a local level would make a real difference here. In communication with affected stakeholders, it is important to involve a neutral and trusted institution, one that can confirm the importance of the project. This cannot be either the project developer, who would be suspected of seeking profit only, or the responsible authority, which is not able to issue statements that compromise its impartiality. The EC is therefore the natural choice.

This measure responds to the following challenges in particular:

- 2-d Involvement, information and compensation of stakeholders: The implementation of a communication strategy focusing on the necessity and benefits of energy infrastructure extension in the EU addresses the challenge of insufficient communication with stakeholders – a problem that has been observed in many Member States within the framework of this analysis.
- 2-e Input, output, documents and instruments: The measure would help solve the problem of insufficient availability of target group-specific information for stakeholders other than the application documents. While the measure does not reduce the necessity for closer engagement in stakeholder communication and dialogue by project developers, it represents a major contribution to providing sufficient and appropriate information to stakeholders.

## II. Implementation

In the **design of this measure**, four key elements should be considered:

- The communication strategy should inform stakeholders of the necessity of energy infrastructure extension in the EU and show how specific projects fit into the bigger picture.
- The communication strategy should aim at three main target groups: the broader public, local populations that are potentially affected, and authorities responsible for the permitting procedures for prioritised energy infrastructure.
- With respect to this measure, the EC should consider providing targeted communication support via "envoys", ensuring direct communication between local stakeholders and the EC.
- Information and communication material should be translated into all the languages of Member States that currently have a project in the permitting procedure pipeline that is facing strong public opposition.

The aim of the communication strategy should be to explain to stakeholders the **necessity of prioritised energy infrastructure**. This should be done by pointing out the link between energy infrastructure extension and security of supply on the one

hand, and the integration of renewable energy into the EU's energy mix on the other. By making this link visible to stakeholders, stakeholders' acceptance of energy infrastructure extension – especially projects that have been declared to be in the public interest (Measure 1) – is expected to increase.

The communication strategy could use the Implementation and Monitoring Plan as input. The Implementation and Monitoring Plan can serve as a basis for demonstrating which energy infrastructure projects must be realised by 2020 in order to ensure security of supply and the integration of renewable energy. Pointing out the urgency of such projects, as well as potential discrepancies between the target schedule for energy infrastructure extension and the current status, may help communicate to stakeholders the need for the prioritised energy infrastructure projects.

The communication strategy should aim to **inform three main target groups: the broader public, potentially affected population and authorities responsible for the permitting procedures for prioritised energy infrastructure projects.** A separate communication strategy is needed for each of these three groups as their need for information and their interests differ greatly (see **Figure 57**).

| GENERAL PUBLIC IN MEMBER STATES   | STAKEHOLDERS ON LOCAL LEVEL  | AUTHORITIES IN MEMBER STATES  |
|---|--|---|
| <p><b>FOCUS:</b></p> <ul style="list-style-type: none"> <li>&gt; General information on need and benefit of energy infrastructure extension</li> <li>&gt; Prioritized projects as core of required energy infrastructure</li> <li>&gt; Unidirectional information campaign via media</li> </ul> | <p><b>FOCUS:</b></p> <ul style="list-style-type: none"> <li>&gt; Information on contribution of specific projects to security of supply and renewables integration</li> <li>&gt; Direct contact with stakeholders including information stands, presentations, etc.</li> </ul> | <p><b>FOCUS:</b></p> <ul style="list-style-type: none"> <li>&gt; Information on public interest status of projects and emphasis of need for high quality and timely procedures</li> <li>&gt; Specific information material and involvement of Member States in communication, e.g. via national institutions such as national ministries</li> </ul> |

**Figure 57:** Communication strategy: focus of communication for each of the three main target groups

For each of these three target groups, the right communication channels need to be selected. The broader public can be best reached through internet sites and the national and regional media. This target group is interested in more general information related to energy infrastructure extension (e.g. explanations of why energy infrastructure extension is needed in general and how this is related to security of supply and the integration of renewable energy sources, explanations of why energy infrastructure projects sometimes need to be built in protected areas, etc.). Affected stakeholders can be better reached via the local media and direct

contact. They need to be informed about the EC's perspective on the need for energy infrastructure extension and how the specific project in question fits into this overall picture. They are more interested in project-related, specific information. The third main target group, authorities responsible for the permitting procedures for prioritised energy infrastructure, can be reached via communication by national public institutions, e.g. national ministries. The involvement of Member States' governments in this communication is crucial to emphasise the timely delivery of prioritised energy infrastructure projects and to make the link with the responsibility of the relevant authority. This communication should also mitigate the difficulty of responsible authorities taking decisions in the face of stakeholder opposition.

With regard to **communication targeted at local populations potentially affected by prioritised projects**, the EC should consider **providing targeted support**. This could be provided by people who travel on behalf of the EC to local sites where a debate on planned energy infrastructure is ongoing – i.e. EC "envoys". These envoys would participate in stakeholder meetings in town halls, say, and explain to participants why the EC thinks that a specific energy infrastructure project is needed. This direct contact between the EC envoy and local stakeholders is key to ensuring that the message actually reaches the target group and becomes a factor in the ongoing debate at a local level.

EC envoys can also fulfil a role which neither the responsible authority nor the project developer can fulfil. The responsible authority has to be neutral and therefore cannot intervene in discussions during the permitting procedure. The project developer can do so, of course, but it is not seen by stakeholders as being independent. By contrast, the EC envoy can be an independent voice in favour of the realisation of the project. This role is currently not fulfilled by any stakeholder directly involved in the discussion on a local level and would have a major impact on stakeholder acceptance of projects.

However, the use of envoys should be limited to prioritised projects that are currently being dealt with in the permitting procedure and which face strong public opposition or the risk of such. This restricted use of envoys would make it possible to implement this function without further organisational expansion, while achieving the strongest possible impact by focusing on the projects that really need support.

The role of envoys differs from that of European Coordinators. European Coordinators are well-known individuals whose impact is based at least partly on their celebrity status. Envoys, by contrast, can be employees of the EC who know the subject and the language of the affected locality. Envoys do not need to be celebrities: their role is to make an impact by simply explaining the facts.

To support the communication strategy, information material would have to be produced on a regular basis. This can include press releases, explanatory notes and other types of information aimed at the general public. For the local population it can include leaflets, brochures and slide presentations, say. To ensure the



communication strategy is effective for both target groups, **the information and communication material must be translated into the languages** of those Member States that currently have a project being dealt with by the permitting procedure and facing strong public opposition.

### **Implementation at EU Level**

For the implementation of this measure, the EC would have to:

- Create a detailed concept for the communication strategy. For the purpose of this temporary assignment, an external agency could be involved.
- Ensure the production of information material (e.g. a website, brochures, slide presentations, flyers) in all relevant languages.
- Ensure communication materials are regularly updated.
- Provide staff for short-term trips to participate in stakeholder discussions. These individuals should be able to explain why the EC considers the realisation of certain energy infrastructure projects necessary. This may also include staff training.

### **Implementation at Member State Level**

Governments of EU Member States should be involved in the communication strategy. They should further disseminate information provided by the EC via their websites and at events attended by the media. They may also supplement the information provided by the EC. Particularly with regard to the third main target group – authorities responsible for permitting procedures – the involvement of Member States' governments is important to ensure that the difficulty of responsible authorities taking decisions in the face of stakeholder opposition is mitigated.

### **Legal Implications in Member States**

This measure requires no adaptation to legislation in Member States.

### **Cost Drivers**

The main cost drivers from the perspective of the EC are:

- Creating a communication concept, possibly by an external agency.
- Producing material, including regular updates, and translation into various languages.

- Staff for updating materials – one full-time member of staff responsible for this task should be sufficient in the medium and long term.
- Sending staff on temporary assignments to participate in stakeholder discussions at a local level and possibly training them in advance.

There are no cost drivers from the perspective of public institutions involved, including the responsible authority.

Likewise, there are no cost drivers from the perspective of project developers.

### III. Evaluation

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** The communication strategy would explain to stakeholders the necessity of energy infrastructure extension in terms of security of supply and the integration of renewable energy sources. This positive backing for the extension of energy infrastructure is provided by an independent institution, so its impact on stakeholders' acceptance of energy infrastructure projects is both positive and high.
- **Impact on duration:** This measure would have an indirect impact on the duration of the permitting procedure. By mitigating stakeholders' opposition to prioritised energy infrastructure projects, the communication strategy is expected to result in fewer comments during the public consultation and less likelihood of appeal. The impact on duration is thus positive and low.

#### EVALUATION: Impact on the permitting procedure



**Figure 58:** Evaluation: Impact of Measure 18 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** No adaptation of the legislation of Member States is required for the implementation of this measure. The legal impact is therefore not relevant.
- **Impact on costs:** The costs of implementing this measure fall exclusively to the EC. No additional costs are created for the public institutions, including the responsible authority in the Member States, the project developer or other stakeholders. The costs would mainly be one-off costs for designing the communication strategy and operating costs for updating materials and sending

out staff on temporary assignments. The impact on costs is thus negative but low.

**EVALUATION: Difficulty of implementation**



**Figure 59:** Evaluation: Level of difficulty of realising Measure 18

Overall, the implementation of this measure is strongly recommended. Various project developers currently dealing with public opposition said that they expected such a measure to have a positive impact. As this measure is expected to have a strong positive impact on stakeholder acceptance and a positive impact on duration, while creating no legal impact in the Member States and incurring only low costs, we strongly recommend implementing it.

**Measure 19: Environmental Advocate [not recommended]**

**I. Rationale**

An Environmental Advocate is a public institution whose task is to represent environmental concerns in permitting procedures. It has the rights of a party to the procedure and is therefore entitled to participate in the public consultation, submit comments and appeal against decisions by the responsible authority. Moreover, it acts as the first point of contact for the public with regard to environmental concerns.

Public opposition to energy infrastructure projects is one of the most frequent reasons for delay in the permitting procedure. Environmental concerns are a key argument used in public opposition. Such opposition is due particularly to insufficient stakeholder information. The Environmental Advocate responds to this challenge. As a first point of contact for the public on environmental issues, the Environmental Advocate supports stakeholder information. Statements by the Environmental Advocate aiming to clarify questions with regards to the environmental impact of a project may help to focus stakeholders' concerns on facts rather than fears. Because the Environmental Advocate is an independent institution with the rights of a party to the permitting procedure, the public may accept its stand as a reliable point of orientation. The representation of environmental concerns by the Environmental Advocate may thus help to shift discussions from an emotional to a factual level. This would help to increase the effectiveness of the public consultation in particular.

The authorities responsible for the permitting procedure and processes often lack access to resources, especially experts with specialist skills. The Environmental

Advocate can help to close this gap, at least partially, by providing expert advice to the responsible authority.

This measure responds to the following key challenges in particular:

- 2-d Involvement, information and compensation of stakeholders: The measure addresses the challenge of insufficient stakeholder communication. This lack of communication is seen particularly with regard to the potential effects of the project on stakeholders and their options for getting involved in the permitting procedure. The Environmental Advocate helps to tackle this challenge.
- 2-f Resources: The Environmental Advocate may also help to overcome the responsible authorities' lack of access to expertise. It can provide support for authorities, especially with regard to environmental issues.

## **II. Implementation**

In the **design of the measure**, five key elements should be considered:

- The Environmental Advocate's tasks should cover a broad range of activities ranging from producing information and communicating with stakeholders to acting as a party in the permitting procedure.
- In the case of transnational projects, the Environmental Advocate can support the coordination between the different parties involved with regard to environmental aspects.
- The Environmental Advocate should be established on a national level where possible.
- Appointment of the Environmental Advocate and its employees should be the responsibility of the public authorities.
- The Environmental Advocate needs access to sufficient resources and expertise to cover the scope of its tasks and rights.

The **tasks of the Environmental Advocate** encompass a broad range of activities. It should be available to support authorities with regard to environmental issues and provide advice and support in the assessment of environmental issues and documentation. Moreover, the Environmental Advocate serves as the first point of contact for the public with regard to environmental concerns. Institutions and individuals can contact the Environmental Advocate if they want an expert opinion on an environmental issue related to the permitting procedure. Knowledge-generating tasks can also fall within the remit, such as commissioning studies to help create an accepted knowledge base about the impact of transmission lines, say.

The Environmental Advocate also has the job of representing environmental concerns within the framework of permitting procedures. It is a party to the procedure and therefore has the right to appeal against decisions by the responsible authorities. In this role, it can also bundle relevant environmental concerns from stakeholders who choose to turn to it with their concerns.

Alternatively, the Environmental Advocate could focus on providing information to the authorities responsible for permitting procedures and to the public, and have no right of appeal. However, this would limit its potential to impact on the permitting procedure, as well as the potential to be accepted by stakeholders as an effective means of representing their environmental concerns. We therefore recommend giving the Environmental Advocate the rights of a party to the permitting procedure for energy infrastructure.

**Example 95:** The Environmental Advocate ("Umweltanwalt") is a good practice example from Austria. Austria is a federal state and environmental protection is a competency of the states, so each state has its own Environmental Advocate.

The tasks of the Austrian Environmental Advocates include providing reliable information to citizens, representing environmental protection interests in administrative procedures, issuing statements on draft laws and regulations concerning environmental issues and participating in mediation procedures on environmental conflicts.

The rights of Environmental Advocates differ between states. In most states, the Environmental Advocate has the right to appeal against decisions by authorities. There are, however, exceptions: thus in the state of Tyrol and Vorarlberg, the Environmental Advocate does not have the right to appeal against authorities' decisions. The limitation of these rights in some states has led to debate in Austria. In 2007, for example, the Green Party requested the extension of the Environmental Advocate's right of appeal to the state of Vorarlberg. This request focused on giving the Environmental Advocate the right to act as a party to the permitting procedure. Press articles clearly show that the effectiveness of the institution is questioned by various stakeholders as a result of this lack of rights.

It should be noted that the broad scope of these tasks brings with it a risk of conflicting assignments. In particular, the Environmental Advocate's role of supporting authorities with expert knowledge risks coming into conflict with its role as a party to the procedure with the right to appeal. This is an argument for removing one of the two tasks from the Environmental Advocate's list of duties and rights.

The Environmental Advocate could also **support coordination with regard to the environmental aspects of projects of transnational projects.** In this case, Environmental Advocates from different countries could focus in particular on the coordination of requirements with regard to environmental surveys and documentation in the countries concerned. Such coordination could be especially

useful with regard to defined thresholds, e.g. acceptable distances between projects and human settlements or protected areas. The thresholds applied currently differ greatly between Member States. These differences become an issue when stakeholders become aware of them during international consultations, for example under the Espoo Convention, potentially causing distrust on the part of stakeholders. Therefore advance agreements on thresholds, supported by the Environmental Advocate, could be beneficial for permitting procedures for interconnectors. In Member States with a federal system, this coordinating role could also be taken on by the Environmental Advocates; here, the authority responsible for the permitting procedure is usually at a state level. Requirements with regard to environmental surveys and studies and compliances may also differ between states.

Wherever possible, the institution of the Environmental Advocate should be **established at a national level** as this will allow a concentration of resources and expertise. In federal states, it might be necessary to have Environmental Advocates at the state level, depending on whether the competency for environmental protection lies at the federal state or individual state level.

**Appointing Environmental Advocates** should be the task of a public authority and based on the candidates' qualifications and suitability. The authority in question could be the same institution that is responsible for the National Energy Infrastructure Supervision (Measure 3), which should also have the task of keeping a list of experts available on a flexible basis for the authority in charge of the permitting procedure (Measure 8).

Alternatively, the Environmental Advocate could be elected by a group of selected stakeholders or the general public. However, election by the general public is not advisable. Making the Environmental Advocate an elected institution would risk harming its impartiality and politicising its statements. This would be particularly damaging, as one of its key roles is to act as an independent voice in discussions about projects.

**Example 96:** In most Austrian states, the Environmental Advocate is appointed by a public authority. In the state of Vorarlberg, however, the Environmental Advocate is elected by accredited environmental NGOs. This leads to a strong politicisation of the institution. Project developers in particular see the Environmental Advocate as an institution that usually takes a stance *against* any larger infrastructure projects and whose focus in communication is not on facts but on further emotionalising the topic. The institution is thus not perceived as independent by the parties involved and cannot fulfil its function as a potential mediator between parties.

The **Environmental Advocate needs sufficient resources** to be able to perform all its tasks and exercise all its rights. Ensuring sufficient resources and expertise for this institution is also crucial to ensure that the public accepts it as a competent institution. Without this, the Environmental Advocate cannot focus the debate on facts.

The right number of employees for the Environmental Advocate depends very much on the number and complexity of permitting procedures in a country, now and in the future. The Environmental Advocate should have sufficient capacity to participate in all ongoing permitting procedures and additionally be able to draw on temporary external support from experts (see Measure 8, "Improving access to experts for authorities").

**Example 97:** In Austria, the size of the institution of Environmental Advocates in different states varies widely. Some Environmental Advocates have a comparatively large number of employees:

- The Environmental Advocate in Vienna ("Wiener Umweltschutzbehörde") has 12 employees. Each employee has a different area of expertise, ranging from landscape protection to chemicals, climate protection and public relations. The 12 employees include 2 designated Environmental Advocates.
- The Environmental Advocate in Tyrol ("Landesumweltanwalt Tirol") has 7 employees and 14 honorary members ("Naturschutzbeauftragte"). The 7 employees include 1 designated Environmental Advocate and mostly administrative support. Technical expertise is provided by the honorary members.

Some Environmental Advocates handle their task with many fewer employees:

- The Environmental Advocate in Burgenland ("Umweltschutzbehörde Burgenland") and the Environmental Advocate in Vorarlberg ("Naturschutzbehörde für Vorarlberg") have 3 employees: 1 designated Environmental Advocate, 1 deputy or legal support officer and 1 secretary.

### **Implementation at EU Level**

The European Union can create a legal basis (e.g. by having the EC prepare a legislative proposal or by the adoption of an EU Directive) to ensure that the institution of the Environmental Advocate would be created in Member States. Alternatively, the EC may prepare a Recommendation or Guidelines laying out recommended elements of the implementation of this measure for Member States.

### **Implementation at Member State Level**

Member States would need to take action in the following areas to establish an Environmental Advocate:

- The institution of the Environmental Advocate needs to be established. This involves detailing the scope of its tasks and rights, defining dependencies and reporting lines with other authorities, establishing the corresponding processes,

building up the institution (including hiring and training staff) and setting up and equipping an office.

- The Environmental Advocate would be a new institution in most Member States. In the countries investigated, only Austria has such a institution at present. No similar institutions have been identified. As a consequence, the measures described above would have to be implemented from scratch in almost all Member States.

### **Legal Implications for Member States**

This measure implies the creation of a new authority by means of a law on a national or state level in the Member States. This would involve a moderate to broad range of legislation.

### **Cost Drivers**

The main cost drivers from the perspective of the public institutions involved, including the responsible authority, are establishing and running the institution of the Environmental Advocate. This includes:

- Staff costs (including salary and training)
- Equipment costs (office, technical equipment)
- Additional operating costs (communication, office suppliers, etc.)

**Example 98:** The Environmental Advocate of the state of Vienna has an annual budget of approximately EUR 1.2 million, covering staff, operating and material expenses (based on the annual statement of accounts for the year 2010). Of this overall budget, approximately EUR 0.8 million is accounted for by personnel expenses (source: Wiener Umweltschutzbehörde).

For project developers and other stakeholders, no additional costs arise relating to the Environmental Advocate.

### **III. Evaluation**

Impact of the measure on the permitting procedure:

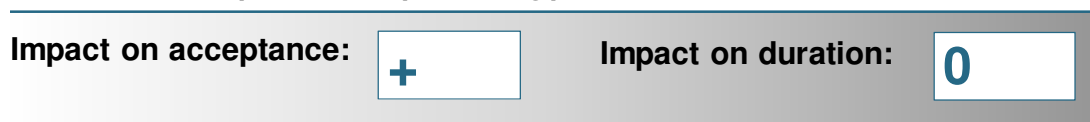
- **Impact on acceptance:** The Environmental Advocate is expected to have a positive impact on the acceptance of prioritised energy infrastructure projects by stakeholders. It is part of the Environmental Advocate's role to provide a rational voice in debates about the potential impact of energy infrastructure projects. As an institution acknowledged by stakeholders as impartial and knowledgeable, the Environmental Advocate should help to refocus debates previously driven by



fear. However, these expectations are not confirmed by the example of the Environmental Advocate in Austria. Here, the institution is reported as often having a negative effect on debates, making them even more emotional by either taking a politicised position or by being politicised by others. Given this high risk of negative effects, the impact of this measure on acceptance is considered positive but low.

- **Impact on duration:** The measure has no direct impact on the duration of permitting procedures. It could have an indirect impact on duration by lowering public opposition to projects. While the institution has the potential to have this positive effect, the Austrian example shows that there is a high risk of a negative effect from overt politicisation of the institution. Therefore the impact on duration of this measure is considered neutral.

**EVALUATION: Impact on the permitting procedure**



**Figure 60:** Evaluation: Impact of Measure 19 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** This measure requires the adaptation of a moderately wide range of legislation in the Member States. It cannot be introduced by the EC via a Regulation. The legal impact is therefore negative and moderate.
- **Impact on costs:** The annual budget for the Environmental Advocate corresponds to the budget required for a small independent authority. The impact on costs is therefore negative and moderate.

**EVALUATION: Difficulty of implementation**



**Figure 61:** Evaluation: Level of difficulty of realising Measure 19

Overall, the introduction of this measure is not recommended: the legal impact is high and the impact on costs is moderate, while the positive impact on acceptance and duration are low. The positive impacts listed here could even turn into negative impacts if the Environmental Advocate becomes overtly politicised, as in the Austrian example. What is more, one of the arguments for introducing an Environmental Advocate is that it could address the issue of insufficient resources at responsible authorities. In fact, other measures presented in this study are much better able to

address this challenge (see Measure 8, "Improving authorities' access to experts"). Also the task of supporting the coordination of projects with regard to environmental aspects – especially defining applicable thresholds – can be carried out better by the National Energy Infrastructure Supervision (Measure 3) in close coordination with the European Energy Infrastructure Supervision (Measure 4) or by a one stop shop (Measure 7) taking the lead in the coordination of the permitting procedures for interconnectors. We therefore do not advise introducing an Environmental Advocate in Member States.

## **Measure 20: Extending the Group of Stakeholders Eligible for Compensation or Mitigation [not recommended]**

### **I. Rationale**

Compensation of landowners whose property rights are affected by the construction of energy infrastructure is generally foreseen by law in Member States. This measure would extend the group of stakeholders eligible for compensation or mitigation measures. Stakeholders considered for new compensation mechanisms include municipalities and affected stakeholders. The compensation may be financial or in kind.

This measure would make it possible to ensure the compensation of affected stakeholders for having to bear the brunt of a project from which a much larger section of the population benefits. For example, the construction of an electricity transmission line may be perceived by the residents of an affected municipality as having a negative impact on the recreational value of their immediate surroundings. Usually, these individuals are not compensated for their loss. A key element of this measure is that the financial or in-kind benefits actually reach the people affected, by redistributing the financial benefits, explicitly dedicating the extra funds raised to a project that benefits them, or by implementing projects or mitigation measures that directly benefit the stakeholders affected.

It is expected that this measure would help reduce public opposition to energy infrastructure projects.

This measure addresses the following key challenge:

2-d Involvement, information and compensation of stakeholders: Compensation mechanisms do not usually target all the individuals or institutions actually suffering a loss due to a project. This causes greater opposition to energy infrastructure projects. This measure aims to address this challenge.

### **II. Implementation**

In the **design of the measure**, five key elements need to be considered:

- If financial compensation is considered, it is more practical to compensate municipalities than individuals.
- If compensation and mitigation measures are to be extended, it may be most practical to grant affected stakeholders mitigation in kind.
- Clear guidelines for compensation and mitigation levels should be established by a forum including representatives of various stakeholders.
- Compensation should be designed so that it is most beneficial to residents of the municipality in question.
- The cost of the compensation to the project developer should be able to be included in network charges.

The main challenge with this measure is to define clearly which additional stakeholders should be eligible for compensation or mitigation, and which should not.

If financial compensation is considered, it would be more practical to **compensate municipalities than individuals**. Clear guidelines on the compensation level would be needed. The reasoning behind this statement is explained in more detail in the following:

- Identifying a threshold value (for example for acceptable impact levels and minimum distances between the project and human settlement or protected areas) is not necessary if municipalities are compensated. If threshold values for compensation payments can be clearly defined, users will have clear guidelines. In most cases, however, thresholds are difficult to define, with different studies reaching different conclusions. This is particularly true with regard to acceptable impact levels, e.g. the visual impact of power lines on local residents. To avoid lengthy discussions about who should be compensated and by how much, it is best to avoid scientific threshold values altogether. This can be done by compensating municipalities rather than individuals. Compensating the municipality ensures that a large number of individuals benefit from the compensation, including everyone suffering from the visual impact of power lines. Moreover, compensating municipalities may also benefit residents of neighbouring municipalities, for example if the compensation is used to enhance the recreational value of the environment. A situation is unlikely to arise in which one person benefits from the compensation and their neighbour does not. Discussions about who will receive compensation and who will not are thus much more likely if compensation is made to individuals rather than municipalities.
- However, the absence of a scientific threshold for compensation would have to be balanced by establishing clear guidelines on compensation levels.

**Example 99:** In Italy, municipalities and regions have the right to negotiate and agree on compensation measures with project developers. The basis for this right is the legislative act 239/2004. In one case, the municipality of Sagunt was offered EUR 600,000 in financial compensation by the TSO Terna for an offshore high-voltage transmission cable. Roughly EUR 500,000 of this was to be used to compensate fishermen for the impact on their income. However, the offer was rejected by Sagunt and the case was brought to court as the municipality found the sum too low compared to the compensation paid to other municipalities.

If compensation or mitigation mechanisms are to be extended, it may be **most practical to include affected stakeholders by means of mitigation in kind**. The reason for this is as follows:

- The inclusion of affected stakeholders through measures for mitigating visual effects, for instance, is the most practical way to extend compensation measures to additional groups of stakeholders. In this case, the project developers would have to install visual protection, planting trees or other plants in front of the electricity line, say.

**Example 100:** In France, the Transmission System Operator RTE offers to mitigate the visual impact on local residents of transmission lines with a nominal voltage above 225 kV by installing visual protection using large trees or other plants.<sup>33</sup>

The advantage of this approach is that it addresses the cause of the visual impact directly. Furthermore, it is not necessary to address the complex issue of who should be compensated and who not. Negotiations about the level of compensation are also unnecessary.

- All the other approaches listed above – in-kind or financial compensation for municipalities, or financial compensation for affected stakeholders – are more difficult to implement. This is because it is necessary to define which individuals or municipalities must be compensated and how much they should receive each.

Clear criteria need to be defined for eligibility for compensation or mitigation, as well as for the level of compensation. For example, a specific amount may be defined per square metre or kilometre of affected territory. To this end, a **forum bringing together various stakeholders** may be created. This creates acceptance for compensation levels and makes it possible to agree a benchmark applying to all affected stakeholders. In this way the project developer can avoid individual discussions about compensation levels and potential related litigation.

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<sup>33</sup> See: <http://www.rte-france.com/fr/nos-activites/etapes-d-un-projet/les-servitudes-et-le-transfert-de-propriete>

**Example 101:** In the state of Salzburg in Austria, the state government and the project developers APG and Salzburg AG initiated a task force in June 2010 aimed at setting compensation payments for municipalities. The task force was led by the mayor of one of the potentially affected municipalities. Compensation was to be paid for each kilometre affected on the territory of the municipality. The overall amount to be dedicated was approximately EUR 69,000 per kilometre, with more for "sensitive areas" such as valley crossings. The overall amount of compensation was EUR 14 million.

**Example 102:** In France, RTE offers – besides mitigating the visual impact – to indemnify for visual impact. For this purpose, a departmental commission is established to assess the visual impact and identify appropriate measures. Based on the report from this commission, RTE makes an offer to individual property owners.<sup>34</sup>

Compensation should be designed so that it is **most beneficial to the inhabitants of the municipality**. There are three options for compensating municipalities in a way that ensures that the benefit is felt directly by its inhabitants:

- In-kind compensation aims to improve the recreational value of the municipality's surroundings, for example. Thus the project developer can implement a compensation measure on the territory of the municipality which enhances the quality of the surroundings. For example, a recreational area could be improved, playgrounds built or a noise protection wall installed beside a motorway. This type of compensation involves a one-off payment by the project developer to the municipality.
- Additional revenue for the municipality's budget clearly dedicated to a purpose that has a direct and visible impact on the residents. For example, a certain amount per square metre of affected territory could be given to the municipality. The administration of the municipality administering this budget would then agree to dedicate this amount to a measure which directly benefits its residents. Measures could be similar to those described above for compensation in kind. The compensation could be a one-off payment or several successive payments by the project developer to the municipality.

**Example 103:** In Italy, the municipality San Fiorano received approximately EUR 510,000 from Terman because a new transmission line will cross the municipality. From these funds, about EUR 300,000 will be used to increase road safety (improvements to footpaths and roundabouts) and EUR 200,000 will be dedicated to energy efficiency measures.

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<sup>34</sup> See: <http://www.rte-france.com/fr/nos-activites/etapes-d-un-projet/les-servitudes-et-le-transfert-de-propriete>

- Reduction of the electricity tariff for affected municipalities: The inhabitants of affected municipalities benefit from a lower electricity tariff. The share of the network charges included in their electricity bill is reduced by a certain percentage or amount over a set period of time.

The expenses for **compensation by the project developer should be viewed as an investment expense under the regulatory regime**. The justification for this is found in the basic purpose of the measure: the redistribution of the costs and benefits of installing energy infrastructure projects. Providing compensation to the inhabitants of a municipality means balancing the costs incurred to the inhabitants of the affected municipalities through a small contribution from the beneficiaries, i.e. the general population connected to the grid. This balance can be achieved by allowing the costs of compensation to be treated as an investment expense. For this purpose, the legislator in EU Member States would have to enable the possibility of compensating other stakeholders such as municipalities and/or visually impacted stakeholders by law. This would not necessarily have to be accompanied by a clear definition of compensation mechanisms or compensation levels by the legislator; stakeholders are expected to reach agreement even without legal provision.

### **Implementation at EU Level**

The European Union may create the legal basis (e.g. through the preparation of a legislative proposal by the EC) to create the legal basis for the compensation of municipalities on a European level. Alternatively, the EC may prepare a Recommendation or Guidelines laying out recommended elements of the implementation of this measure for Member States. The EC may also consider issuing principles or guidelines to provide further guidance to Member States on the implementation of the measure. Additional guidance may be especially useful with regard to the level of compensation for municipalities.

### **Implementation at Member State Level**

Member States have to take action in the following areas:

- Create a legal basis for the compensation of stakeholders and mitigation measures aimed at such parties (municipalities and/or visually impacted residents)
- Support the creation and functioning of forums involving key stakeholders (e.g. the project developer, municipalities), whose purpose is to define appropriate means and levels of compensation.
- Adapt provisions with regard to network charges to ensure that compensation measures can be included in the network charges by the project developer.

### Legal Implications in Member States

Making it possible to compensate stakeholders other than landowners necessitates the adoption of a law by Member States. An example of one such law is the legislative act 239/2004 in Italy, which establishes the right of municipalities and regions to negotiate with project developers over compensation measures.

With regard to covering the additional costs incurred by the project developer via inclusion in network charges, this could be decided on by the relevant regulator without involvement of the legislator. This measure therefore only affects a small section of legislation in the Member States and the legal implications are thus not considered an obstacle from the point of view of this study.

### Cost Drivers

The main cost drivers from the perspective of the public institutions involved, including the responsible authority, are:

- The national legislator would have to define clear guidelines on the implementation of this rule, including setting compensation levels and defining which municipalities should benefit. The costs for this additional task are very low as it is part of the regular work of the legislator.
- The national regulator would have to adapt the composition of network charges to allow for the inclusion of compensation expenses. Again, the costs for this additional task are very low as it is part of the regular work of the regulator.

The main cost driver from the perspective of the project developer is:

- The project developer would have to advance funds for compensation measures. Only after a certain period of time would additional costs be compensated for via the network charges. This may result in additional capital expenditure for the project developer.

### III. Evaluation

Impact of the measure on the permitting procedure:

- **Impact on acceptance:** While this measure could have a mitigating impact on public opposition, there is a great risk that stakeholders would perceive additional compensation as an attempt to "buy them off".

**Example 104:** In the state of Salzburg in Austria, the reaction of civil initiatives and municipal politicians to compensation offered by the project developer for the impact of one high-voltage transmission line was rather negative – the measure was perceived as an attempt to buy people off. Thus opponents of the

compensation mechanism said that people's health could not be compensated with money. They insisted on the route being changed or a switch to underground cables.

The impact of this measure on stakeholder acceptance is thus positive but low.

- **Impact on duration:** This measure may impact the duration of a permitting procedure indirectly by decreasing stakeholder opposition, which may result in fewer comments during the public consultation phase and less likelihood of appeal. However, the measure would also increase the number of people who are formally involved in the procedure and the number of people who have an incentive to oppose the project as thus influence the compensation levels. Moreover, additional coordination meetings, extra discussion groups and potentially more studies would be required to determine the right for compensation and compensation levels. As a consequence, the impact of this measure on the duration of the procedure is negative and low.

#### **EVALUATION: Impact on the permitting procedure**

**Impact on acceptance:**

+

**Impact on duration:**

-

**Figure 62:** Evaluation: Impact of Measure 20 on the permitting procedure

Level of difficulty of realising the measure:

- **Legal impact:** The introduction of this measure requires the adoption of a new law or a change to existing laws in Member States. Only a small area of legislation would typically be affected, however, and so this is not considered an obstacle. The legal impact is thus negative but low.
- **Impact on costs:** This measure creates additional costs for municipalities, the legislator and the regulator. However, these are one-off costs and very low. The project developer may have to bear additional capital costs, as these are usually not covered in the network charge. The largest part of the costs, i.e. the costs of the compensation itself, would be borne by the electricity consumers connected to the network via the network charge. As these costs are distributed over a very large number of consumers, the impact on an individual level may be considered low. Overall, a very large number of stakeholders bears a share of the additional costs, which are in total rather high. The impact on costs is therefore negative and moderate.



**EVALUATION: Difficulty of implementation**

**Legal impact:**



**Impact on costs:**



**Figure 63:** Evaluation: Level of difficulty of realising Measure 20

Overall, this measure can help achieve a "fairer" distribution of costs between the different stakeholders for required energy infrastructure extensions. However, it does not have a major influence on speeding up the permitting procedure or improving stakeholder acceptance of important energy infrastructure projects. We therefore do not recommend the implementation of this measure by the EU. Rather, project developers may choose to use similar means on a voluntary basis to mitigate public opposition – the most useful approach being the mitigation of visual impact, as described above. This does not necessarily require any action from the EC or Member States.

## **D.6 Summary of the Evaluation**

Evaluating the measures (see **Figure 64**), we find that in each of the five categories there are measures that have a high impact on duration, or a high impact on acceptance, or both, and which are therefore recommended when they have an acceptable level of legal impact or associated costs. Only 2 of the measures analysed are not recommended for implementation: the Environmental Advocate (Measure 18) and the compensation of municipalities (Measure 19), both of which are very costly and would have a very low or no impact on stakeholder acceptance.

| Measures   | Impact on permitting procedure |                    | Difficulty of implementation |                 | Recommended? |
|--|--------------------------------|--------------------|------------------------------|-----------------|--------------|
|  | Impact on acceptance           | Impact on duration | Legal impact                 | Impact on costs |              |
| <b>1. Improve Transparency and Manageability</b>   |                                |                    |                              |                 |              |
| Measure 1: Definition of projects of public interest                                     | +++                            | +                  | -                            | -               | ✓            |
| Measure 2: Implementation and monitoring plan  | +                              | ++                 | 0                            | 0               | ✓            |
| Measure 3: National Energy Infrastructure Supervision                                    | 0                              | ++                 | -                            | -               | ✓            |
| Measure 4: European Energy Infrastructure Supervision                                    | 0                              | ++                 | -                            | -               | ✓            |
| Measure 5: Legally defined target durations  | 0                              | +++                | 0                            | -               | ✓            |
| Measure 6: Definition of a reference permitting process                                  | 0                              | ++                 | 0                            | 0               | ✓            |
| <b>2. Empower Authorities</b>  |                                |                    |                              |                 |              |
| Measure 7: One stop shop   | +                              | +++                | -                            | ++              | ✓            |
| Measure 8: Improving authorities' access to experts                                      | ++                             | +++                | 0                            | --              | ✓            |
| Measure 9: Award for territorial entities for implementing a smooth permitting procedure | +                              | +                  | 0                            | -               | ✓            |
| <b>3. Optimise Permitting Procedures</b>   |                                |                    |                              |                 |              |
| Measure 10: Fixing the legal status quo for the duration of the permitting procedure     | -                              | ++                 | -                            | ++              | ✓            |
| Measure 11: Integration of spatial planning into the permitting procedure                | -                              | +++                | ---                          | ++              | ✓            |
| Measure 12: Mandatory Scoping  | +++                            | +++                | 0                            | 0               | ✓            |
| Measure 13: Granting access to land / easement together with permit                      | -                              | +                  | --                           | +               | ✓            |
| Measure 14: Limiting legal recourse to a single level of jurisdiction                    | -                              | ++                 | --                           | +++             | ✓            |

Legend: +++ = very positive impact    --- = very negative impact  
 ✓ = measure recommended    ✗ = measure not recommended

Figure 64a: Evaluation of measures – overview (1/2)

| Measures  | Impact on permitting procedure |                    | Difficulty of implementation |                 | Recommended? |
|---|--------------------------------|--------------------|------------------------------|-----------------|--------------|
|   | Impact on acceptance           | Impact on duration | Legal impact                 | Impact on costs |              |
| <b>4. Improve Project Developers' Planning and Involvement in Permitting Procedures</b> |                                |                    |                              |                 |              |
| Measure 15: Principles for inclusive permitting procedures                              | +                              | ++                 | 0                            | 0               | ✓            |
| Measure 16: Linking access to EIB, EBRD and EU funds                                    | ++                             | ++                 | 0                            | -               | ✓            |
| Measure 17: Creating incentives for developers for a pro-active stakeholder dialogue    | +++                            | +                  | 0                            | -               | ✓            |
| <b>5. Improve Communication and Mitigate Public Opposition</b>                          |                                |                    |                              |                 |              |
| Measure 18: Communication strategy  | +++                            | +                  | 0                            | --              | ✓            |
| Measure 19: Environmental Advocate  | +                              | 0                  | --                           | --              | ✗            |
| Measure 20: Extending of eligibility for compensation or mitigation                     | +                              | -                  | -                            | --              | ✗            |

**Legend:** +++ = very positive impact    --- = very negative impact  
 ✓ = measure recommended    ✗ = measure not recommended

**Figure 64b:** Evaluation of measures – overview (2/2)

## **D.7 Connections between the Different Measures**

While each of the measures can be implemented independently, the measures can be seen as a coherent set of interrelated measures that together improve the effectiveness of permitting procedures in the European Union. To achieve a significant impact on the speed and effectiveness of permitting procedures for prioritised energy infrastructure projects, the relevant measures should be implemented as a "package". Below, we describe how the different measures in this package are interrelated.

Three of the relevant measures result in institutional adaptations at the EC and in Member States: the one stop shop (Measure 7), the National Energy Infrastructure Supervision (Measure 3) and the European Energy Infrastructure Supervision (Measure 4). These institutions and functions should be in charge of handling the other measures.

### **One stop shop (Measure 7):**

- The one stop shop – an authority at national level – is responsible for the handling of the permitting procedure in the Member States. It should therefore be responsible for handling measures aimed at optimizing the procedures in Member States, including freezing the legal framework for the duration of the permitting procedure (Measure 10), integrating spatial planning into the permitting procedure (Measure 11), the Mandatory Scoping (Measure 12), granting access to land/easement together with the permit (Measure 13) and limiting legal recourse to a single level of jurisdiction (Measure 14).
- The one stop shop could benefit from the improved access to experts for authorities (Measure 8).
- The one stop shop would be in close contact with the National Energy Infrastructure Supervision (NEIS, Measure 3), as the latter maintains an overview of projects and checks whether the permitting procedures for prioritised energy infrastructure projects are on track. The NEIS would also support the one stop shop with regard to access to additional resources and expertise in peak times during permitting procedures by keeping a list of experts and checking their independence (Measure 8).

### **National Energy Infrastructure Supervision (Measure 3):**

- The NEIS would be responsible for handling the Implementation and Monitoring Plan (Measure 2) at Member State level based on the legally defined target durations for the permitting procedure for prioritised projects (Measure 5).

- For handling the Implementation and Monitoring Plan, the NEIS would obtain data from the one stop shop on the progress of permitting procedures. It could also support the one stop shop with regard to Measure 8 (see above).
- The NEIS would work in close coordination with the European Energy Infrastructure Supervision (Measure 4). The NEIS would deliver data on the progress of permitting procedures to the EEIS, which is responsible for the aggregation of this data on a European level.

**European Energy Infrastructure Supervision (Measure 4):**

- The EEIS would coordinate the alignment of prioritised projects of public interest on a European and national level with Member States (Measure 1).
- It would be responsible for handling the Implementation and Monitoring Plan (Measure 2) at a European level. For this purpose, it would aggregate data from Member States and monitor the progress of projects of public interest prioritised by the EC. To this end, it would handle the alignment of a reference permitting process (Measure 6) with the Member States.
- The EEIS could further be charged with the running of the award for territorial entities that implement a smooth permitting and consultation process (Measure 9) and for the development and promotion of principles of sustainable and inclusive project planning and permitting procedures for prioritised energy infrastructure projects (Measure 15).
- It could also be responsible for preparing and handling the implementation of the communication strategy relating to the necessity and benefits of energy infrastructure extension in the EU (Measure 18).
- The EEIS would be in close contact with the NEIS in order to gather data on the status of permitting procedures for prioritised energy infrastructure projects (Measure 2). Moreover, it would support the NEIS and one stop shops in different EU Member States on coordinating transnational projects.

**Project developers:**

- The first point of contact for project developers implementing prioritised energy infrastructure projects would be the one stop shop. In the case of transnational projects, the EEIS would support both the responsible authorities and project developers in the task of coordinating the realisation of the project in the different Member States, with a special focus on the permitting procedure.
- Project developers may also have to provide the NEIS with data on the status of these projects for the purposes of the Implementation and Monitoring Plan (Measure 2).

- Project developers would have to comply with the principles for sustainable and inclusive project planning and permitting procedures for prioritised energy infrastructure projects (Measure 15) and their access to EIB, EBRD and EU funds would be dependent on this (Measure 16).

## **E. Recommendations**

The European Union and its Member States are committed to creating effective energy infrastructure that supports the creation of a single market for energy, contributes to compliance with the 2020 climate targets and strengthens security of supply. Current practice with regard to permitting procedures in Member States in many cases results in delays. All stakeholders involved in the process view this as a major obstacle to meeting the 2020 climate targets. At the present point in time, many projects within the current TEN-E framework are delayed. Our analysis (see Section D) and discussion of possible measures with industry experts show that there is room for improving the permitting landscape in five key areas:

- Improve transparency and manageability
- Empower authorities
- Optimise permitting procedures
- Increase project developers' engagement in permitting procedures
- Improve communication and mitigate public opposition



## **E.1 Improve Transparency and Manageability (see D.1)**

### E.1.1 Summary of the Analysis

Our analysis reveals a lack of transparency and manageability in permitting processes on both a European and a national level. This includes inadequate transparency about the status of processes and possible problems, unmanageable processes (and difficulties intervening in them) and unclear responsibilities for meeting quality and time targets.

Some of the analysed Member States have a system for keeping track of the status of prioritised energy infrastructure in place. However, this is mainly used internally by the responsible authority. Moreover, we found no standardised overview of the status of prioritised energy infrastructure projects, which would facilitate communication about the status of projects between Member States and the EC. The EC has difficulty keeping track of the status of prioritised projects, since aggregation of data on a European level relies on receiving adequate data from the Member States. Yet transparency about the status of projects is essential for triggering intervention in case of delay or risk of delay. What is more, most Member States lack formal intervention mechanisms.

Responsibility for meeting quality and time targets is usually assigned to the authority responsible for handling the permitting procedure. In fact, in many EU Member States, different authorities are responsible for different processes within the overall procedure. As a result, no one authority has overall responsibility for delivering the permitting procedure within time and quality targets.

Transparency and manageability are particular problems in the case of transnational projects. Here, a high level of coordination is required to ensure parallel permitting procedures with consistent contents. Yet no formalised mechanism exists that would support the responsible authorities and project developers in this complex task.

### E.1.2 Recommended Measures

The recommended measures are aimed at creating an institutional set-up that would enable and facilitate the realisation of prioritised energy infrastructure projects. The required procedural adaptations concern both the EC and Member States.

Recommended measures **at the level of the EC** are the **definition of projects of public interest (Measure 1)**, the introduction of an **Implementation and Monitoring Plan (Measure 2)**, the creation of a **European Energy Infrastructure Supervision (Measure 4)** and the **definition of a reference permitting process (Measure 6)**.

The adoption of a list of projects of European public interest at a European level (Measure 1) is a precondition for establishing the transparency and manageability of projects, as it provides the basis for monitoring and intervening where necessary. Member States would have to agree on this list. The European Energy Infrastructure Supervision can be realised within existing institutions, e.g. DG Energy. This function

could handle the Implementation and Monitoring Plan (Measure 2). It could also handle additional measures, i.e. the establishment of principles for inclusive permitting procedures (Measure 15), the communication strategy focusing on the necessity and benefits of extending energy infrastructure in the EU (Measure 18), and possibly the award for territorial entities implementing a smooth permitting procedure (Measure 9). The European Energy Infrastructure Supervision should provide support particularly to the responsible authorities and project developers, helping them coordinate permitting procedures for transnational projects.

Drawing up a reference permitting procedure (Measure 6) should facilitate the Implementation and Monitoring Plan by providing standardised milestones for permitting procedures. These milestones could then be monitored in each Member State. Moreover, the reference permitting procedure could be used by the EC and Member States as a basis for defining a target duration for permitting procedures for prioritised energy infrastructure projects.

We believe that an overall target duration of four years for the entire permitting procedure, i.e. from the scoping exercise to the issuing of the permit, is realistic. The phase from submission of the application documents to the issuing of the permit can be limited to one year. This overall target duration is considerably shorter than the current average duration of permitting procedures in the Member States analysed in this study, which is roughly four years from submission of application documents to the issuing of the permit.

Recommended measures that should be implemented on a national level are the creation of a **National Energy Infrastructure Supervision (Measure 3)**, the introduction of **legally defined target durations (Measure 5)**, the **definition of projects of public interest (Measure 1)** and the establishment of an **Implementation and Monitoring Plan (Measure 2)**.

On the national level, projects of public interest included on the list of projects of European public interest should be adopted either by the legislator or by means of some other procedure foreseen for this purpose (Measure 1). National legislators should implement legally defined target durations for processes and process steps in the permitting procedure (Measure 5). Both these measures should be introduced in close cooperation with the EC. The projects of public interest defined at a national level should mainly be projects that have been prioritised at a European level, but they could also include other projects. Legally binding target durations for the permitting procedure and processes should be in line with the overall duration of permitting procedures recommended by the EC if possible, i.e. ideally one year from submission of application documents to issuing of the permit, or three to four years from scoping and preparation of application documents to the issuing of the permit.

The National Energy Infrastructure Supervision (Measure 3) should be responsible for creating transparency about the status of permitting procedures for prioritised projects in the Member State in question. It should also handle the Implementation

and Monitoring Plan on a national level. This function should be assigned to an existing institution – that which is best suited to gain an overview of permitting procedures and report on progress and any potential issues. This could be an existing one stop shop on a national level, evolving one stop shops or existing national institutions such as ministries. National and European supervisors should work closely together to create transparency about the realisation of infrastructure project in line with European priorities. Close coordination is particularly important with regard to the handling of the Implementation and Monitoring Plan.

## **E.2 Empower Authorities (see D.2)**

### E.2.1 Summary of the Analysis

The complexity of the legal, technical and environmental aspects of permitting procedures are a cause of many delays at authorities. The number of different standards for protecting the environment and involving stakeholders has grown over time, and these standards provide a good framework for building infrastructure that meets with wide acceptance. However, they also require a major effort by the authorities driving the permitting processes. Coping with them demands technical expertise, the ability to handle documentation and deal with stakeholders, and experience in facilitating complex procedures – procedures that often go far beyond the traditionally largely technical decisions that many authorities were designed to handle.

In many Member States, the current set-up of permitting authorities is inappropriate both in terms of staffing and specialist expertise. In the interviews carried out for this study, this challenge was mentioned by lawyers and project developers in 12 of the 13 Member States analysed. One particular problem cited was the long response times by authorities, the result of insufficient resources; this was considered a serious problem by project developers in 9 of the 13 Member States in the study.

### E.2.2 Recommended Measures

The recommended measures are aimed at helping authorities handle the complexity of the legal, technical and environmental aspects of permitting procedures. The recommended measures should be implemented both at the level of the Member States and the EC.

Recommended measures that should be implemented on a national level are the establishment of a **one stop shop (Measure 7)** and **improving authorities' access to experts (Measure 8)**.

A one stop shop (Measure 7) – a single authority responsible for handling the single permitting procedure ideally required for the construction and operation of a project – already exists in some countries (e.g. England and Wales, the Netherlands). Countries that do not have a one stop shop can create one out of existing authorities. The one stop shop should bear overall responsibility for a single procedure for prioritised energy infrastructure projects and be equipped with the required expertise and resources. A one stop shop can also be created by integrating functions at different authorities into a single authority. Where it is not possible to create a fully-fledged one stop shop – a one stop shop with full decision-making powers on all the major aspects of projects – at a national level (e.g. in some federal states), the creation of a "coordinating" one stop shop could be considered.

To ensure that the one stop shop has the capacity to handle complex permitting procedures for high-profile energy infrastructure projects, it is crucial that it has sufficient, flexible access to experts (Measure 8). This is particularly relevant during certain parts of the permitting procedure where large-scale resources or specialised expertise is needed. In these periods, which are often quite short, the responsible authority should be able to draw on experts, both internal and external, to help handle the procedure and assess documentation.

**The award for territorial entities implementing a smooth permitting and consultation process (Measure 9)** would have to be introduced by the EC. This measure does not solve the issue of insufficient access to resources and expertise on the part of authorities. However, it would have an important signalling effect with regard to authorities' role in effective permitting procedures, and it would create an incentive for authorities at sub-national level to improve the effectiveness of their handling of the permitting procedure. Authorities under budgetary constraints are also eligible for the Award – a key feature that creates an incentive for authorities who cannot dedicate significant resources to the handling of permitting procedures.

### **E.3 Optimise Permitting Procedures (see D.3)**

#### E.3.1 Summary of the Analysis

Our analysis shows that the most effective permitting procedures are those with the smallest possible number of processes – ideally a single process for obtaining all the required permissions for construction and operation of the project. In the best-case scenario, this single process is handled by a sole responsible authority. Comparing the different permitting procedures in different Member States, it is clear that some procedures are much more complex than others and that some countries have found "smart" solutions to making processes easier, cutting the overall length of the procedure and allowing processes to occur in parallel without compromising quality. In some countries, permitting procedures consist of more than four separate processes handled successively by various authorities; in others, there is just one process and one responsible authority. Room for improvement is found particularly in Member States where the project developer has to handle a large number of separate processes in order to obtain all the required permits.

#### E.3.2 Recommended Measures

The recommended measures are aimed at simplifying and shortening the permitting procedure, i.e. the set-up of processes and process steps within the procedure. Measures that adapt the procedure apply only to Member States, as the permitting procedure is typically executed on a national level (or state level in the case of some federal states).

We recommend measures that would create a much more concentrated permitting procedure. The procedure should also feature elements that have proven useful in some Member States, such as carrying out a thorough scoping exercise at the beginning of the process or the early involvement of stakeholders. The introduction of a one stop shop (Measure 7, see E.2) goes hand-in-hand with the bundling of existing permitting processes into a single process. The measures described in this section should ideally be implemented within this single process.

The recommended measures are **freezing the legal framework for the duration of the permitting procedure (Measure 10), integrating spatial planning into the permitting procedure (Measure 11), introducing mandatory scoping (Measure 12), granting access to land or easement together with the permit (Measure 13) and limiting legal recourse to a single level of jurisdiction (Measure 14).**

## **E.4 Improve Project Developers' Engagement in Permitting Procedures (see D.4)**

### E.4.1 Summary of the Analysis

Project developers play a crucial role in permitting procedures. They plan the project, prepare the application documents and communicate with stakeholders. However, significant differences are found between project developers with regard to their performance in permitting procedures and how they deal with stakeholders and environmental concerns. Thus while some project developers proactively initiate dialogue with stakeholders (affected municipalities, environmental NGOs, etc.), sometimes even before the official start of the permitting procedure, others do not go beyond the legal requirements of the permitting procedure.

Like authorities, developers also need to take into account the strict requirements with regard to environmental protection and stakeholder involvement. One area for improvement is in aligning the planning procedure in a way that not only optimises the technical and economic viability of the project but also its acceptance by the public and its reflection of environmental concerns. Another area where developers should do more is in assuming responsibility for the early involvement of stakeholders and taking their feedback into account.

### E.4.2 Recommended Measures

Project developers can help avoid delays both before and during the permitting procedure. The recommended measures are aimed at urging project developers to assume their responsibility and take a proactive role in handling the permitting procedure, especially with respect to the proper involvement of stakeholders and the reflection of environmental issues. Measures should be implemented by the EC and on a national level.

The recommended measures that should be implemented by the EC are the **development of principles for sustainable and inclusive project planning and permitting procedures for prioritised energy infrastructure projects (Measure 15)** and **linking access to EIB, EBRD and EU funds to compliance with the principles for inclusive permitting procedures (Measure 16)**.

Principles for inclusive permitting procedures should be developed as a reference guide for project developers. This would show them how they should handle permitting procedures with regard to internal resources and expertise, their approach to stakeholder dialogue and the reflection of environmental and other stakeholder concerns in the planning of the project. The EC should define the Principles and ensure their dissemination to project developers and other stakeholders, including the responsible authorities. To enforce implementation, project developers' access to EIB and EBRD loans and EU funds should be made dependent on compliance with the Principles.

On a national level, **incentives for developers to take responsibility for effective stakeholder dialogue within the procedure (Measure 17)** should be introduced within the framework of the permitting procedure. Project developers should be obliged to conduct a public information campaign prior to submitting the application documents. The responsible authority may oversee this campaign. Moreover, the project developer should have to submit a short document presenting the findings and "lessons learned" from this campaign together with the application documents.



## **E.5 Improve Communication and Mitigate Public Opposition (see D.5)**

### **E.5.1 Summary of the Analysis**

Project developers identify public opposition as one of the main reasons (besides complex permitting procedures) for delays in the realisation of large energy infrastructure projects. Increasing stakeholder acceptance is thus one of the most important challenges to be addressed in making permitting procedures more effective.

Better communication about the necessity of improving energy infrastructure and the benefits of projects increases the level of acceptance of projects. Three main target groups should be addressed here: the general public, directly affected stakeholders (e.g. the residents of impacted municipalities) and the authorities responsible for the permitting procedures for prioritised energy infrastructure projects. The first two target groups must be convinced of the benefits of prioritised energy infrastructure projects. For the third group – responsible authorities – it is important to mitigate the difficulty of taking decisions in the face of stakeholder opposition and to ensure high-quality and timely permitting procedures. At present, no communication strategy exists at a European level aimed at showing target groups the beneficial impact of energy infrastructure projects or coordinating communication with Member States. Some individual Member States have communication strategies, but they are usually not specifically targeted at directly affected stakeholders.



### **E.5.2 Recommended Measures**

The recommended measures are aimed at improving acceptance of prioritised energy infrastructure projects by stakeholders. To do so, better communication is needed about the necessity of improving energy infrastructure and the benefits of projects. This communication should place prioritised energy infrastructure projects in the broader context of security of supply, the integration of renewable energy into the energy mix and increasing the competitiveness of the energy market. Clearer communication by the EU and national institutions would strengthen the permitting authorities and encourage them to take bolder – and potentially faster – decisions to approve energy infrastructure projects.

**A communication strategy focusing on the necessity and benefits of extending energy infrastructure in the EU (Measure 18)** should be implemented by the EC. This communication strategy should be targeted at the three target groups listed above: the general public, stakeholders directly affected by prioritised projects on a local level, and the authorities responsible for the permitting procedures for prioritised energy infrastructure. The communication strategy should be coordinated with Member States. Individual Member States should be actively involved by (at the very least) allowing them to use the communications strategy and the supporting material prepared by the EC.

## E.6 Overview of Recommended Measures

Figure 65 gives an overview of the measures recommended for implementation on an EC and Member State level.

|  |  <b>European Commission</b>  |  <b>EU Member States</b>  |
|--|---|--|
| <b>1. Improve Transparency and Manageability</b>               | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 2:</b> Implementation and monitoring plan</li> <li>&gt; <b>MEASURE 4:</b> European Energy Infrastructure Supervision</li> <li>&gt; <b>MEASURE 6:</b> Definition of a reference permitting process</li> </ul> | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 1:</b> Definition of projects of public interest</li> <li>&gt; <b>MEASURE 2:</b> Implementation and monitoring plan</li> <li>&gt; <b>MEASURE 3:</b> National Energy Infrastructure Supervision</li> <li>&gt; <b>MEASURE 5:</b> Legally binding target durations</li> </ul>  |
| <b>2. Empower Authorities</b>                                  | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 9:</b> Award for territorial entities for implementing a smooth permitting procedure</li> </ul>  | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 7:</b> One stop shop</li> <li>&gt; <b>MEASURE 8:</b> Improving authorities' access to experts</li> </ul>  |
| <b>3. Optimise Permitting Procedures</b>                       |   | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 10:</b> Fixing the legal status quo for the duration of the permitting procedure</li> <li>&gt; <b>MEASURE 11:</b> Integration of spatial planning into the permitting procedure</li> <li>&gt; <b>MEASURE 12:</b> Mandatory Scoping</li> <li>&gt; <b>MEASURE 13:</b> Granting access to land / easement together with permit</li> <li>&gt; <b>MEASURE 14:</b> Limiting legal recourse to a single level of jurisdiction</li> </ul> |
| <b>4. Increase Project Developers' Engagement</b>              | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 15:</b> Principles for inclusive permitting procedures</li> <li>&gt; <b>MEASURE 16:</b> Linking access to EIB, EBRD, EU funds to guidelines</li> </ul>   | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 17:</b> Creating incentives for developers to take responsibility for effective stakeholder dialogue within the procedure</li> </ul>  |
| <b>5. Improve Communication and Mitigate Public Opposition</b> | <ul style="list-style-type: none"> <li>&gt; <b>MEASURE 18:</b> Communication strategy focusing on the necessity and benefits of extending energy infrastructure in the EU</li> </ul>  |  |

**Figure 65:** Overview of recommended measures

A key finding of this study is that making permitting procedures more effective does not necessarily mean that they will become more cost efficient. Certainly some measures – creating a fully-fledged one stop shop (Measure 7) or shortening processes (Measure 11), say – will reduce the administrative expenses for handling procedures. However, the benefits of investing more time, effort and resources specifically in the early phase of procedures, as a way of reducing the overall duration of the process, will become evident in the longer term.

Another key finding of this study is that the authorities responsible for handling permitting procedures need to be strengthened in most of the Member States analysed. The relevant measures have been discussed in detail above.

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