

Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs)

Guidance Document "Streamlining environmental assessment procedures for energy infrastructure 'Projects of Common Interest' (PCIs)"

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Disclaimer: This guidance in no way creates any obligation for the Member States or project developers. It reflects the views of the Commission services. The definitive interpretation of Union law is the sole prerogative of the European Court.

1. INTRODUCTION – PURPOSE AND STRUCTURE OF THE GUIDANCE

With the 2009 Climate and Energy Package¹, the EU has given itself a clear framework to steer its energy and climate policies up to 2020. This framework integrates different policy objectives such as reducing greenhouse gas (GHG) emissions, securing energy supply and supporting growth, competitiveness and jobs through a high technology, cost effective and resource efficient approach. The optimisation of the network development at European level is key to meeting all of the above-referenced goals. In this context, investment in the order of EUR 200 billion is needed in building new infrastructure across the EU by 2020.

Regulation (EU) No 347/2013 of the European Parliament and of the Council² (hereafter the "new TEN-E Regulation") sets out a comprehensive legal and policy framework to optimise network development at European level by 2020 and beyond.

It identifies 12 strategic priority corridors and geographic areas for energy infrastructure with a trans-European/cross-border dimension. The new TEN-E Regulation sets out a process to establish on a two-yearly basis Union-wide lists of 'Projects of Common Interest' (PCIs) which will contribute towards the development of energy infrastructure networks in each of the 12 corridors. Projects labelled as PCIs will benefit from improved regulatory treatment and may be eligible for funding under the Connecting Europe Facility (CEF)³. They shall also benefit from faster and more efficient permitting procedures.

To this end, the new TEN-E Regulation places certain requirements on the permit granting process for PCIs, including time limits for the permit process, a 'one-stop-shop' permit, a single co-ordinating authority, and a requirement for Member States to assess potential measures to streamline environmental assessment procedures. These requirements are aimed at streamlining the overall permit process through faster and more efficient environmental assessment procedures, including through better and more fruitful public consultation, whilst at the same time respecting the requirements of EU environmental policies and laws.

In this regard, the EU has clear environmental targets. Article 11 of the Treaty on Functioning of the European Union (TFEU) sets the overall policy goal of the integration of environmental protection requirements into other EU policies and activities to promote sustainable development. The EU's environmental policy is articulated through environmental action programmes (EAP) – the Commission proposal for the 7th EAP⁴ published in late 2012 lists established policy and legal environmental targets. Of particular relevance for energy policy are the targets of halting the loss of biodiversity and degradation of ecosystem services by 2020, achieving good status for all EU inland and marine waters by 2015 and 2020, respectively, and achieving air quality that does not give rise to significant negative impacts on human health and the environment.

As set out in Article 7(4) of the new TEN-E Regulation, the **purpose** of this Guidance document is to support Member States in defining adequate legislative and non-legislative

¹ See: http://ec.europa.eu/clima/policies/package/index_en.htm

² OJ L 115, 25.4.2013, p.39.

³ Proposal for a Regulation of the European Parliament and of the Council establishing the Connecting Europe Facility, COM(2011)665 – 2011/0302 (COD).

⁴ Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 "*Living well, within the limits of our planet*" COM(2012)710 – 2012/0337(COD).

measures to streamline environmental assessment procedures and to ensure coherent application of environmental assessment procedures required under Union law for PCIs. The recommendations set out in this document are based on, but go beyond, the implementation experience and the good practices identified in the Member States so far.

The **target audience** is primarily authorities of Member States responsible for environmental assessment procedures, for complying with other environmental requirements, and for facilitating and coordinating the permit granting process for PCIs (i.e. the competent authorities within the meaning of the new TEN-E Regulation). The Guidance will also be useful for project promoters, including energy Transmission System Operators (TSOs) and investors, in the preparation of projects. Stakeholder groups, including NGOs and industrial associations, that will provide input to project planning and design through consultation procedures, can also benefit from this Guidance. It is vital that all relevant actors consider and, as appropriate, implement the recommendations set out in the Guidance not only with sufficient capacity and knowledge of the procedures at stake, but also with a co-operative attitude in the understanding that streamlining actually serves energy and climate as well as environmental protection goals.

In the context of this Guidance document, **‘streamlining’** means improving and better coordinating environmental assessment procedures with a view to reducing unnecessary administrative burdens, creating synergies and hence speeding up the environmental assessment process, whilst at the same time ensuring a maximum level of environmental protection through comprehensive environmental assessments, in accordance with the EU environmental *acquis*. Hence, ‘streamlining’ does not imply any weakening of environmental protection requirements foreseen under EU law. On the contrary, the recommendations set out in this Guidance serve to improve the quality of the environmental assessment process for energy infrastructure process.

2. LEGISLATIVE BACKGROUND

2.1. The requirements of the new TEN-E Regulation

2.1.1 Projects of common interest (PCIs)

The new TEN-E Regulation, which was adopted on 17 April 2013 and entered into force on 15 May 2013⁵, sets out a new legal and policy framework to optimise network development at European level by 2020 and beyond. It identifies 12 strategic priority corridors and geographic areas for energy infrastructure with a trans-European/cross-border dimension. The Regulation sets out a process to establish on a two-yearly basis Union-wide lists of ‘Projects of Common Interest’ (so-called PCIs), which will contribute to the development of energy infrastructure networks in each of the 12 corridors.

New TEN-E Regulation: The process for identification of PCIs
<ul style="list-style-type: none">• Submission of proposals by project promoters to the Regional Groups (composed of Member States, national regulatory authorities, TSOs, the Commission, the Agency for the Co-operation of Energy Regulators (ACER) and the European Networks of Transmission System Operators for electricity and gas (ENTSO-E and ENTSO-G))• Assessment and ranking of proposals in the context of the Regional Groups, including consultation of relevant stakeholders (Annex III 1.(5)).

⁵ Pursuant to its Article 24, the Regulation applies as of 1 June 2013, with the exception of its Articles 14 and 15, which shall apply as from the date of application of the relevant Regulation on a Connecting Europe Facility.

New TEN-E Regulation: The process for identification of PCIs

- **Agreement on draft regional lists** by the decision making bodies of the Regional Groups (Member States and Commission only)
- **Opinion of ACER** on cross-regional consistency of the regional lists
- **Adoption of the Union-wide list** by the Commission (delegated act procedure)

Projects labelled as PCIs will benefit from improved regulatory treatment and may be eligible for funding under the upcoming CEF, in accordance with the provisions of the *acquis*. They shall also benefit from **faster and more efficient permitting procedures**, whilst maintaining the highest possible standard of environmental assessment and protection. To this end, the new TEN-E Regulation introduces a number of measures such as: the introduction of a binding overall time limits for permit procedures of normally 3,5 years, a 'one-stop-shop' for permitting, a national competent authority for the co-ordination of permit procedures, a transparent and open approach to consultation of the public and stakeholders, and the obligation on Member States to assess the need for streamlining environmental assessment procedures, and to take relevant streamlining measures they have identified as appropriate.

2.1.2 Time limits for the permit granting process

Under the new TEN-E Regulation (Article 10), the **permit granting process** is split into two main phases:

1. The **pre-application procedure**: This procedure covers the period between the start of the permit granting process and the acceptance of the submitted application file by the competent authority. It starts from the date of written acknowledgement by the competent authority of the project notification, submitted by the project promoter. The pre-application procedure shall take place within an indicative period of two years. This procedure shall include the preparation of any environmental report by the project promoter(s).
2. The **statutory permit granting procedure**: This procedure covers the period from the date of acceptance of the submitted application file until the comprehensive decision is taken. This procedure shall not exceed one (1) year and six (6) months.

The **combined duration** of the two phases shall **not exceed a period of three (3) years and six (6) months**, with a possible nine (9) month extension period allowed⁶. This does not, however, include any work done by the project promoter or authorities prior to the start of the pre-application procedure. During this phase, strategic planning, environmental assessment and public consultation can also take place, without any time limit imposed by the Regulation.

The time-limits set out in the Regulation are without prejudice to obligations arising from international and Union law, and without prejudice to administrative appeal procedures and judicial remedies before a court or tribunal (Article 10(6)).

A schematic overview of the permit granting process as set out in the new TEN-E Regulation is included in Annex II.

⁶ It should be recalled that under Article 10(3) of the new TEN-E Regulation, "*in Member States where the determination of a route or location undertaken solely for the specific purpose of a planned project, including the planning of specific corridors for grid infrastructures, cannot be included in the process leading to the comprehensive decision, the corresponding decision shall be taken within a separate period of six months, starting on the date of submission of the final and complete application documents by the promoter.*"

2.1.3 ‘One-stop-shop’ approach to permitting, national competent authority and transboundary co-operation

The new TEN-E Regulation requires Member States to implement a ‘one-stop-shop’ approach to permitting and enhance co-ordination of the permit granting process (Article 8). By 16 November 2013, each Member State has to designate one national competent authority, which shall be responsible for facilitating and co-ordinating the permit granting process for PCIs. The responsibilities of this authority may be delegated to, or carried out by, another authority per PCI or category of PCIs, provided that the competent authority notifies the Commission of that delegation and the information therein is published by either the competent authority or the project promoter, and subject to the requirement that any one such authority acts as the sole point of contact in the permit granting process and co-ordinates submission of all relevant documents and information. Furthermore, Member States have to choose one of three possible schemes to implement the 'one-stop-shop' approach, namely:

1. **Integrated scheme**, whereby a comprehensive, binding decision is issued by the competent authority and other concerned authorities give their opinion as input to the procedure.
2. **Coordinated scheme**, whereby the comprehensive decision comprises multiple individual legally binding decisions issued by several authorities concerned, coordinated by the competent authority. The competent authority under this scheme has the right to disregard the decisions of other authorities or take decisions on their behalf in certain justified cases, without prejudice to other national or Union legislation.
3. **Collaborative scheme**, whereby the comprehensive decision is coordinated by the competent authority based on individual, legally binding decisions by other concerned authorities. Member States that choose this option must inform the Commission of their reasons for doing so.

In case of transboundary projects, which require decisions to be taken in two or more Member States, the respective competent authorities shall take all necessary steps for efficient and effective cooperation and co-ordination (Article 8(5)).

2.1.4 Transparency and public participation

The new TEN-E Regulation recognises that transparency and early and effective involvement of the public is essential for complex infrastructure projects to be approved quickly and effectively. By 16 May 2014, Member States or competent authorities have to publish a manual of procedures for the permit granting process of PCIs, which shall be updated as necessary and made available to the public (Article 9(1)). Principles for public participation are set out in Annex VI.3 of the Regulation and have to be followed without prejudice to requirements under the Aarhus and Espoo Conventions and relevant Union law (see section 2.2.1) (Article 9(2)). Pursuant to Article 9(3), the project promoter must develop and submit a concept for public participation within three months of the start of the permit granting process to be approved by the competent authority (Article 9 (3)), and following the process set out in the procedures manual referred to above, and in line with the guidelines set out in Annex VI of the Regulation. Furthermore, the project promoter, or, where required by national law, the competent authority, must carry out at least one public consultation before submission of the application file. A report summarising the results of the public participation has to be prepared and submitted together with the application file to the competent authority (Article 9(4)). Article 9(5) and (6) set out requirements for cross-border public consultation

procedures. Pursuant to Article 9(7), the project promoter or competent authority shall establish and regularly update a website with relevant information about the PCI.

2.1.5 Streamlining environmental assessment procedures

Based on this Guidance document, Member States shall assess which measures to take to streamline their environmental assessment procedures, and shall inform the Commission of the result (Article 7(5)). Non-legislative streamlining measures have to be taken within 9 months of the issuance of this Guidance document, legislative measures within 24 months (Article 7(6) and (7)).

2.1.6 Other relevant and transitional provisions

With regard to environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, PCIs shall be considered as being of public interest from an energy policy perspective, and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are met. Should a Commission opinion pursuant to Article 6(4) of Directive 92/43/EEC be required, the Commission and competent authority shall ensure that the decision with regard to the overriding public interest is taken within the time limits set out in the Regulation (Article 7(8)).

The provisions set out above apply only to PCIs for which the application file is submitted on or after 16 November 2013 (Article 19).

2.2. The requirements for environmental assessment procedures and other requirements set out in EU environmental legislation in relation to PCIs

The key instrument of the EU environmental assessment legislation is Directive 2011/92/EU, known as the Environmental Impact Assessment (EIA) Directive⁷. The fundamental objective of the EIA Directive is that before authorisation is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location, should be made subject to a requirement for development consent and an assessment with regard to their effects. The EIA Directive is the main procedure for assessing the environmental impacts of projects as well as providing for public participation to decision-making. Due to its horizontal and crosscutting character, the EIA Directive is very relevant for PCIs (section 2.2.1).

Environmental assessments required by other sectoral Directives, such as the Habitats Directive, the Water Framework Directive and the Industrial Emissions Directive, are also relevant depending on the specific circumstances of each PCI (section 2.2.3).

Directive 2001/42/EC, known as the Strategic Environmental Assessment (SEA) Directive, may also be relevant for PCIs. SEA is not directly relevant for projects; it ensures that certain plans and programmes which are likely to have significant effects on the environment are made subject to an environmental assessment prior to their approval (section 2.2.2).

Questions related to compliance with the requirements of the SEA Directive may arise if:

⁷ On 26.10.2012, the Commission proposed to amend the EIA Directive (COM(2012)628 final).

- the implementation of a PCI requires the modification of existing plans or programmes;
- a specific plan or programme sets the framework for the implementation of PCIs.

The following sections recall the main obligations of the abovementioned EU environmental legislation. More detailed information, including existing and forthcoming EU Guidance documents aiming to clarify and facilitate the proper application of the environmental assessments, is presented in Annex III.

2.2.1 EIA Directive

Under Directive [2011/92/EU](#), for some types of energy infrastructure projects (Annex I of the Directive), EIA is mandatory. These are:

- Pipelines with a diameter of more than 800 mm and a length of more than 40 km for the transport of gas, oil, chemicals and CO₂ streams intended for geological storage;
- Construction of overhead electrical power links with voltage of 220 kV or more and a length of more than 15 km.

Other energy infrastructure projects listed in Annex II of the Directive must be screened to determine whether they are likely to have significant effects on the environment, taking into account specific criteria in Annex III (of the Directive). If they are likely to do so, an EIA must be carried out. These project classes include:

- Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables;
- Oil and gas pipeline installations and pipelines for the transport of CO₂ for geological storage.

Most energy infrastructure PCIs will require EIAs, either because they meet Annex I conditions or will otherwise be considered as having significant impacts on the environment.

The EIA procedure can be summarized as follows: the developer may request the competent authority to say what should be covered by the EIA information to be provided by the developer (scoping stage); the developer must provide information on the environmental impact (often known as EIA report)⁸; the environmental authorities and the public (and affected Member States) must be informed and consulted (including the possibility for the public to comment); the competent authority decides, taking into due consideration the environmental information and the results of consultations. The public is promptly informed of the decision afterwards, including the reasons on which the decision is based, and can challenge the decision before the courts.

The EU is also a Party to the 1991 [UNECE Convention on Environmental Impact Assessment in a Transboundary Context \(Espoo Convention\)](#)⁹. Its provisions are similar to the EIA Directive and are relevant for transboundary energy infrastructure projects or

⁸ This information includes at least: (a) a description of the project comprising information on the site, design and size of the project; (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects; (c) the data required to identify and assess the main effects which the project is likely to have on the environment; (d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects; (e) a non-technical summary of the information referred to in points (a) to (d).

⁹ More information on the Convention is available at: <http://www.unece.org/env/eia/eia.html>.

projects with transboundary impacts. The Convention sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of Parties to notify and consult each other on all projects likely to have significant adverse impacts on the environment across boundaries. All EU Member States have ratified the Espoo Convention. Non-EU Member States which have ratified the Convention include: Albania, Serbia, Montenegro, Armenia, Azerbaijan, Bosnia-Herzegovina, Ukraine, Moldavia and Belarus.

By virtue of the 1998 [UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters \(Aarhus Convention\)](#)¹⁰ all permitting procedures for PCIs have to provide for the possibility for the members of the public to exercise effectively the three basic rights provided in the Convention. These three rights are the access to environmental information, the right to participate in the decision-making and the right to have access to justice. Subject to limited exceptions, everyone must have access to information on the state of the environment, also on policies or measures taken, and on the state of human health and safety where it can be affected by the state of the environment.

In particular and in accordance with the EIA Directive and the Aarhus Convention, public participation in the decision-making for PCIs should comply with the following requirements¹¹:

- The public shall be given early (i.e. when all options are still open) and effective opportunities to participate in the environmental decision-making procedures and shall, for that purpose, be entitled to express comments and opinions before the final decision is taken.
- The public shall be informed, by public notices or by other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedure:
 - (a) the request for development consent and the proposed project;
 - (b) the fact that the project is subject to an EIA procedure and, where relevant, the fact that trans-boundary issues arise;
 - (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
 - (d) the nature of possible decisions or, where there is one, the draft decision;
 - (e) an indication of the availability of the information gathered;
 - (f) an indication of the times and places at which, and the means by which, the relevant information will be made available;
 - (g) details of the arrangements made for public participation.
- All information relevant to the decision-making should be made available to the public.
- Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making.

¹⁰ More information on the Convention is available at: <http://www.unece.org/env/pp/introduction.html>.

¹¹ The requirements on public participation are also applicable in the context of the Seveso Directive and Industrial Emissions Directive, when referring to permits and also plans, as appropriate.

2.2.2 SEA Directive

According to the [SEA Directive \(2001/42/EC\)](#), an environmental assessment is mandatory for plans/programmes in certain fields, including for energy, town & country planning or landuse and which set the framework for future development consent of projects listed in the EIA Directive.

It is also mandatory for plans/programmes which have been determined to require an assessment under the Habitats Directive; in that sense, the EU legal framework has already ensured the necessary interaction between the two Directives, avoiding the risks of duplication and unnecessary administrative and financial costs.

The SEA Directive requirements may apply to network development plans established by TSOs under Directive 2009/72/EC¹² in which candidate PCIs are specified, depending on whether the conditions for the applicability of the SEA Directive, as transposed by the Member States, are met (e.g. when the content of such plans is approved for the succeeding planning stages and in this context is setting the framework for official national grid development plans).

If the above plans and programmes determine the use of small areas at local level or if they are subject to minor modifications, there is no obligation for an environmental assessment. According to the SEA Directive, a screening has to take place to determine whether the plans/programmes are likely to have significant environmental effects and the subsequent need for an environmental assessment. If there are no significant effects, no further step is needed, apart from the obligation to make the screening decision available to the public. If the plan/programme is deemed to have significant impacts, an SEA is needed.

The SEA procedure can be summarized as follows: an environmental report is prepared in which the likely significant effects on the environment and the reasonable alternatives of the proposed plan or programme are identified. The public and the environmental authorities are informed and consulted early and effectively, when all options are open, on the draft plan or programme and the environmental report prepared. As regards plans and programmes which are likely to have significant effects on the environment in another Member State, the Member State in whose territory the plan or programme is being prepared must consult the other Member State(s). Due account is taken of the environmental report and the results of the consultations before adoption. Once the plan or programme is adopted, the environmental authorities and the public are informed and relevant information is made available to them. In order to identify unforeseen adverse effects at an early stage, significant environmental effects of the plan or programme are to be monitored.

From an international point of view, the SEA Directive has similar provisions to the [SEA Protocol to the Espoo Convention](#), which entered into force in 11 July 2010. The EU is a party to the Protocol. All EU Member States have signed the SEA Protocol and most of them ratified it (those who have not, do so progressively). Non-EU Member States which have ratified the Protocol are: Albania, Serbia, Montenegro and Armenia. The SEA Protocol to the Espoo Convention applies to national plans and programmes with significant adverse transboundary environmental impacts.

¹² Directive 2009/72/EC on common rules for the internal market in electricity (OJ L 211, 14.8.2009).

2.2.3 Sectoral Directives

Article 6(3) of the [Habitats Directive 92/43/EEC](#) requires Appropriate Assessment (AA) of plans and projects that are likely to impact a Natura 2000 site (i.e. an area designated pursuant to the [Birds Directive 2009/147/EC](#) and/or the Habitats Directive). Effective and accurate determination of the extent to which a PCI may have adverse effects on one or more Natura 2000 sites generally requires precise data and careful expert analysis. In addition to the AA for individual PCIs, the Habitats Directive's requirement for AA may apply to network development plans established by TSOs under Directive 2009/72/EC¹³ in which candidate PCIs are specified, depending on the nature, form and content of such plans. The AA lays down obligations on substance, mainly because it introduces an environmental standard, i.e. the conservation objectives of a Natura 2000 site and the need to preserve its integrity. The competent authorities can only authorise the plan or project if the AA determines that it will not adversely affect the integrity of a Natura 2000 site. Any possible mitigation measures (e.g. in relation to location of the PCI, design, construction method and timing etc.) should therefore be taken so as to avoid PCIs adversely affecting the integrity of Natura 2000 sites.

Should authorities wish, by way of derogation from the provisions of Article 6(3), to authorise a PCI for which the AA concludes a negative impact, they will have to establish that all conditions of Article 6(4) of the Habitats Directive are met, i.e. no alternative solutions are available and that the PCI is necessary for *'imperative reasons of overriding public interest'*. It must also be demonstrated that compensation measures, which ensure that the overall coherence of the Natura 2000 network is maintained, have been secured. In particular cases, when priority habitats or species are affected, the project can be authorised only after an Opinion from the European Commission. Authorities are advised to follow the guidance on the provisions of Article 6.3 and 6.4 of the Habitats Directive developed by the European Commission (see Annex III).

It should be noted that provisions related to species protection under Article 5 of the Birds Directive and Articles 12 and 13 of the Habitats Directive have also to be complied with both within and outside Natura 2000 sites.

Under the [Water Framework Directive \(WFD\)](#), PCIs should not prevent the achievement of good groundwater status, good surface water ecological status or, where relevant, good ecological potential. They should also not cause deterioration to the 'status' of surface water bodies and groundwater as reported in the River Basin Management Plans (RBMPs) required under the WFD.

PCIs may threaten the status of surface water bodies or groundwater in a number of ways. Projects that involve the creation of reservoirs for pumped water energy storage plants could also have important impacts on water status, and may not have been envisaged in the first cycle of RBMPs (2009). In addition, PCIs where pipelines cross watercourses may permanently alter water status through physical modifications of the water bodies caused by the infrastructure.

Article 4(7) of the WFD sets out circumstances in which failure to achieve the relevant environmental objectives may be accepted, subject however to a set of strict conditions¹⁴.

¹³ Directive 2009/72/EC on common rules for the internal market in electricity (OJ L 211, 14.8.2009).

¹⁴ For these strict conditions please refer to the text of Article 4(7). For further information about the application of WFD exemptions see Guidance on Environmental Objectives and Exemptions (https://circabc.europa.eu/d/a/workspace/SpacesStore/2a3ec00a-d0e6-405f-bf66-60e212555db1/Guidance_documentN%c2%b020_Mars09.pdf)

These two circumstances are: 1) new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or 2) when failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities.

As for the Natura 2000 sites, there is the option of allowing projects to proceed in cases considered as of '*overriding public interest*'. In such cases, the WFD additionally requires, *inter alia*, that the best environmental option, which is not disproportionately expensive or technically infeasible, needs to be taken.

It is recommended that this environmental assessment be integrated in the EIA/SEA procedures, when the latter are carried out, in order to streamline the assessment processes. The river basin authorities, as competent authorities in this case, will need to include the relevant justification for the projects in the RBMPs. However, it should be noted that the WFD Article 4(7) conditions have to be fulfilled and assessed, even when EIA/SEA assessments are not carried out.

An additional condition which is set out in Article 4(7) to allow the deterioration of status is that the reasons for the project are specifically set out and explained in the RBMPs.

Projects falling under the ambit of Article 4(7) of the WFD should be integrated into the RBMPs in order for the public to have the chance to comment on the water-related aspects. Where a project is put forward in the middle of the 6 years cycle and was not included in the previous RBMP, under strict and short time limits, Member States will be *de facto* amending their RBMPs and with no public consultation. Therefore, the preferred course of action would be to formally update the existing RBMPs¹⁵. An alternative would be to rely on a proper *ad hoc* public consultation, e.g. using the EIA process or other proper consultation. This consultation should in all cases make reference to the existing RBMP which will provide useful context to the development of the project, in terms of water uses in the affected water bodies and river basins, other projects which are planned, etc. Failing to carry out a proper public consultation could run the risk that Member States lose sight of the links between the proposed project and other water uses in the basin or that citizens are partly deprived of their right to be consulted as provided under the WFD. It is therefore recommended that time limits for the consultations are sufficient to allow a proper consideration of the project in the RBMP context. In cases where the projects are developed in the middle of the WFD planning cycle, they will then need to be included in the subsequent RBMP, which will be subject to public consultation in its entirety.

In addition to Article 4(7) of the WFD, it is important to highlight Article 4(8), which obliges Member States to ensure that the project does not permanently exclude or compromise the achievement of the WFD objectives in other water bodies.

If PCIs are co-financed through the European Regional Development Fund (ERDF) 2014-20 they must also respect the *ex-ante* conditionalities foreseen for the water sector; failure to do so can result in suspension of funds if significant prejudice is identified.

The [Marine Strategy Framework Directive \(MSFD\)](#) aims at reaching Good Environmental Status (GES) of the EU marine waters by 2020. As offshore energy generation becomes more important for the overall share of electricity supply in the EU, more transmission infrastructure is needed in marine areas, leading to a number of environmental consequences. For example, in many cases cables will need to be buried under the seabed or otherwise

¹⁵ The more important and significant the project is, the more preferable to update the RBMP.

covered for protection, causing potential damage and contamination and possible habitat loss. Noise and electromagnetic emissions are another potential impact from underwater cables and pipelines. Sea floor integrity, permanent alterations of hydrographical conditions, underwater noise and electromagnetic emissions, all relevant for offshore energy generation, are explicitly mentioned. Only in exceptional cases Member States can identify instances when GES cannot be achieved (see Article 14 of the MSFD).

The [Seveso II](#) and [Seveso III Directives](#)¹⁶ on the control of major-accident hazards involving dangerous substances can be relevant for facilities for the reception, storage and regasification or decompression of liquefied natural gas (LNG) or compressed natural gas (CNG) as among the energy infrastructure categories to be developed (Annex II of the new TEN-E Regulation). These facilities could store sufficient quantities of flammable gases to qualify under Part I of Annex I of the Seveso Directive. Transmission pipelines for the transport of natural gas and biogas could also be covered by this legislation. In such cases, a project promoter has to notify the competent authority within a ‘reasonable’ time prior to the start of construction or operation and produce a safety report demonstrating, *inter alia*, whether any major accident hazards have been identified and what necessary measures have been taken to prevent such accidents. The safety report must be made available to the public.

Member States also need to ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in their relevant land use policies or plans. This includes the siting of new establishments, modifications to existing establishments, particularly where the siting is close to residential areas or locations frequented by the public.

[Industrial Emissions Directive \(IED\)](#) replacing the [Integrated Pollution Prevention and Control \(IPPC\) Directive](#)¹⁷ is relevant for PCIs that involve storage facilities for gas and oil, and facilities for the liquefaction and buffer storage of carbon dioxide in view of its further transportation. Many Member States have incorporated the application process for operating permits under the IPPC and now the IED Directive, into their EIA procedures, as both have to be prepared and submitted by project promoters.

In conclusion, the two main environmental assessment procedures required by EU legislation are EIA and AA. The EIA procedure and, depending on the location of the PCI, the AA will be required for nearly all PCIs, and form a critical part of the overall permit granting process for these projects. Assessments required by other EU environmental directives can be relevant in specific circumstances.

¹⁶ The Seveso III Directive entered into force on 13 August 2012, and Member States have until 1 June 2015 to transpose and implement it.

¹⁷ From 7 January 2014.

3. RECOMMENDATIONS FOR STREAMLINING

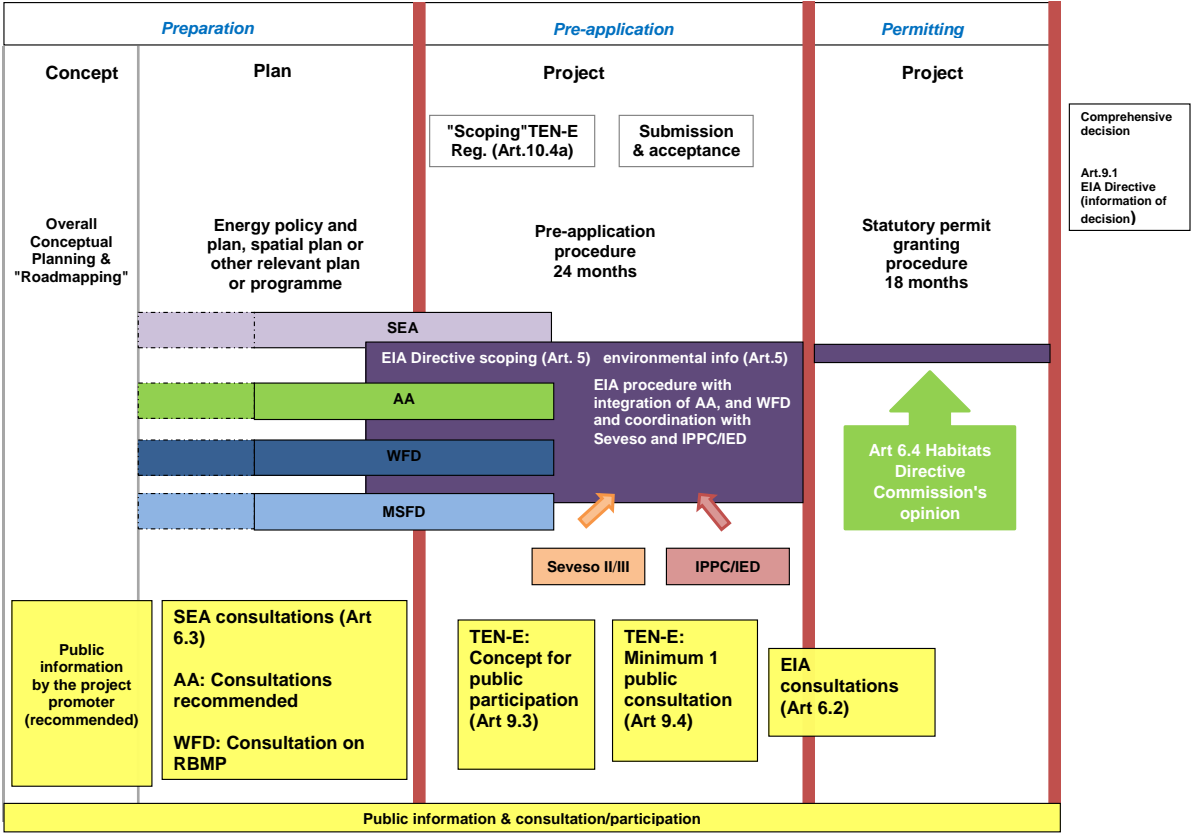
3.1. Introduction

As set out in section 2.2, the legislative framework for environmental assessments of PCIs may be rather complex and often raises delicate questions; it spans from the preparation up to the project permitting stage and involves various different actors. There is a risk that the overall assessment process is not sufficiently planned and co-ordinated, which leads to parallel procedures, but also at times to unnecessary overlaps in assessments. Without a strong co-ordinating authority or time-limits on the assessment procedures, these can potentially go on for a very long time without any decision being taken. The above issues can become bottlenecks, and when combined with others, such as property rights, permits required under national law and lack of social acceptance, hinder PCIs from progressing and entering into operation. All of these bottlenecks need to be addressed, and if possible remedied, without lowering the quality of the environmental assessments performed, and with a view to meeting the permitting deadlines set out in the new TEN-E Regulation.

This section provides guidance to Member States for streamlining environmental assessments. It is considered that early planning, adequate timing and complementarity both of environmental assessments and other environmental requirements, as well as of public participation procedures, are essential elements for successful streamlining.

The recommendations set out below hence refer to different stages in the overall assessment and permitting procedure for PCIs, which is reflected in Figure 1 – preparation, pre-application and permitting. The latter two phases are described in section 2.1. The preparation phase, which is not subject to the requirements of Article 10 of the new TEN-E Regulation, is often crucial for the overall planning of the project permitting cycle by project promoters.

Figure 1: Streamlining environmental assessments for energy PCIs: the overall procedure



3.2 Specific recommendations

3.2.1 Early planning, "roadmapping" and scoping of assessments

Given the complexity of environmental assessment procedures and the requirements of other environmental legislation to be respected for PCIs (at either the planning, pre-application or permitting phases), the complexity of the environmental issues to be addressed, and the nature of PCIs, an early planning and "roadmapping" of the different assessments to be considered and other environmental requirements to be met is vital for a successful streamlining of environmental assessment procedures, which in turn is crucial to meet the permitting deadlines set out in the new TEN-E Regulation. Ideally, this planning should happen at the very early concept stage of a PCI (e.g. definition of connection points), and should lead to a concise assessment roadmap for the project, indicating which type of assessment should take place at what point in the overall assessment / permit procedure. This roadmapping should be the main responsibility of the project promoter, in close co-operation with the co-ordinating authority.

In case of a staged assessment, the roadmap should also indicate which aspects should be assessed at what stage in the process to ensure complementarity, and to avoid both non-consideration of certain elements and reduce the risk of repetitive assessments. The roadmap

should also set out how and at what point in the process other environmental requirements should be met.

Scoping has been shown to have many benefits for environmental assessments, both in terms of the duration of the procedure and the quality of the assessment. For a start, it stimulates early dialogue, helps identifying relevant legislation or necessary assessments and regulatory controls, or potential Natura 2000 impacts that may be relevant to the project but not immediately perceived by the project promoter. Scoping should also identify relevant data, reasonable alternatives for consideration, information gathering methods and their scope and level of detail, and issues of particular concern to affected stakeholders and the public. By agreeing the expectations of the assessment with the relevant authorities at the start, the project promoter can confidently and effectively plan the collection of environmental information.

In order to adequately roadmap the different assessments required and other environmental requirements at stake, a **very early scoping** of all potential environmental effects of a project is recommended already at the conceptual stage. More **detailed scoping** should happen in line with the further development of the project, e.g. obviously at the pre-application phase (as required under Article 10(4a) of the new TEN-E Regulation) or as part of the EIA process. Naturally, early scoping and roadmapping are supposed to reduce the time required for later scoping compared to what is foreseen e.g. under the new TEN-E Regulation for the pre-application procedure.

Member State examples for early planning and roadmapping

In Germany, the early scoping process for electricity grid planning (Bundesfachplanung – Federal specialist planning) and the following detailed scoping process for specific electricity grid projects with cross-regional or cross-border impacts are set out in the Grid Expansion Acceleration Act of 2011 known as the NABEG. This law provides for ‘application conferences’ that have to take place after the initial application is submitted to the competent authority. At the conference, which is open to the public, scoping of assessments required including SEA/EIA and siting alternatives are discussed. The authority determines the final scope for the final application and the level of detail of information to be included based on the input at the conference.

In Hungary, it is a common practice that before the initiation of a large authorization procedure, the investors, their experts and legal representatives meet together with the competent authority to discuss the further details of the given procedure, the necessary requirements, etc. Additional meetings often take place throughout the procedure, and the various parties also keep in contact via email.

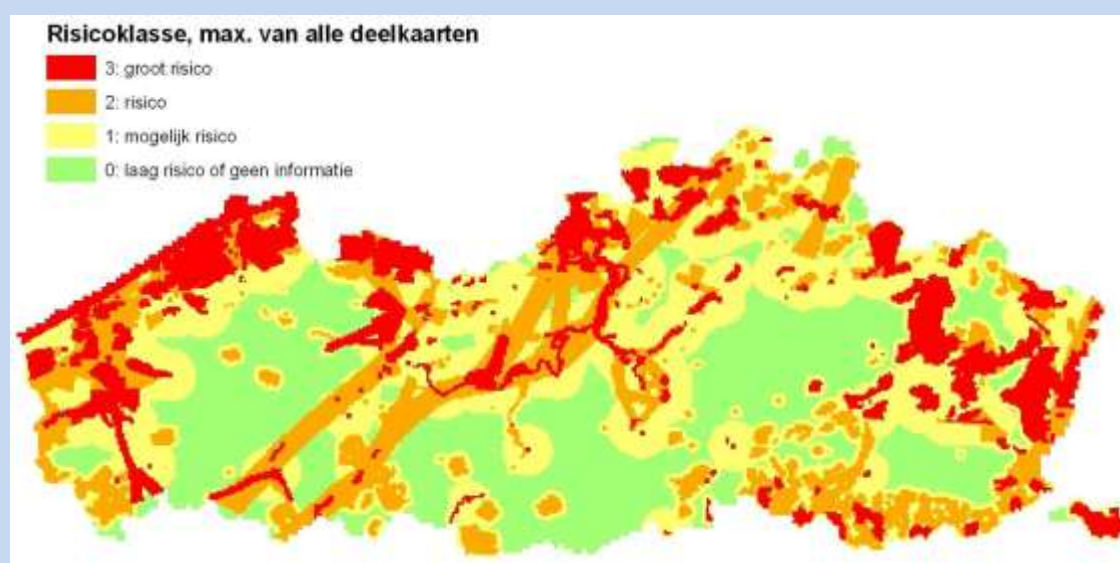
Taking environmental considerations into account at the early strategic planning phase and preparing sensitivity/suitability maps that would guide the project location has proved to be very useful and facilitates the permitting process. Examples of mapping used in land use and energy planning are:

- Energy potential maps such as those showing wind potential or hydropower potential.
- sensitivity maps with a categorisation system (highly sensitive, moderately sensitive, lowly sensitive) for water bodies, species and habitats, bird areas, etc.
- suitability maps which are based on a combination of technical potential and environmental sensitivity; suitability assessment might also be based on a dialogue between the different competent authorities, stakeholders and NGOs.

Member State examples: coordinated data collection tools

Belgium (Flanders) has prepared a detailed bird risk atlas with regard to wind farm developments

This dynamic decision instrument includes information and recommendations concerning the possible effects of planned wind turbines on birds and bats in Flanders. The instrument makes clear which steps have to be undertaken for new wind farm developments, including information on where the necessary information can be found. The instrument can be used at both a strategic and project level. The instrument includes a vulnerability atlas for birds and wind farms. The component maps of this atlas can be consulted in a geographical web application via the website of the Flemish Institute for Nature and Forestry Research, INBO. In this vulnerability atlas, Flanders is divided into areas with a risk level ranging from 0 to 3 (see map below). The maps are based on available information including bird seasonal migration areas, important wintering and roosting areas, and important breeding areas for Red List bird species. This risk atlas can also be useful for assessing high-voltage overhead transmission lines, while acknowledging the differences in the possible effects from wind farms and power lines.



Source: Belgium www.inbo.be – search: 'risicoatlas windturbines' accessed 04.03.13

3.2.2 Early and effective integration of environmental assessments and of other environmental requirements

Environmental assessments should be performed as early as possible, and to the level of detail possible, at an early stage in the overall process. Effective tiering should be applied to ensure that different assessments required under different pieces of EU environmental legislation, or in different phases of the process, build on, and complement each other. Environmental requirements other than assessments should also be integrated as early as possible, and as efficiently as possible, in the overall process to identify and remedy problems at an early stage, and to avoid delays and public acceptance problems in the run-up to project permitting.

As for **early integration of environmental assessments**, it is strongly recommended that SEAs and, where applicable, AAs, are made mandatory already at the planning stage for national energy policies and plans (e.g. network development plans submitted by TSOs and approved by the competent authorities, in accordance with Directive 2009/72/EC¹⁸). This allows the environmental suitability of different types of energy sources as well as different

¹⁸ Directive 2009/72/EC on common rules for the internal market in electricity.

locations for energy projects to be assessed from the start. It encourages a more integrated and efficient approach to territorial planning where environmental considerations are taken into account much earlier in the planning process and at a much more strategic level. It also ensures that the level of assessment always matches the level of planning/decision-making and avoids that *faits accomplis* are created by inclusion of projects in national energy plans, for which no relevant assessments have been carried out. This in turn translates into fewer conflicts at the individual project level, both in substance and in terms of public acceptance (see section 3.2.6). The positive effects of an SEA at the national planning stage are illustrated by the example from Portugal in the box below.

Member State example: SEA of national transmission grid (NTG) investment plan in Portugal

The Portuguese TSO Rede Electrica Nacional (REN) carried out an SEA for the 2009-2019 National Electric Transmission Grid Investment and Development Plan (NTG Plan) during 2007-2008. This SEA followed an integrated procedure with the technical planning process, and demonstrates the time-saving and overall quality benefits that effective SEAs of grid plans can have on the projects that are eventually developed to implement the grid. The SEA of the NTG Plan enabled the consideration of different strategic investment options and eventual adoption of a solution that represented the best option from both environmental and development perspectives. This option avoided as much as possible environmentally sensitive and highly populated areas, resulting in significant potential reduction of the time required to plan and approve subsequent investment projects.

The NTG Plan came at a strategic point in the development of Portugal’s electricity system. The national goal to generate 60% of total electricity needs from renewable energy sources by 2020 would require changes and reinforcements to the grid. Much of the existing and planned renewable capacity, mainly from wind and large hydropower sources, is located far from the load areas. There was the need to increase interconnection capacity with the Spanish Transmission Grid to levels compatible with the Iberian Market for Electricity (MIBEL). The grid would also need to supply two new planned high speed railways in inland areas, and replace old assets, lines and substations which came into operation in the 1950s and 1960s.

The objectives for the SEA of NTG Plan were to set an assessment framework, considering the above NTG strategic issues as well as the relevant environmental and sustainability issues and policy priorities, necessary to guide and assess the technical strategic options for the evolution of the transmission grid. Within the SEA, an important methodological step was the identification and justification of critical decision factors (CDFs). Three CDFs were selected: energy, fauna and land use, corresponding to major strategic issues relevant for the assessment. For each CDF two to five criteria were identified, with one or two indicators per criterion. This enabled a highly focused assessment on the major issues at stake: the need for increased use of renewable energy sources and the efficiency of energy transmission; the potential conflict with major biodiversity and nature conservation areas; and the need to transport electricity to where it is needed while avoiding conflicts with nature or human population.

The review and assessment of strategic options for expanding the NTG initially considered four strategic options.

A fifth strategic option emerged, due to close cooperation between the SEA and planning teams and careful iteration between the SEA and planning processes.

Assessment criteria for each CDF were established, as summarised in the table below. Eventually, the fifth strategic option (S5) proved to be the one with the least unavoidable risks to fauna, and was also the only option that presented positive opportunities to avoid densely populated areas with regard to land use, while at the same time meeting strategic objectives of the NTG Plan.

Member State example: SEA of national transmission grid (NTG) investment plan in Portugal

CFD	Criteria	S1	S2	S3	S4	S5
Energy	Effective transmission of energy including from the Special Production Regime (renewable sources)	++	+	+	-	++
	Energy efficiency (management and reduction of losses in the network)	+	-	-	+	+
Fauna	Crossing/fragmentation of protected areas	--	--	--	-	-
	Crossing of sensitive areas for fauna species	--	--	-	--	-
	Crossing of critical areas for bird species with unfavourable conservation status and higher risk of collision	--	--	-	-	-
	Proximity to shelter of bats of national importance	--	--	--	--	-
	Minimising cumulative impacts	-	-	+	+	+
Land use	Interference with sensitive areas (including landscape) or conditioned by natural and heritage protection status	--	--	-	-	-
	Interference with current and potential areas of strong human presence and infrastructure	--	--	--	-	+
	Opportunities for synergies between energy production needs, development in remote regions; improvement in efficiency of energy transmission and reductions in the overall need for transmission lines or corridors	+	+	-	-	++

Key: ++ very significant opportunity; + opportunity; 0 neutral; - risks; -- very significant risks

The SEA was carried out during the same timeframe as the NTG Plan process itself. It began with the preliminary planning discussions on objectives, and concluded with the final approval of the plan. The total process took 11 months, including institutional and public consultations. Conducting the SEA simultaneously with the development of the plan, rather than after the main planning decisions had been made, not only resulted in a more effective assessment, but also saved time in the overall procedure.

The NTG Plan and the SEA were submitted to a period of public consultation that was longer than the 30 days legally required in Portugal. The consultations included presentation sessions in each of the planning regions in Portugal, engaging the general public, NGOs, environmental authorities, as well as public authorities responsible for licensing the network operations and the energy operators. A workshop was held with all the public environmental authorities and NGOs. Two public debates took place; these were advertised in newspapers and invitations were sent to key stakeholders, including local authorities. All reports were made available on the REN website.

The SEA in this case did not identify and assess the impacts of subsequent projects, but rather focused on creating the most adequate environmental and sustainability conditions for NTG expansion. This also avoided subsequent conflicts with stakeholders and the public at the project level. It established a dialogue platform

Member State example: SEA of national transmission grid (NTG) investment plan in Portugal

linking the Portuguese TSO with internal and external stakeholders that improved the quality of the NTG Plan and will continue through the project development phase. The SEA of the NTG Plan enabled the development of guidelines for planning, management and monitoring that will support the implementation of the plan. These guidelines have been included in the terms of reference for EIAs of the infrastructure projects that have emerged from the NTG Plan.

Source: Partidario M., Ricardo J., Peralta J., Pinto M., Augusto B. (2010), *First Transmission Grid Plan with Strategic environmental assessment in Portugal: Added Value to the Electric System*, REN – Rede Eléctrica Nacional, S.A. and IST – Instituto Superior Técnico, Portugal

Within the context of the environmental assessment procedures, **all relevant environmental aspects should be considered** as thoroughly as possible to avoid later problems in project permitting and project implementation. In case of PCIs, impacts on biodiversity and habitats (and in particular on Natura 2000 sites) and modifications to water bodies will be the most important impacts to consider given the territorial requirements related to the construction of energy infrastructure. Projects consisting of installations, such as substations and storage facilities, may also be subject to IED requirements.

However, assessments should also incorporate potential climate change adaptation issues, which means potential impacts on the PCI due to for instance landslides, strong winds, flooding and fires (resulting from extreme weather events) or increase in average temperatures and sea level rise (as long term climate trends). These assessments will seek to ensure that the new infrastructure will remain resilient throughout its life cycle against an evolving environmental baseline) The Commission services have prepared specific guidance on how climate change and biodiversity can be dealt with in EIA and SEA procedures (see Annex III)¹⁹.

To the extent possible, and with a view to streamlining the overall environmental assessment process, all relevant environmental impacts should be considered in the different phases of the EIA process. Where separate pieces of environmental legislation require separate assessments, those should be aligned with the respective EIA procedures. Where possible, assessment procedures should even be integrated to maximise efficiency in data collection and the assessment process itself²⁰. If sectoral assessments are carried out separately, the same principles for early assessment and effective tiering as set out for EIAs above apply, i.e. taking into account the results of previous assessments in order to avoid redundancies.

This is demonstrated for the AA required under Article 6(3) of the Habitats Directive in the following box below. As set out in section 2.1.6, PCIs may be considered as being of overriding public interest from an energy policy perspective within the meaning of Article

¹⁹ See also the Communication from the Commission "An EU Strategy on adaptation to climate change" (COM(2013)216).

²⁰ For instance, it should be recalled that any coordinated or joint assessments should comply with the requirements of the various Directives. An SEA or EIA cannot be a substitute for an AA or WFD assessment. One of the key distinctions between SEAs/EIAs and AA, is how the outcome of the Assessment is followed up. Contrary to the SEA and EIA which lay down essentially procedural requirements and do not establish obligatory environmental standards, the AA lays down obligations of substance because it introduces an environmental standard i.e. the conservation objectives of a Natura 2000 site and the conclusions of the AA are binding. This is why it is recommended that, when AA forms part of the EIA/SEA assessment it should be clearly distinguishable and identifiable in the SEA/EIA reports.

6(4) of the Habitats Directive (Article 7(8) of the new TEN-E Regulation).

Integration of Appropriate Assessment at different levels of the planning and permitting process

The AA at the level of national energy or grid planning should focus on avoiding sensitive locations, i.e. locations where siting of the proposed energy infrastructure might jeopardise Natura 2000 site conservation objectives as well as Natura 2000 protected species outside Natura 2000 sites. This does not mean that energy infrastructure cannot be built inside Natura 2000 areas, nor that energy infrastructure outside Natura 2000 sites will not harm Natura 2000 site conservation objectives. This has to be investigated case-by-case. Cumulative impacts are also important at the strategic plan level; they are often not sufficiently taken into account in AA at all levels. Preparing an AA for a national energy or grid plan however offers an opportunity to consider potential cumulative biodiversity impacts that could be generated by the combined realisation of different energy infrastructure projects and to adapt the plan in order to avoid significant cumulative impacts. An example is the cumulative impact of power lines and wind farms on migratory birds.

At the level of project-driven spatial planning, AA should focus in greater detail on the potential Natura 2000 impacts of the more narrowly defined location alternatives. These may be routing alternatives which differ by as little as a few kilometres or less. In some cases, the AA at this level will allow identification of the need for compensation measures and even the location of these measures.

Finally the AA in the framework of the permit granting process for an even more concrete project will focus on additional fine-tuning of the type and significance of impacts and any required mitigation measures. This fine-tuning might involve defining a more suitable location as well as the precise nature of measures to reduce the impact. In case of projects justified for Imperative Reasons of Overriding Public Interest (IROPI), if the need for re-routing or compensation only arises at the very last phase of the planning and permitting process, considerable time may be lost. Therefore, such issues should be considered an early stage.

As regards potential impacts on water bodies, the relevant RBMPs established under the WFD have to be checked to determine the baseline (water status) upon which the impacts of the project must be measured. This should drive the identification of what is permissible and whether impacts can be avoided through an alternative solution. Article 7(8) of the new TEN-E Regulation provides that a PCI may be considered as being of overriding public interest, provided that the conditions of Article 4(7) of the WFD are met.

If a PCI was not envisaged in the existing relevant RBMP, an update of the RBMP would be preferable but an alternative procedure to consult the public would be acceptable²¹. In all cases, a proper consultation needs to be carried out to explain the reasons justifying the modifications or alterations of the water bodies affected by the project, so that its consequences can be appreciated in the broader river basin context. Moreover, all conditions in Article 4(7) must be fulfilled (see section 2.2.3). With a view to streamlining future water related assessment procedures, it is recommended to *ex ante* consider and integrate all water-relevant projects included in the upcoming Union wide list of PCIs in the review of the RBMPs due in December 2015.

In line with the recommendation to integrate different assessment procedures to the extent possible, Member States and project promoters often already integrate the necessary water considerations into their SEAs and EIAs, with a view to identifying any issues as early as possible and to involve the necessary experts, authorities and stakeholders. A number of examples are provided in the box below.

²¹ The more important and significant the project is, the more preferable to update the RBMP.

Member State examples: integration of the Water Framework Directive requirements into environmental assessments

In **Germany**, the competent authorities must respect the RBMPs and the programmes of measures within the Federal specialist planning, spatial planning procedures and plan approval procedures.

In **Belgium (Flanders)**, when deciding on a permit, plan or programme, authorities are required to carry out a 'water test' according to the criteria in Article 4.7 of the WFD. Based on the water test, authorities can decide to refuse the permit or impose conditions for its authorisation. Authorities can also require redress measures to be implemented. The water test can be required independently or be part of an EIA or SEA procedure when such a procedure is required for the activity, plan or programme. The Belgian energy network operator ELIA reports that it ensures that the water-related chapters of the SEA and EIA cover the criteria in Article 4.7 of the WFD whenever water impacts are foreseen, to avoid conflicts down the line. Information required to take a well-informed decision about the 'watertest' is included in the water-related chapters of the SEA and EIA and is summarized in a separate chapter of every SEA and EIA report. The decision on the 'watertest' however is taken in the procedure of permits and spatial plans.

Member States should also ensure that an **effective tiering approach** is applied across subsequent environmental assessments at different stages in the overall process. Tiering is the process by which 'higher-tier' or strategic decisions influence and set the context for other, subsequent 'lower-tier' or more detailed decisions (policies set the context for plans, and plans in turn set the context for programmes and then projects).

There are many important advantages to be gained by preparing a sequence of environmental assessments at different planning levels and linking environmental assessments at planning level to each other and to the project level, primarily because assessment issues can be given the appropriate amount of attention and detail at the right time, in line with the project maturity level. This includes for instance the extent to which alternatives are formulated and assessed; another issue is the use of expert opinions versus advanced quantitative and detailed methods. Furthermore – and critical with a view to meeting the deadlines for the PCI permit granting procedure as set out in the new TEN-E Regulation – it means that efficiency gains at more detailed stages of assessment such as the project EIA can be achieved through the flagging or ruling out of major issues for further investigation at a higher level.

Whilst a number of requirements for tiering are already set out in EU environmental legislation (Article 4(3) of the SEA Directive requires that Member States avoid duplication of assessment where plans and programmes form part of a hierarchy; it also states that any plan or programme which sets the framework for future development consent of projects that are likely to require EIA must be subject to SEA), it is recommended that Member States explore, and, as appropriate, introduce, further requirements for tiering at the national level in line with the relevant national hierarchies of procedures.

In order to ensure efficient tiering in practice, it is vital to determine the timing and scope of the different relevant assessments for a concrete project very early in the overall procedure, to allow for timely planning on the part of project promoters and the authorities concerned and to avoid unnecessary overlaps of the different relevant assessments on the one hand, but also to ensure that all relevant aspects are assessed at some point in the sequence of assessments on the other, in line with the respective progress in decision-making. Ideally, this should be done at the roadmapping stage (see section 3.2.1). However, constant review and eventually revision of the roadmap is necessary in the further course of the process, depending e.g. on the results of the earlier assessments. This is a task to be managed by the designated

competent authority (see section 3.2.3).

Member State examples: smart use of tiering

In **Germany**, for multi-country and multi-länder grids, the competent authorities are entitled to restrict EIAs carried out during the plan approval procedure to additional or other environmental aspects that were not assessed as part of SEAs carried out during the federal planning for transmission. The competent authorities should, however, consider whether investigation of some SEA issues is needed in more detail at the project stage, in particular to ensure compliance with the EIA Directive.

3.2.3 Procedural co-ordination and time limits

As set out in section 2.1, under the new TEN-E Regulation, Member States are required to choose between three different permit schemes implementing a so-called "one-stop-shop" permit. Moreover, they have to designate one competent authority which shall be responsible for facilitating and co-ordinating the permit granting process for PCIs or delegate the responsibility to another authority as provided for in Article 8(2) of the new TEN-E Regulation. Whilst the organisation of the overall permitting process is not directly related to the streamlining of relevant environmental assessment procedures, it is highly recommended that Member States choose either the integrated or the co-ordinated approach to the permitting process, as both imply a level of overall co-ordination which is likely to maximise the streamlining effects also in the co-ordination of relevant environmental assessment procedures.

Moreover, it is highly recommended that the designated competent authority is endowed with **strong co-ordinating competences** relating to the organisation of the relevant environmental assessment procedures, including for instance the power to request joint or overall environmental assessments where considered useful²², to determine the scope of individual assessments depending on the scope and outcome of previous ones, and/or on a case-by-case basis, to organise joint public consultations. The new TEN-E Regulation already goes quite far in this respect, as it endows the competent authority with the power, in the case of a collaborative approach to permitting, to establish time-limits within which the necessary individual decisions of other authorities have to be provided. All these powers should be exercised without prejudice to the quality of the environmental assessments.

A further powerful tool to streamline environmental assessment procedures could be to set **time limits for parts or all of the environmental assessment procedures**; this would increase legal certainty, stimulate a more efficient decision-making and help meeting the binding time limits for the overall permitting process as set out in the new TEN-Regulation. Time limits could be set either generically for certain types of projects, or else individually on a case-by-case basis. Naturally, time limits should only serve to reduce unnecessary delays in assessment procedures and encourage the creation of synergies between assessments where possible, but should in no way lower the quality of the environmental assessments performed. Time limits should be binding and proportionate. Consequences for exceeding time limits should be clearly defined and enforced, unless there is a justification for the excess of any time limit related to the proper performance of the assessment itself. In this respect, Article 10(6) of the new TEN-E Regulation should apply by analogy. Since grid development projects differ substantially in their scope and nature, flexible options for explicit and justified extensions of the time-frames should be available, also taking into account the nature,

²² The need for an overall assessment of environmental impacts has been stressed by the Court of Justice of the European Union in several cases related to the EIA Directive, e.g. cases C-142/07 or C-205/08.

complexity, location and size of the proposed project and the significance of environmental impacts.

An example of an area where time limits can be introduced is the consultation on the EIA report; based on the implementation experience across the EU, it should be a minimum of 30 days and a maximum of 60 days, with a possibility for extending it by a further month, depending on the proposed project. This is also in line with the requirements and practices of the Aarhus Convention²³.

Member State examples: procedural coordination

In **Poland**, the project promoter submits an application to one environmental authority, which then coordinates the entire permitting process for the environment-related decision. The environmental authority requests opinions from other relevant institutions and keeps the project promoter informed regarding any additional documentation that is required.

In **Finland**, there is a designated 'Liaison Authority' (within the Centre for Economic Development, Transport and the Environment), which does not make decisions, but coordinates the EIA process. The Liaison Authority communicates with project promoters, ensures public participation, and enables a single authority to specialise and gain expertise on law, guidelines and good practices. In court rulings, significant weight has been given to the opinion of the Liaison Authority when reviewing the adequacy of the EIA.

In **Italy**, the EIA competent authority shall provide for coordinated or joint procedures coordinating the various environmental assessments required by the Union and national legislation into EIA procedure (e.g. IED permit, water withdrawals and discharges, air emissions, soil management) or integrating into EIA procedure Strategic Environmental Assessment and the Appropriate Assessment. The EIA decision shall coordinate or substitute the different environmental authorizations, permits, licences which are relevant for the project.

3.2.4 Data collection, data sharing and quality control

Project promoters **should start data collection as soon as possible in the preparation phase for critical issues**. The need for complex or time-dependent data collection is a major potential delay in permit granting procedures. This risk can be mitigated if the need for data collection is identified and specified early in the process, so that collection of necessary data can start as soon as possible. This process could already start at the roadmapping stage, and should be continued in the further stages of project development. To be able to start data collection, it is necessary the project promoters have access to all available data which is in the possession of the Member States authorities.

Good quality data are particularly important for AA, where it is critical to objectively demonstrate that there will be no adverse effects on the integrity of the Natura 2000 site. Data on project pressures, impact pathways, occurrence of habitats and species, sensitivity of biotic factors, other environmental features, mitigation possibilities, good practices and many other issues are essential to allow environmental experts to carry out high quality impact assessments. Without objectively verifiable information and a sound scientific basis, environmental assessments – particularly at the level of PCIs and for AA – will not be

²³ The findings of the Compliance Committee of the Aarhus Convention can be useful in this regard. In the Belarus case (Belarus ACCC/C/2009/37, ECE/MP.PP/2011/11/Add.2, April 2011, para.89), the Compliance Committee held that a minimum period of 30 days for the public to access the relevant information and prepare to participate was a reasonable timeframe. In the French case (France ACCC/C/2007/22, ECE/MP.PP/C.1/2009/4/Add.1, 8 February 2011, para.44), the Compliance Committee found that a period of 45 days to inspect the relevant information and to prepare and an additional subsequent period of 45 days to comment were sufficient.

complete nor credible and will cause delays in the permit granting process. For Natura 2000 sites, the "Natura 2000 Viewer"²⁴ provides public access to information (descriptive data, site boundaries) on each site across all Member States and should be used by Member States and project promoters in the data collection process. Furthermore, site-specific management plans, as well as data on species/habitats gathered through national monitoring schemes, are a useful source of data for AAs and should be used, as appropriate.

The importance of data collection for Appropriate Assessment

Once the potential effects of the plan or project have been predicted as accurately as possible, the AA can move onto the next stage which is to determine whether the impacts will adversely affect the integrity of the Natura 2000 site, either alone or in combination with other plans or projects. It is important to bear in mind that the focus of the assessment should be on objectively demonstrating, with supporting evidence, that there will be no adverse effects on the integrity of the site, in light of its conservation objectives. Thus, the competent authority has to be sure that there is no reasonable scientific doubt. If the adverse effects cannot be ruled out or if there is too much scientific doubt, the adverse effects have to be assumed. This does not necessarily mean that the plan or project is automatically refused. The competent authority could ask the project promoter to redesign or relocate the energy infrastructure or introduce mitigation measures that would avoid or eliminate the predicted adverse effects.

Member States should coordinate the process of data collection and database management at national or regional levels. They can prepare appropriate datasets and maps covering the national or regional territories, with data used to describe baseline situations (before a plan or project is executed) and to store them in regional or national databases. These datasets will help speed up the preparation of environmental assessments. Data gathered in the course of environmental assessments should likewise be stored in a publically accessible national database. Amongst others, constantly updated databases will facilitate the tiering between higher level and lower level environmental assessments, as well as assessments of other plans and projects. In addition, the collection and publication of relevant case law and precedents could increase transparency and legal certainty and promote a uniform methodological approach.

Member States should share data with other Member States as well as co-operate on data introduction in the national data base regarding regions near Member State borders. Data exchange can increase the overall efficiency of the planning and permitting process of PCIs throughout the EU and avoid double work. Transboundary projects will benefit from uniform methodological approaches with regard to environmental assessments and therefore data sharing amongst Member States connected by a common PCIs project will certainly be advantageous.

Member States should establish *ex post* monitoring schemes in order to collect information about the real impacts of new energy transmission infrastructure and assess whether the introduced mitigation and compensation measures are indeed implemented and effective. Such monitoring schemes should be proportionate to the nature, location and size of the energy infrastructure project and the significance of its environmental effects.

Information from monitoring will contribute to the quality level of impact prediction in environmental assessments and help to reduce remaining uncertainties. As a result future PCIs will considerably benefit from *ex post* monitoring schemes of existing PCIs. *Ex-post* monitoring should be coordinated at higher level (i.e. it should not be left to each project

²⁴ <http://natura2000.eea.europa.eu>.

promoter individually) in order to build up a database. Such a system would reduce the time project promoters spend on extensive field surveys, and therefore facilitate future environmental assessments for similar projects and reduce process duration.

Member State examples: data collection, database management and data sharing

A good practice is the *ex post* monitoring programme established for wind farm developments in the North Sea. In the **Belgian part of the North Sea**, several areas within a specifically designated zone have been given in concession to wind farm operators. The first wind farms have been built and are operational; others are planned or under construction. As it is not efficient to require each wind farm operator to run a similar *ex-post* monitoring programme independently, the Belgian competent authority has set up a joint monitoring programme which is financed by the wind farms in operation. As soon as a new wind farm comes on line, financial contributions are redistributed.

In 2008 in **Hungary** all of the three electric utility companies, the Hungarian TSO and BirdLife Hungary signed the "Accessible Sky" agreement in order to reduce the electrocutions of some types of birds by multi-voltage power lines. Subsequently, BirdLife developed a "bird electrocution conflict map", showing the risk across Hungary for the most affected bird species. New measures to make power lines safer are now prioritized more effectively and also receive funding from LIFE and ERDF. This example also shows the positive impact of enhanced cooperation between the industry and NGOs.

In **Italy** several environmental and territorial databases are available for public access. The Ministry of the Environment, through a website dedicated to SEA and EIA procedures, provides a catalogue of environmental data at national and regional level in which the information are directly connected to the source supplying them, to ensure their regular updating. The environmental data are selected on the basis of criteria which ensure the reliability and quality in accordance with national and EU provisions.

The use of external experts and independent quality control can ensure that assessment reports are robust and the data used are valid and relevant. It is the responsibility of a project promoter to prepare an environmental report. To ensure the quality of this report, it is important that it is based on appropriate technical expertise (e.g. the promoter can use external or in-house experts). In addition, it is necessary that the competent authority verifies this report by using its (internal or external) experts. The use of external qualified and technically competent experts to carry out or verify assessments can help to ensure that appropriate resources and expertise are available for environmental assessments, particularly where project promoters or competent authorities lack these skills. Involving external experts can sometimes mean higher costs, but it will reduce time delays in case of insufficient human resource capacity and/or expertise on the part of the project promoter. Quality control mechanisms (internal or external) can be put in place by authorities to verify the capacity, qualification and knowledge of external experts as well as their impartiality.

The EU Cohesion Policy funds, including technical assistance available from the ERDF or training activities under the European Social Fund (ESF) may be available to support training for both authorities and other stakeholders.

Quality control mechanisms can also go beyond merely verifying the relevant qualifications of technical experts and provide an overall review service for all environmental reports, as illustrated by the cases of Belgium and the Netherlands in the box below. This would enable better control over the relevance and validity of the data in the environmental report.

For the programming period 2014-2020 if PCIs are co-financed through the ERDF, they must also respect the *ex ante* conditionalities concerning the improvement of administrative capacity to carry out high quality EIA and SEAs.

Member State examples: quality control for environmental assessments

In **Belgium (Flanders)**, the quality of SEAs and EIAs is guaranteed by the combined system of independent quality control and accreditation for external experts. Project promoters can consult a specific website managed by the environmental authority to find accredited experts. The authority has also developed a certification system to allow environmental experts to acquire an accreditation for one or more environmental expertise areas (e.g. surface water, soil, air, fauna and flora). The authority also has a specific department dedicated to following the process of all EIAs and SEAs carried out in Flanders. The authority meets regularly with the project promoter, external experts and advisory bodies at the scoping, intermediate and final stages of preparing the assessment. The authority also prepares guidance documents and organises training events for accredited experts. This process has been in operation for 25 years and has significantly improved the quality of environmental assessment in Flanders.

In the **Netherlands**, the Netherlands Commission for Environmental Assessment (NCEA) prepares advisory reports for authorities on the scope and quality of environmental assessment reports. Official review reports are prepared for competent authorities, but project promoters and stakeholders may request advisory services. For complex projects and all SEAs, an official review report from the NCEA is legally required. For each report the NCEA assigns a working group of relevant experts, which usually undertakes a site visit. The competent authority may request the NCEA to take account of submissions by the public directly in its report, to ensure greater transparency. It may also request advisory services from the NCEA at any time during an environmental assessment procedure, including at the EIA scoping stage. The time allowed for an official advisory report is six weeks. Overall the use of this independent quality control body has proven to increase the quality of environmental assessment and also reduce the likelihood of legal challenges to authorities' decisions.

Guidance documents, advice on specific issues and other support tools published by the authorities have proven very useful. Training and good practice exchanges are also important measures to ensure good quality. *Ex-post* evaluation of the permit granting process for energy infrastructure (which may also include other infrastructure categories) can be useful to identify and share lessons learned.

Member State examples: national guidance documents

In **Germany** guidance documents have been issued by the federal and regional authorities on how to carry out administrative procedures (including EIA and SEA), and how to prepare application documents for such procedures. For example, the Federal Network Agency prepared and updates the guidelines on federal specialist planning (*Leitfaden zur Bundesfachplanung*) and Bavaria adopted recommendations to standardise plan approval documents (*Empfehlungen zur Standardisierung von Planfeststellungsunterlagen*) in 2006.

In the **United Kingdom (Scotland)**, the relevant authorities are currently considering the development of standardised impact assessment models to be able to ensure consistency across the various models used by promoters. This would ensure that all applications would be comparable and treated in the same manner. The regulators would be able to further build up expertise and deliver efficiencies in handling applications. The success of these standardised models will, however, depend on their ability to account for the needs of very diverse projects.

In **Italy**, since 1988, technical standards for the preparation of the environmental impact reports of projects subject to EIA are being used. These technical standards are aimed to ensure quality and consistency of the information submitted by the developers and are currently being updated taking into account current knowledge and methods of assessment. Since 2003, guidelines (currently being updated) for the preparation and implementation of the Environmental Monitoring Plan of strategic projects subject to EIA (e.g. major transport/energy infrastructures) are available. For the environmental monitoring of plans and programmes subjected to SEA, methodological and operational indications are also available together with a catalogue of indicators for environmental monitoring.

3.2.5 Cross-border co-operation

According to Article 8(5) of the new TEN-E Regulation, for cross-border projects the Member States shall co-operate and coordinate amongst themselves especially regarding the definition of the scope and level of detail of the information to be submitted by the project promoter and the schedule for the permit granting procedure. The Member States shall endeavour to provide for joint procedures, particularly with regard to the assessment of environmental impacts.

Such procedures could be jointly organised by the competent authorities of the Member States concerned, or a third body (coordination body) could be set up specifically for cross-border co-ordination, as the Commission has recommended in its recently published Guidance on EIA Procedures for Large-scale Transboundary Projects (see Annex III).

These mechanisms could be set in bilateral or multilateral agreements concluded by the concerned Member States or regions. At the level of the individual Member State or region, these agreements could be institutionalised (and prescribed in legislation), but also carried out informally; they could furthermore be set up on an *ad hoc* basis or for the entire PCI project category or specific PCIs categories (i.e. energy infrastructure). Several agreements have already been concluded under the Espoo Convention²⁵.

Under the new TEN-E Regulation, where a PCI encounters significant implementation difficulties, the Commission can, in agreement with the Member States concerned, designate a European coordinator to assist in and facilitate amongst other the public consultation and permitting process (Article 6). Such a co-ordinator could also be designated by Member States themselves at an earlier stage in process and to avoid any implementation difficulties to arise at a later stage.

3.2.6 Early and effective public participation

The EU environmental assessment legislation (e.g. the EIA and SEA Directives) and other relevant EU and international instruments (Aarhus Convention) place public participation requirements on the process of development consent for PCIs. It will be important for Member States to determine the ideal scope and timing of public involvement in the preparatory and permit granting processes. The early planning and roadmapping of environmental assessment procedures recommended above (section 3.2.1) should include also an early planning and roadmapping of public participation. Similarly, early scoping should not only look at potential environmental effects of a future project, but also at its specificities and potential problems with regard to public participation. In the end, the roadmap referred to in Section 3.2.1 should include not only the different stages of environmental assessment procedures, but also a planning for different levels of public consultation and participation. It is recommended that the public is already informed of and involved in the early scoping and roadmapping of the project at the conceptual stage. Public scoping events might be very helpful to inform the public and to receive early feedback by the public.

Pursuant to Article 9(7) of the new TEN-E Regulation, the project promoter or competent authority shall establish and regularly update a website with relevant information about the PCI. In the case of cross-border projects or projects likely to have significant cross-border effects, it is recommended that this website includes relevant information for the project in the official languages of all countries concerned by the project.

²⁵ <http://www.unece.org/env/eia/resources/agreements.html>.

Effective public participation also includes effective tiering of consultations in line with the different assessments performed at different levels of the procedure, as well as early and effective inclusion of other requirements of EU environmental legislation.

For instance, public consultation is optional in relation to AA under the Habitats Directive. It is, however, strongly recommended that the concerned public be consulted about any possible impacts on Natura 2000 sites; in order to avoid parallel public consultations, it is advocated to do this through the on-going consultation process for the plan or project in question.

Public consultation is also required under the WFD for the preparation of the RBMPs. When these are revised in 2014, a six month public consultation period will apply. PCI projects which are liable to cause a deterioration of the status of water bodies shall be included in the RBMP, together with the reasons and justification of the fulfilment of the conditions in Article 4(7), in order to ensure that the public will have the chance to comment on the water-related aspect through this process. The same will be the case for the on-going marine assessments and programmes under the MSFD.

Member States examples of stakeholders cooperation and involvement

A specific approach in **Germany** is the organization of application conferences. As a starting point of the federal specialist planning and the plan approval procedure, the Federal Network Agency carries out application conferences that convenes the TSOs, authorities concerned (in particular authorities of the Länder) and environmental protection organisations. The application conferences are open to the public. The conferences aim, *inter alia*, at determining the scope for SEAs and EIAs.

In **Italy**, TSO TERNA organises round table talks to ensure cooperation with regional and local authorities. Furthermore, TERNA and WWF Italy work together on long-term contracts for the realisation of joint projects.

In **France**, TSO RTE is testing so called "Citizen Conferences" in some projects. A dedicated number of citizens are involved very early in the process.

In **Belgium** (Flanders), before filing the request for the building permit of a project listed in Annex I or II of the EIA Directive, a meeting ('project meeting') can be arranged on request with all concerned governmental organizations and the developer with the aim to facilitate the building consent procedure. This 'project meeting' can also facilitate the integration of the results of the environmental impact assessment into the building consent procedure.

5. CONCLUSION

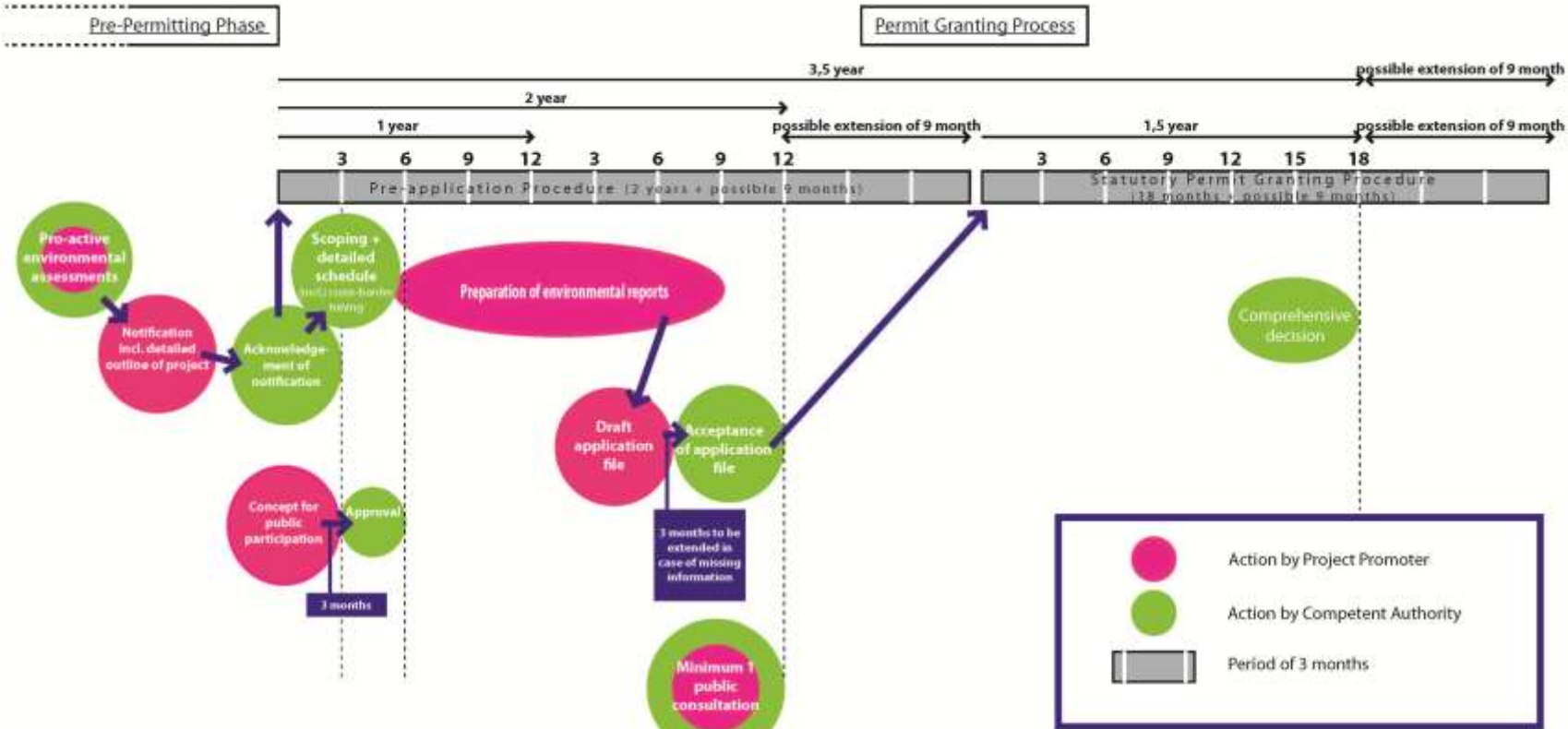
Based on the recommendations set out in this Guidance document, Member States are now called upon to analyse their national legislation and administrative practice, and to take adequate legislative and non-legislative streamlining measures within the timelines set out in the new TEN-E Regulation, i.e., within 24 months of the issuance of this Guidance document for legislative measures, and within 9 months for non-legislative measures. The Commission services will continue to support Member States in the implementation of the permitting chapter of the new TEN-E Regulation, including in the context of the Regional Groups established under the new TEN-E Regulation, whilst at the same time ensuring the highest possible standard of environmental protection. The Guidance shall be **reviewed and updated** as necessary, based on experiences with streamlining measures and their implementation in the Member States.

4. ANNEXES

Annex I: Acronyms and abbreviations

Acronym	Meaning
AA	Appropriate Assessment
ACER	Agency for the Cooperation of Energy Regulators
CEF	Connecting Europe Facility
CNG	Compressed Natural Gas
EAP	Environmental Action Programme
EC	European Commission
EEA	European Environmental Agency
EIA	Environmental Impact Assessment
ERDF	European Regional Development Fund
EU	European Union
GES	Good Environmental Status
IED	Industrial Emissions Directive
IPPC	Integrated Pollution Prevention and Control
IROPI	Imperative Reasons of Overriding Public Interest
LNG	Liquefied Natural Gas
MSFD	Marine Strategy Framework Directive
N2000	Natura 2000
NGO	Non-governmental organisation
NIMBY	'Not in my backyard'
PCI	Project of Common Interest
RBMP	River Basin Management Plan
SEA	Strategic Environmental Assessment
TEN-E	Trans-European Energy Networks
TFEU	Treaty on Functioning of the European Union
TSO	Transmission System Operator
UNECE	United Nations Economic Commission for Europe
WFD	Water Framework Directive

Annex II: Schematic overview of the permit granting process for PCIs



Annex III: Specific Commission guidance on environmental assessments

SEA Directive

Guidance documents on the SEA Directive, available at:

<http://ec.europa.eu/environment/eia/sea-support.htm>

EIA Directive

Guidance documents on the EIA Directive and information on relevant case law, available at:

<http://ec.europa.eu/environment/eia/eia-support.htm>

Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment, available at: <http://ec.europa.eu/environment/eia/pdf/EIA%20Guidance.pdf>

Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment, available at: <http://ec.europa.eu/environment/eia/pdf/SEA%20Guidance.pdf>

Guidance on the Application of the EIA Procedures for Large-scale Transboundary Projects, available at: <http://ec.europa.eu/environment/eia/pdf/Transboundary%20EIA%20Guide.pdf>

Natura 2000 and Appropriate Assessment

General Guidance on applying Article 6 of the Habitats Directive can be found at:

http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

Relevant case law can be found at:

http://ec.europa.eu/environment/nature/legislation/caselaw/index_en.htm

Guidance on wind energy developments and Natura 2000 can be found at:

http://ec.europa.eu/environment/nature/natura2000/management/docs/Wind_farms.pdf

Guidance on Electricity, gas and oil transmission infrastructures and Natura 2000: to be published soon

Water Framework Directive

Water Framework Directive Guidance Document N° 20 - Exemptions to the environmental objectives, available at: http://ec.europa.eu/environment/water/water-framework/facts_figures/guidance_docs_en.htm

Annex IV: The Commission's Guidance in relation to the new TEN-E Regulation

