Analysis of the manuals of procedures for the permit granting process applicable to projects of common interest prepared under Art.9 Regulation No 347/2013

Overview Report

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ANALYSIS OF MANUAL OF PROCEDURES AND PERMIT GRANTING PROCESS APPLICABLE TO PCIs – OVERVIEW REPORT

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EXECUTIVE SUMMARY

- Objectives of this study

Given the pressing issue of climate change, the need to strengthen security of supply, and the need for increased competition in energy markets, EU energy policy has undergone rapid developments in recent years. These include a thorough review of both the concept and rationale of the framework for the Trans-European Networks for Energy (TEN-E), in response to a greater recognition of the critical need to further develop strategic energy infrastructure networks across the EU. The interconnection, interoperability and development of the TEN-E networks for transporting electricity, gas, oil and carbon dioxide are considered essential for the proper functioning of the EU energy market. EU support for these networks led to the adoption of Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure (TEN-E Reg.), which lays down guidelines for the timely development and interoperability of priority corridors and areas of trans-European energy infrastructure. The TEN-E Reg. places considerable emphasis on streamlining and simplifying procedures for facilitating the permitting and implementation of energy infrastructure 'projects of common interest' (PCIs) across the Member States.

In its Chapter III, the TEN-E Reg. introduces a series of requirements that must be applied by Member States to permit granting procedures for those projects selected for the Union list of PCIs. The TEN-E Reg. also requires Member States to publish a manual of procedures for the permit granting process applicable to PCIs on their territory (Article 9(1)). Correctly compiled, these manuals should enable verification of compliance of the permit granting procedures applicable to PCIs with the TEN-E Reg. requirements, and also serve as practical guidance for PCI project promoters, bringing greater transparency to the process.

The main purpose of this study is to assist the Commission in analysing the permit granting process for PCIs applicable in the EU Member States and to identify instances of non-compliance with Chapter III of the TEN-E Reg., as well as to assess compliance of Member States with their obligation to prepare and publish the manual of procedures as per Article 9(1) of the TEN-E Reg.

The analysis of both the permit granting process and the manuals of procedures drew attention to the challenges that Member States face in adjusting their PCI permitting practices in line with the TEN-E Reg. requirements, the process of preparing the manuals, and also some of the good practices put in place to overcome these challenges. This enabled the development of an informative and insightful comparative overview to support the implementation of the permit granting process for PCIs. This study therefore provides the opportunity to assess current progress and future potential for the timely development of PCIs across the Member States, as well as recommendations for improving the current process.

- Methodology

Milieu's team of national legal experts for each of the 27 Member States[1] prepared country-specific reports, according to a uniform template, designed to ensure a consistent understanding of the objectives and purpose of the reports, as well as the specific requirements.

The country-specific reports comprised two key research steps. Firstly, each national expert carried out desk research to establish national practice on implementing the TEN-E Reg. and to analyse the content of the manual of procedures published by the relevant Member States. Secondly, each national expert conducted interviews with the designated one-stop-shop, other concerned authorities and

[1] Although the study was initially supposed to cover all 28 Member States and Norway, neither Austria nor Norway published their manuals within the timeframe of this study and both countries were therefore not included in this study.

selected project promoters. The purpose of these interviews was to validate the findings of the desk research and/or to provide additional information for inclusion in the draft report. The national experts consulted each one-stop-shop on their country-specific draft report before finalised versions were delivered to DG Energy.

This overview report compares the different approaches adopted by the Member States with regard to the permit granting process for PCIs and the manuals of procedures, as described in the country-specific reports.

- Current status of implementation of PCIs

The TEN-E Reg. is directly applicable in Member States' national legal orders from 1 June 2013. However, limited information is available on how the requirements from Chapter III of the TEN-E Reg. (on permit granting and public participation) have been implemented in practice, as the information for this study was gathered between February and April 2015, less than two years after the entry into force of the TEN-E Reg. Many PCIs have not yet been implemented or are at the early stages of implementation. In addition, in accordance with Article 19 of the TEN-E Reg., the provisions of its Chapter III do not apply to PCIs for which a project promoter has submitted an application file before 16 November 2013. Several PCIs, therefore, do not fall under the scope of Chapter III of the TEN-E Reg. and were not included in the study. Further, the implementation status of a given PCI is not always straightforward, as differences in interpretation as to the official start of the permit granting process and the definition of what constitutes 'the application file', combined with sometimes contradictory information from the ACER report compared to the information given by the project promoters results in a number of uncertainties. Aside from the practical experience, however, this study assessed the existing legal framework and recent legislative developments to indicate whether the necessary conditions to comply with the requirements of the TEN-E Reg. are in place. To date, three Member States – Belgium, France and Latvia - have adopted specific legislation which facilitates the application of the provisions of Chapter III of the TEN-E Reg.

In view of the diverse stages of implementation of the TEN-E Reg. in Member States - whereby countries differ significantly in both their practical experience and relevant legislation - this report addresses the comparative overview in three different ways, depending on the requirements analysed.

- Trends in implementing the TEN-E Reg. and assessment of compliance

<u>Appointment of the one-stop-shop</u>
Pursuant to Article 8(1) of the TEN-E Reg., Member States were required to designate one national competent authority responsible for facilitating and coordinating the permit granting process for PCIs (the so-called one-stop-shop) by 16 November 2013. All Member States have meanwhile established the one-stop-stop. Two Member States (Estonia and Belgium) established a completely new competent authority for the purposes of the TEN-E Reg., while most Member States granted the existing permit granting authority for energy infrastructure projects specific powers for the facilitation and coordination of the permitting of PCIs.

The large majority of Member States (21) did not comply with the assigned deadline. However, in most cases, the one-stop-shop was designated soon after 16 November 2013, with two exceptions, Belgium (May 2015) and Romania (January 2015 – although the one-stop-shop is not yet operational). In Slovenia, there are two effective one-stop-shops.

<u>Permit granting scheme</u>
Article 8(3) of the TEN-E Reg. requires Member States to organise their permit granting process in accordance with one of three schemes: integrated, coordinated or collaborative. Most Member States (15) have decided to choose the collaborative scheme, the least cohesive one, and only one Member State, Romania, has chosen the integrated scheme. Nine Member States favour a coordinated scheme,

and two (Denmark and Greece) have chosen more than one scheme. In many cases this choice has not been explicitly stated either in legislation or in the manual of procedures.

Of the 15 Member States that have experience with implementing Chapter III of the TEN-E Reg., ten have not properly applied the scheme chosen according to Article 8(3) and are therefore non-compliant. In Germany, despite choosing the collaborative scheme, it is the integrated scheme which applies for projects for which the Federal Network Agency issues the comprehensive decision. In the remaining Member States, non-compliance is mainly caused by the incomplete powers given to the one-stop-shop.

Priority status

Article 7(3) of the TEN-E Reg. requires Member States to allocate the status of the highest national significance possible to PCIs, where such status exists in national law. The granting of this special status should ensure that the permitting (including spatial planning and EIA) of PCIs is given the most rapid treatment legally possible, '*in the manner such treatment is provided for in national law applicable to the corresponding type of energy infrastructure*'. In practice, the status of the highest national significance possible exists in the national law of 16 Member States, with Luxembourg considering the introduction of a status of (overriding) public interest. The type of 'status of the highest national significance possible' differs from country to country, with the type of projects to which the status can be given, benefits which stem from the status, and method of allocating the status showing considerable variation.

Of the 16 Member States that have a priority status in place, six are not compliant with Article 7(3) of the TEN-E Reg. Non-compliance is, in all cases, related to the fact that it cannot be guaranteed that all PCIs are allocated this priority status – due to the imposition of additional criteria or given practical experience.

Workflow

Article 10 of the TEN-E Reg. describes the permit granting process of PCIs as consisting of two procedures – the pre-application procedure and the statutory permit granting procedure. Our study shows that Member States have organised their workflows differently: some Member States, for example, refer in their manuals of procedures to Strategic Environmental Assessment (SEA) as one of the first steps of the procedure (e.g. Portugal); some Member States include spatial planning within the pre-application procedure; and, in a few Member States, the EIA procedure starts well before the official start of the pre-application procedure.

Of the 15 Member States assessed, only four – France, Greece, Ireland and the Netherlands – were considered fully compliant with the workflow requirements as laid down in Article 10 of the TEN-E Reg. Two Member States – Germany and the UK – were compliant with all assessed requirements except one, and they were therefore considered partially compliant. The reasons for non-compliance are in all cases related to issues with (some of) the pre-application procedure requirements, although in three cases – Croatia, Poland and Romania – problems have also been identified concerning compliance with the statutory permit granting procedure requirements.

Time limits

Article 10 of the TEN-E Reg. establishes a maximum period of three years and six months for the conclusion of PCI permitting; separately, the two procedures should take no longer than two years (pre-application) and one year and six months (statutory permit granting). A maximum nine month extension for both procedures combined is allowed.

Current practical experience is very limited and this study can only give insights into the 'probability' that time limits are feasible. It was concluded that most Member States may face problems in complying with the time limit to issue the comprehensive decision. As a sequential process, a delay in

issuing individual permits is likely to lead to delays in issuing other decisions and permits at a later stage. This is a particular problem where the one-stop-shop does not have the power to impose or enforce time limits on the different authorities involved in the permit granting process. In addition, even if national legislation sets out time limits for the whole process and/or for its different procedures, these time limits are not always followed in practice as they may be non-enforceable.

Public participation

Public participation is one of the essential elements of the TEN-E Reg. and its Article 9 sets out a series of rules that must apply without prejudice of existing rules stemming from international and EU law obligations. In addition, Annex VI to the TEN-E Reg. provides guidelines for transparency and public participation, including details on the content of the manual of procedures, the concept for public participation and the project website, as well as the basic principles for the public participation procedure (early involvement, ensuring participation at local and regional level of a wide public, grouping public consultations, setting rigid timeframes for accepting comments).

Despite the directly applicable public participation requirements, our study has shown that, in general, most Member States have not properly implemented the requirements of Article 9 and Annex VI to the TEN-E Reg. A common problem is that the one-stop-shop does not always have the power and means to ensure that the project promoter is actively supported in its public participation activities. Further, interpretation difficulties related to Article 9(4) and to the concept for public participation have led to implementation problems.

Article 9(3) of the TEN-E Reg. requires project promoters to draw up and submit a concept for public participation to the one-stop-shop. So far, only four Member States (France, Greece, Ireland and the UK) have applied the public participation concept in practice. Furthermore, one Member State (Belgium) has described the need to draw up a public participation concept in national law, in what might be considered an indication for future compliance with this requirement.

Article 9(4) of the TEN-E Reg. requires that at least one public consultation takes place before the submission of the application file (i.e. before the beginning of the statutory permit granting procedure). Of 14 Member States to whom this applied in the study[2], eight have held a public participation procedure in addition to the one envisaged in the framework of the EIA.

- Trends in the manuals of procedures and assessment of compliance

Publishing deadline

As required by the TEN-E Reg., all Member States (with the exception of Austria) published a manual of procedures for the permit granting process applicable to PCIs. Only six Member States (Cyprus, Denmark, Spain, France, Ireland and Slovenia) published the manual of procedures by the 16 May 2014 deadline, while the remaining Member States published the manual in the months immediately following the deadline. In the case of Romania, the manual was only published as a draft at the time of this study. Only two of the 28 Member States had not formally adopted a manual of procedures within a year of the TEN-E Reg. deadline.

Drafting the manual of procedures

The Member States applied various approaches when preparing their manuals of procedures - with varying degrees of cooperation and consultation with other authorities and stakeholders in the drafting process. In most Member States, the manual was prepared by the one-stop-shop, often in consultation with other authorities (15 Member States) and/or stakeholders (14 Member States). Only three Member States (Denmark, Estonia and France) did not consult with other authorities or stakeholders in

[2] Only 15 Member States which are already implementing the TEN-E Reg. in practice or have legislation in place for at least some of the relevant requirements have been assessed. Belgium does not have any practical experience (the country only has legislation in place) and is therefore not included in this assessment of compliance with Art.9(4) of the TEN-E Reg.

the drafting process. Somewhat unusually, Croatia charged an authority other than the one-stop-shop with the preparation of its manual of procedures, which the one-stop-shop then officially issued. Finally, six Member States opted to have a working group draft the manual. In all instances, the working group was composed of representatives of different ministries and authorities, with regional authorities also included in the cases of Finland and Belgium. In Slovakia and Slovenia, the working group also included the project promoter, while in Bulgaria, Finland and Slovakia, the working group consulted with stakeholders in the process of the drafting of the manual.

Review clauses

While only nine Member States include relevant review clauses in their manuals of procedures, virtually all of the one-stop-shops interviewed for the study stated that the manuals would be updated 'as necessary'. Three Member States have updated their manual of procedures since their first issuance, including France (which updated both of its manuals), Latvia, and Slovakia. In Luxembourg, an update is in progress.

Multiple manuals of procedures in one Member State

In four Member States, more than one manual of procedures has been adopted, for reasons of language, or to tailor the manual to a specific energy sector (i.e. France). However, not all Members States have published the manual of procedures in all of their official languages (i.e. Luxembourg, Malta and Belgium).

Assessment of compliance with Annex VI(1) of the TEN-E Reg.

Pursuant to Article 9(1) of the TEN-E Reg., the manuals of procedures to be published by the Member States must include, at a minimum, the information specified in Annex VI(1):

a) Relevant legislation upon which the decisions are based for the different types of PCI, including environmental law;
b) Relevant decisions and opinions to be obtained;
c) Names and contact details of the one-stop-shop and other authorities and major stakeholders concerned;
d) The work flow, outlining each stage in the process, including an indicative time frame and a concise overview of the decision-making;
e) Information about the scope, structure and level of detail of documents to be submitted with the application for decisions, including a checklist;
f) The stages and means for the general public to participate in the process.

About half of the manuals of procedures include all relevant legislation, while the remaining manuals are considered partially compliant, typically because they do not refer to certain sectoral laws that can also be relevant for the permitting of PCIs. A similar picture emerges for those manuals of procedures that include all relevant decisions and opinions to be obtained. Only the manuals of procedures of two Member States (Croatia and the Netherlands) include all the relevant names and contact details of the one-stop-shop, other authorities and major stakeholders concerned. In addition, 18 manuals of procedures are found to be non-compliant or only partially compliant with Annex VI(1)(d) of the TEN-E Reg., which states that the manuals should include the workflow, outlining each stage in the process, including an indicative time frame and a concise overview of the decision-making process. As the TEN-E Reg. requirements should be clearly interwoven with the national system, the lack in this specific domain can be interpreted as showing an issue with the understanding and implementation of the TEN-E Reg. as a whole by the authorities. With regard to e), partial non-compliance is mainly due to the lack of a (complete) checklist of the documents to be submitted with the application for decisions. Finally, only the manuals of procedures of ten Member States include all the stages and means for the general public to participate in the process. The other 17 are considered partially compliant, as the information contained is general and not comprehensive enough to effectively inform the public of the stages and means by which they can participate in the process.

While no manual of procedures was assessed as fully compliant with all of the requirements laid down in Annex VI(1) of the TEN-E Reg., nor was any manual of procedures found to be entirely non-compliant. A recurrent justification among Member States is the risk of overburdening the manual: while the specificity of each PCI needs to be acknowledged and often leads to complex and parallel procedures in different Member States, providing fit-for-all explanations is not always be practical and may, conversely, cause more confusion for the reader.

- Recommendations on good practices

Permit granting process

Given the country-specific nature of the permit granting process, the recommendations are, in many cases, equally specific. However, some good practices have wider application. Firstly, an early coordination phase between the permitting authorities, the general public and the project promoters – on an informal basis and before the start of the pre-application procedure – facilitates the subsequent permitting process and allows identification and discussion of issues up-front. It may also avoid the common 'not in my backyard' problem. Secondly, public participation and/or consultation can be facilitated by the appointment of a local coordinator or supervisor to help streamline the public consultation and ensure that all interested parties are invited to take part. Thirdly, the use of an electronic submission system or online sharing platform can simplify and help to centralise the permitting process at the Member State level. Fourthly, there is still ample room for streamlining the various permitting or authorisation procedures. Merging the building and the environmental permit or signing a Memorandum of Cooperation are a few of the positive examples discussed in the country-specific reports. And finally, it can be beneficial to further detail some of the TEN-E Reg.'s provisions in national legislation - although the TEN-E Reg. is directly applicable in the national legal order – or to provide guidance notes as to the correct interpretation of, inter alia, what constitutes 'the' application file, the 'without prejudice' clause in Article 9(4), the approach for the concept for public participation and the detail requested.

Manual of procedures

Several recommendations at the national level are also relevant for other Member States' manuals of procedures. In general, in order to be useful, the manuals of procedures need to be more focused and user-friendly, and to make a better link between the TEN-E Reg. and the national permit granting process. The lack of clarity as to which steps of the national permitting process fall under each of the two procedures established by the TEN-E Reg. (the pre-application procedure and the statutory permit granting procedure) is particularly problematic. The main aim of the manuals of procedures should be to specify how the TEN-E Reg. requirements will be implemented in the Member State. Additionally, the lack of an appropriate dissemination of the manuals of procedures significantly limits their value. If they are to be – as intended – a tool for ensuring the transparency of PCI permitting, they should be made available in a more coordinated way. Accordingly, manuals of procedures would benefit from being published in each of the official languages of the Member State, with a publication in English also recommended. Finally, many one-stop-shops and project promoters are looking to other Member States for specific examples of best practice, and these could also be included in the manuals of procedures.

ABBREVIATIONS USED

ACER	Agency for the Cooperation of Energy Regulators
EIA	Environmental Impact Assessment
ENTSOs	European Network of Transmission System Operators
NGO	Non-Governmental Organisation
PCI	Project of Common Interest
SEA	Strategic Environmental Assessment
TEN-E	Trans-European Networks for Energy
TEN-E Reg.	Regulation (EU) No 347/2013

1 INTRODUCTION

1.1 BACKGROUND

Given the pressing issue of climate change, the need to strengthen security of supply, and the need for increased competition in energy markets, EU energy policy has undergone rapid developments in recent years. These include a thorough review of both the concept and rationale of the framework for the Trans-European Networks for Energy (TEN-E) in response to greater recognition of the critical need to further develop strategic energy infrastructure networks across the EU. The interconnection, interoperability and development of the TEN-E networks for transporting electricity, gas, oil and carbon dioxide are considered essential for the proper functioning of the EU energy market. The European Commission has identified 'adequate, integrated and reliable energy networks' as crucial for achieving the main goals of EU energy policy.[3]

EU support for these networks has been governed through successive TEN-E guidelines. The 2006 TEN-E Guidelines[4] introduced the concept of a 'project of European interest'. These were priority projects of a cross-border nature, which have a significant impact on cross-border transmission capacity. The European Commission warned, however, that half of the total investment necessary was at risk of not being delivered due to obstacles related to lengthy and ineffective permit granting procedures and public acceptability, as well as difficulties with existing regulatory systems and/or financial frameworks.[5] The Commission also found that '*existing rules and procedures for projects of European interest (serving security of supply, solidarity or renewable integration purposes) will need to be improved and streamlined significantly, while respecting the principles of public acceptance and existing environmental legislation*.'[6]

Industry and regulators have identified long and uncertain permit granting procedures as one of the main reasons for delays in the delivery of energy infrastructure in Europe.[7] Complex administrative procedures and lack of transparency were believed to be the main causes of such delays. These may be compounded by stakeholder and public opposition, as well as legal challenges.

Arising from these challenges, Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (TEN-E Reg.) was adopted in April 2013. The TEN-E Reg. places considerable emphasis on streamlining and simplifying procedures for facilitating the permitting and implementation of energy infrastructure projects of common interest (PCIs) across the Member States. Under the TEN-E Reg., PCIs benefit from faster permit granting procedures, preferential regulatory treatment and – under certain conditions – the possibility of obtaining funding from the Connecting Europe Facility.

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[3] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Energy infrastructure priorities for 2020 and beyond – A Blueprint for an integrated European energy network (COM(2010) 677 final).

[4] Decision No 1364/2006/EC of the European Parliament and of the Council of 6 September 2006 laying down guidelines for trans-European energy networks and repealing Decision No 96/391/EC and Decision No 1229/2003/EC, OJ L 262/1.

[5] Commission Staff Working Paper, Energy infrastructure investment needs and financing requirements (SEC(2011) 755 final) was prepared by the Commission at the request of the European Council of 4 February 2011 on energy infrastructure investment needs and financing requirements.

[6] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Energy 2020 – A strategy for competitive, sustainable and secure energy" (SEC(2010)1346)), p.10.

[7] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Energy infrastructure priorities for 2020 and beyond — A Blueprint for an integrated European energy network (COM(2010) 677), and accompanying Impact Assessment (SEC(2010) 1396 final), p. 12–13.

In response to many of the obstacles presented above, Chapter III of the TEN-E Reg., 'Permit granting and public participation', introduces a series of requirements for Member States in permit granting procedures for projects that are selected for the Union list of PCIs. In particular, Member States must designate one national competent authority (one-stop-shop) responsible for facilitating and coordinating the permit granting process for PCIs and the resulting comprehensive decision. The latter shall be issued according to one of three schemes: the integrated, coordinated or collaborative scheme, with a three-and-a-half years' timeframe.

The TEN-E Reg. also requires Member States to publish a manual of procedures for the permit granting process applicable to PCIs (manual of procedures) on their territory (Article 9(1)). If complete, the manual should enable verification of compliance of the permit granting process applicable to PCIs with the TEN-E Reg. requirements. In addition, it should serve as practical guidance for PCI project promoters and other stakeholders involved, as well as the general public and non-governmental organisations (NGOs), bringing greater transparency into the process.

1.2 OBJECTIVES OF THE STUDY

The main purpose of this study is to examine the permit granting process for PCIs in the Member States and to assess their compliance with the specific schemes and requirements laid out in the TEN-E Reg. The study also analyses the Member States' manuals of procedures to enable the Commission to verify their compliance with the TEN-E Reg. The analysis of both the permit granting process and the manuals of procedures yielded insights into the challenges that Member States face in adjusting their PCI permitting practices in line with the TEN-E Reg. requirements, in the process of preparing the manuals, and also some of the good practices they have put in place to overcome these challenges. This enabled the development of an informative and insightful comparative overview to support the implementation of the PCI permit granting process.

2 METHODOLOGY

2.1 COMPLETION OF THE COUNTRY-SPECIFIC REPORTS

Although the study was intended to cover all 28 Member States and Norway, **Austria and Norway were taken out of the scope of the study as those countries did not publish their manuals within the timeframe of this study**. Therefore, 27 EU Member States were analysed. The completion of the country-specific reports was done in two steps.

1. Firstly, the legal experts carried out a legal desk research to analyse the content of the manuals of procedures published by the Member States, and to establish whether or not these correspond to national practice on implementing the TEN-E Reg. and whether the practice is in line with the chosen permit granting scheme under the TEN-E Reg. While the manuals differ somewhat between countries, the regulatory requirements and the content of the analysis was applied consistently across the Member States. To ensure that each of the legal experts for the 27 Member States had a consistent understanding of the objectives and purpose of the reports, as well as the specific requirements, a uniform template for the country-specific reports was developed. Guidance and ongoing support was also provided, to further aid in consistency of interpretation.

2. Following completion of the legal desk research, the national experts interviewed the one-stop-shop, other concerned authorities and selected project promoters. The purpose of these interviews was to validate the findings of the desk research and/or to provide additional information. National experts carried out approximately five interviews per Member State:

    - One interview with the national competent authority (i.e. one-stop-shop);
    - Two interviews with other concerned authorities (e.g. sectoral permitting authorities);
    - Two interviews with project promoters.

Prior to the interview, experts had sent a request including information about the project. To secure a high response rate, a letter of introduction from DG Energy was also prepared to support this request. On the basis of both the analysis and the outcome of the interviews with the relevant stakeholders, the national experts completed the country-specific reports. The respective one-stop-shops were then consulted on the draft versions of the country-specific reports before a final version was delivered to DG Energy.

2.2 DRAFTING OF THE OVERVIEW REPORT

The overview report presents a comparative assessment of the permit granting process for energy infrastructure PCIs following the entry into force of the TEN-E Reg. and of the manuals of procedures produced by the Member States. The purpose of the overview report is to provide an overview of trends in how permitting works across Member States, to analyse the potential problems, challenges and prospects for meeting the specific objectives of the TEN-E Reg., and to draw conclusions and useful recommendations for a wide target audience.

The information provided in the country-specific reports form the basis of the comparative overview report. More in-depth information on each Member State can be found in the detailed analysis set out in the country-specific reports annexed to this report.

3 PCIs INCLUDED IN THIS STUDY

3.1 PRACTICAL EXPERIENCE WITH PCIs

The TEN-E Reg. is directly applicable in Member States' national legal orders since 1 June 2013[8]. The information on which this study is based was gathered between February and April 2015, less than two years after the entry into force of the TEN-E Reg. As a result, limited information is available on how the requirements from Chapter III of the TEN-E Reg. (on permit granting and public participation) have been implemented in practice, particularly where a project has not yet been implemented or is at the early stages of implementation, i.e. at the beginning of the pre-application procedure as defined in Article 10 of the TEN-E Reg. In most of the Member States there is thus limited or no experience with the application in practice of the provisions of Chapter III of the TEN-E Reg., a fact confirmed in many of the interviews conducted for the study.

3.2 LEGAL EXPERIENCE WITH PCIs

In addition to practical experience, this study also took into account the existing legal framework and recent legislative developments as indicators that the necessary conditions to comply with the requirements of the TEN-E Reg. are in place. Although the TEN-E Reg. is directly applicable, the adoption of facilitating legislation can be a good indicator of present or future compliance. The lack of specific legislation should not, however, be taken to mean that the TEN-E Reg. will not be applied properly, except where the pre-existing national legislation includes provisions which are incompatible with the TEN-E Reg. To date, three Member States (Belgium, France and Latvia) have adopted specific legislation which facilitates the application of the provisions of Chapter III of the TEN-E Reg. The adoption of facilitating legislation excludes those cases where the new legislation merely appoints the one-stop-shop or states which scheme has been adopted.

Member States had until April 2014 to communicate their non-legislative measures to the Commission (Article 7(6) of the TEN-E Reg.), and until August 2015 to communicate the legislative measures (Article 7(7) of the TEN-E Reg.), adopted to streamline environmental assessment procedures.

3.3 ARTICLE 19 OF THE TEN-E REG.

In accordance with its Article 19 of the TEN-E Reg., the provisions of its Chapter III do not apply to PCIs for which a project promoter has submitted an application file before 16 November 2013. Therefore, there are several PCIs that do not fall under the scope of Chapter III of the TEN-E Reg. and were not, therefore, taken into account in the study.

3.4 UNCERTAINTY AS TO THE IMPLEMENTATION STATUS OF PCIs

The implementation status of a given PCI is not always straightforward. In the first place, the TEN-E Reg. does not define an 'application file' – even though this is essential to correctly interpret Article 19 of the TEN-E Reg. Where different permits and permitting authorities are involved in the permit granting process, the question has been asked whether 'the' application file is the file applying for the first permit or the file applying for the very last permit.

Secondly, the start of the permit granting process at national level often does not entirely correspond to the official start described in the TEN-E Reg., in that it does not require a formal notification by the project promoter to the one-stop-shop. As a consequence of not having a formal notification, it has been difficult to assess when the provisions of Chapter III of the TEN-E Reg. with regard to the pre-

[8] See Article 24. Articles 14 and 15 on financial assistance, however, apply 'as from the date of application of the relevant Regulation on a Connecting Europe Facility'.

application procedure should start to apply. In addition, the one-stop-shops and project promoters have expressed concern about the lack of a formal notification and the inherent interpretation issues. Depending on the source consulted, the same PCI can be considered as already being in the pre-application procedure or not yet implemented.

Thirdly, the Agency for the Cooperation of Energy Regulators (ACER) published the 'Consolidated Report on the Progress of Electricity and Gas Projects of Common Interest'[9] on 30 June 2015. This report provides a very useful overview of PCI-specific information, indicating their implementation status, the expected year of commissioning, whether there have been any delays and, for electricity PCIs, whether the permit granting file submission (i.e. the application file) took place before or after 16 November 2013. Where possible, the information included in the ACER report has been taken into account in the final versions of the country-specific reports, however, the ACER report does not clearly state if a PCI is currently in the pre-application procedure, in the statutory permit granting procedure or not yet in either of these two procedures. The ACER report uses a different classification such as 'under consideration', 'in planning and permitting' or 'under construction'. As a result, it is not clear, for example, whether a project classified as 'in the planning stage' is not yet implemented, in the pre-application procedure, or already in the statutory permit granting procedure. In addition, where the classification laid down in the ACER report did not correspond with the information gathered by the national experts based on the interviews conducted with the one-stop-shops and project promoters, a footnote has been inserted in the respective country-specific reports.

- For example, PCI 1.7.2 France - United Kingdom interconnection between Tourbe (FR) and Chilling (UK) (known as the IFA2 project) is, according to the project promoters, at the feasibility study stage and the one-stop-shop confirmed that the project has not yet been notified to the competent authority. According to the ACER report, however, this PCI is already at the permitting stage.[10]

3.5 APPROACHES TAKEN IN THIS OVERVIEW REPORT

In view of the diverse stages of implementation of the TEN-E Reg. in Member States (countries with practical experience, countries with no practical experience, countries with no practical experience but with relevant legislation, etc.), three different approaches have been adopted for the comparative overview, depending on the requirements analysed.

- Where possible, this overview report provides both an overview of the approaches adopted and makes an assessment of compliance for all Member States, even for those with limited or no experience as yet in implementing the TEN-E Reg. and without legislation (adopted prior to or after the entry into force of the TEN-E Reg.), prescribing similar requirements. This includes only Articles 7(3), 8(1) and 9(1):

  - The possibility of granting a 'priority status' to PCIs pursuant to Article 7(3) would usually be laid down in national legislation or would have to take place so early in the procedure that projects on the Union list, even if not yet implemented, should have already been granted such a status;
  - Pursuant to Article 8(1), the appointment of the national competent authority for facilitating and coordinating the permit granting process for PCIs (the one-stop-shop) had to be made by 16 November 2013;
  - Article 9(1) required Member States to publish the manual of procedures by 16 May 2014, which had to include at least the information specified in Annex VI.1.

[9] http://www.acer.europa.eu/Official_documents/Publications/Pages/Publication.aspx
[10] See footnote 5 in the UK country-specific PCI report.

- For other requirements, the report provides an overview of the approaches adopted by different Member States, highlighting some interesting examples, but limiting the assessment of compliance to those Member States where there is practical experience with the application of the TEN-E Reg. (i.e. Croatia, the Czech Republic, Denmark, France, Germany, Greece, Ireland, Lithuania, the Netherlands, Poland, Romania, Slovenia, Sweden and the UK). Belgium does not have any practical experience but has adopted legislation facilitating the application of the TEN-E Reg. and, in this case, their legislative compliance with the TEN-E Reg. is discussed.

    - This includes the provisions on the permit granting process, namely Article 8(3) (permit granting scheme), Article 10(1)(a) and 10(4) (pre-application procedure), and Article 10(1)(b) (statutory permit granting procedure).

- Finally, for the remaining requirements assessed, the analysis is limited to comparing the current situation across Member States without making an assessment of compliance – at most, an indication of potential future problems is given. This includes the provisions setting requirements related to time limits and public participation. In view of the early stages of implementation, very limited (in case of the public participation) or no (in case of the overall time limit) projects are sufficiently advanced in the permit granting process to allow making an accurate assessment of compliance. Nonetheless, for certain Member States it is already possible to indicate potential problems in the near future. The report provides some interesting examples of such cases.

4 COMPARATIVE OVERVIEW – TRENDS IN IMPLEMENTING THE TEN-E REG. AND ASSESSMENT OF COMPLIANCE

4.1 APPOINTMENT OF THE ONE-STOP-SHOP

Pursuant to Article 8(1) of the TEN-E Reg., Member States had to designate one national competent authority responsible for facilitating and coordinating the permit granting process for PCIs (the so-called one-stop-shop) by 16 November 2013. The establishment of a single competent authority responsible for facilitating and coordinating the permit granting process for PCIs is one of the new features introduced by the TEN-E Reg.

All Member States have meanwhile established the one-stop-stop. The table below shows, for each Member State, the designated one-stop-shop and the means of establishing this appointment.

Table 1 – One-stop-shop and means of designation

Member State	One-stop-shop and means of designation	Webpage
BE	Permit Coordinating and Facilitating Committee, designated by Cooperation Agreement of 27 February 2014 (consented to and published on 17 May 2015)	http://economie.fgov.be/nl/modules/regulation/divers/20140227_accord_de_cooperation_comite_de_coordination_facilitation_autorisations_projets_infrastructures_energetiques_transeuropeens.jsp
BG	Ministry of Energy, designated by Decision of the Council of Ministers No 157 of 21 March 2014	http://pris.government.bg/prin/document_view.aspx?DocumentID=%2bk51idqwSMQv0PYYKEavCg==
CY	Ministry of Energy, Commerce, Industry and Tourism, designated by Decision of the Council of Ministers 75.948 of 23 October 2013	http://www.cm.gov.cy/cm/cm_2013/cm.nsf/82039F93B6ABD2E9C2257C4E00214B0A/$file/75.948.pdf
CZ	Ministry of Industry and Trade, designated by Resolution of the Government No 733 of 10 September 2014	https://apps.odok.cz/attachment/-/down/VPRA9NZBWSZ4
DE	Federal Network Agency, announced on 22 May 2014 by the Federal Ministry of Economic Affairs and Energy	http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl114s0576a.pdf
DK	Danish Energy Agency, designated by letter to the Danish Energy Agency from the Minister for Climate, Energy and Buildings and confirmed in the Manual – no specific legislation	Website of the Danish Energy Agency: http://www.ens.dk/en/supply/pci-projects-common-interest
EE	PCI Working Group, established by Decree of the Minister of Economic Affairs and Communications of 26 February 2014 and designated by Order of the Government of the Republic of 25 November 2014	Website of the Ministry of Economic Affairs and Communications: https://www.mkm.ee/et/tegevused-eesmargid/euroopa-liit-ja-rahvusvaheline-koostoo/europa-liit
EL	General Directorate of Strategic Investments of the General Secretariat of Strategic and Private Investments of the Ministry of Development and Competitiveness, designated by Law 4271/2014, 28.06.2014 (competences determined by Presidential Decree 157/2013, 07.11.2013)	http://www.taxheaven.gr/laws/law/index/law/607
ES	Director General for Energy and Mining Policy, according to the Manual – no specific legislation	http://www.boe.es/buscar/act.php?id=BOE-A-2012-2080 (art.3)
FI	Energy Authority, designated by the Law on permitting procedure for energy projects of common European Union interests (Law 684/2014 of 22 August 2014)	http://www.finlex.fi/fi/laki/alkup/2014/20140684
FR	Minister of Ecology, Sustainable Development and Energy, designated by Decree 2012-772 of 24 May 2012	http://www.legifrance.gouv.fr/eli/decret/2012/5/24/DEVX1223373D/jo
HR	Ministry of Economy, designated by Governmental Decision of 20 November 2014, although in practice there is potential confusion with the Centre for Monitoring Business Activities in the Energy Sector and Investments (CEI)	http://www.propisi.hr/print.php?id=13330
HU	Hungarian Energy and Public Utility Regulatory Authority, designated by Government Decree No 111/2014 (IV.1) on the acceleration and coordination of	http://njt.hu/cgi_bin/njt_doc.cgi?docid=168461.262097

Member State	One-stop-shop and means of designation	Webpage
	PCIs related to the trans-European energy infrastructure	
IE	An Bord Pleanála, appointed by the Department of Communications, Energy and Natural Resources (in consultation with the Department of Environment, Community and Local Government) on 3 December 2013 – no specific legislation	Website of An Bord Pleanála: http://www.pleanala.ie/
IT	Ministry for Economic Development, designated by Decree of the President of the Council of Ministers of 5 December 2013, No 158	http://unmig.sviluppoeconomico.gov.it/unmig/norme/dpcm051213.htm
LT	Ministry of Energy, designated by Resolution No 101 of the Government of the Republic of Lithuania of 5 February 2014	https://www.e-tar.lt/portal/legalAct.html?documentId=8fafa67092eb11e380b38b32042e57ec
LV	Ministry of Economy, according to the manual of procedures. Not yet designated by law, but Draft law amending Energy Law is currently undergoing the parliamentary approval process	http://likumi.lv/doc.php?id=265292 (meeting minutes No. 18, 34.§, of the Cabinet of Ministers of 25 March 2014, determining the Ministry of Economy as competent authority)
LU	Facilitation Unit For Urban Planning And Environment, designated by Grand-Ducal Regulation of 25 April 2013 determining the attributions and organisation of a Facilitation unit relating to authorisations in the areas of urban planning and the environment	http://www.fonction-publique.public.lu/fr/structure-organisationnelle/cellule-facilitation-urbanisme-environnement/Arrete_CFUE.pdf
MT	Malta Environment and Planning Authority, designated by an Order of the Prime Minister: Legal Notice 362 of 2014 'Environment and Development Planning Act (Amendment No. 2) Order 2014', amending Cap. 504	https://www.mepa.org.mt/LpDocumentDetails?syskey=1673
NL	Minister of Economic Affairs, designated by the Law of 25 September 2008 amending the Electricity Act 1998, the Mining Act and the Gas Act in relation to the application of the national coordination procedure on energy infrastructure	https://zoek.officielebekendmakingen.nl/stb-2008-416.html?zoekcriteria=%3fzkt%3dUitgebreid%26pst%3dStaatsblad%26vrt%3drijkscoordinatieregeling%26zkd%3dAlleenInDeTitel%26dpr%3dAlle%26spd%3d20150306%26epd%3d20150306%26sdt%3dDatumUitgifte%26planId%3d%26pnr%3d1%26rpp%3d10&resultIndex=2&sorttype=1&sortorder=4
PL	Minister of Economy, designated by Ordinance of the President of the Council of Ministers of 16 February 2015 regarding the Working Group for the support during the process of issuing permits and decisions for projects in the field of energy infrastructure which are the subject of PCIs	http://isap.sejm.gov.pl/DetailsServlet?id=WMP20150000190
PT	Directorate-General for Energy and Geology (DGEG), designated by Decree-Law 130/2014 of 29 August	http://dre.tretas.org/dre/319011/
RO	Ministry of Energy, SMEs and Business Environment, designated by GD No.42 of 21 January 2015. However, only the former Department for Energy has been notified to the European Commission as one-stop-shop. The current one-stop-shop is not yet operational.	http://lege5.ro/en/Gratuit/guzdomjwga/hotararea-nr-42-2015-privind-organizarea-si-functionarea-ministerului-energiei-intreprinderilor-mici-si-mijlocii-si-mediului-de-afaceri
SI	Ministry of Infrastructure and Spatial Planning (now divided into two	http://www.uradni-list.si/1/content?id=116144

Member State	One-stop-shop and means of designation	Webpage
	ministries), designated by Decree implementing Regulation (EU) No 347/2013, effective from 25 January 2014.	
SK	Ministry of Economy, designated by Ministerial Decision of 22 October 2013 (the legal basis of the Decision was enacted through amendment to Act 251/2012 Coll. in force since 1 January 2015)	http://www.zakonypreludi.sk/zz/2012-251
SE	The Government designated by Ordinance (2013:752) on the granting of permits in relation to Trans-European energy infrastructures, adopted on 3 October 2013. However, the responsibility has been delegated to the Energy Markets Inspectorate for electricity and gas projects.	https://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-2013752-om-tills_sfs-2013-752/?bet=2013:752
UK	Secretary of State for Energy and Climate Change, designated by Ministerial Statement of 18 November 2013	https://www.gov.uk/government/speeches/designation-of-decc-secretary-of-state-as-competent-authority-for-ten-e

The table shows that few Member States have decided to establish a completely new competent authority for the purposes of Article 8(1) of the TEN-E Reg. These include Belgium and Estonia, which have appointed, respectively, the Permit Coordinating and Facilitating Committee and the PCI Working Group. Most Member States have granted the existing permit granting authority for energy infrastructure projects specific powers for the facilitation and coordination of the permitting of PCIs. Most Member States have then appointed a specific unit within the competent ministry or agency.

Compliance with Article 8(1) of the TEN-E Reg.

Member States were to designate the one-stop-shop by 16 November 2013. While all Member States have appointed their one-stop-shop, the designation occurred, in most cases, after the deadline laid down in the TEN-E Reg., as shown in the table below.

Table 2 – Compliance with Article 8(1) of the TEN-E Reg.

Member State	Compliant	Non-compliant	
		One-stop-shop established after deadline	One-stop-shop not yet fully established
BE		√	
BG		√	
CY	√		
CZ		√	
DE		√	
DK		√	
EE		√	
EL		√	
ES	√		
FI		√	
FR	√		
HR		√	
HU		√	
IE		√	
IT		√	
LT		√	
LV		√	
LU	√		
MT		√	
NL	√		
PL		√	
PT		√	
RO			√
SI		√	√
SK	√		
SE	√		
UK		√	
TOTAL	7	19	2

The large majority of Member States (21) did not meet this deadline. Only Belgium and Romania, however, had significant delays. In Belgium, the Cooperation Agreement establishes the one-stop-shop *Vergunningscoördinerend en -faciliterend comité/Comité de concertation et de facilitation* (VCFC/CCFA). Although it is dated 27 February 2014, the Agreement between the Belgian Federal State, the Flemish Region, the Walloon Region and the Brussels Capital Region only entered into force on 17 May 2015. Given the delays in establishing an operational one-stop-shop, it was not

possible to implement the TEN-E Reg. requirements and the permitting process for all PCIs was consequently put on hold.

In Romania the initial one-stop-shop, as notified to the Commission, ceased to exist in December 2014 after a restructuring process of the central administration. A new one-stop-shop, the Ministry of Energy, SMEs and Business Environment, was consequently appointed in January 2015. However, the department within that Ministry responsible for PCIs is not yet operational.

Slovenia appointed two effective one-stop-shops. The original one-stop-shop, the Ministry responsible for spatial planning, construction and energy, was reorganised into two different ministries. As a consequence, the Ministry of Infrastructure is the one-stop-shop for the facilitation of energy PCIs, while the Ministry of the Environment and Spatial Planning is the one-stop-shop for the coordination of the permit granting process. This new structure has not yet been formally communicated to the Commission. It is considered an instance of non-compliance with Article 8(1) TEN-E Reg., which requires the Member States to designate one authority.

Furthermore, Article 8(2) specifies that '*the responsibility of the competent authority referred to in paragraph 1 and/or the tasks related to it may be delegated to, or carried out by, another authority, per project of common interest or per particular category of projects of common interest,'* under certain conditions. In particular, the Commission should be notified and the information published in the website set up for the relevant PCI pursuant to Article 9(7) of the TEN-E Reg. This does not appear to be the case for the situation in Slovenia.

Main problems identified

The most common problems identified with regard to the appointment of the one-stop-shop are:

- Even though all Member States have appointed a one-stop-shop (albeit, most of the times, after the established deadline), the original appointment may meanwhile have changed due to a restructuring process in the central administration.
- It is not always clear whether the subsequent 'name change' of the one-stop-shop should be communicated to the Commission.

4.2 PERMIT GRANTING SCHEME

Article 8(3) of the TEN-E Reg. requires Member States to organise their permit granting process in accordance with one of the three schemes: integrated, coordinated or collaborative. The schemes described in Article 8(3) of the TEN-E Reg. are, like the one-stop-shop, intended to facilitate and accelerate the permit granting process, albeit at different levels:

- The integrated scheme: a comprehensive, binding decision is issued by the one-stop-shop and other concerned authorities give their opinion as input to the procedure;
- The coordinated scheme: the comprehensive decision comprises multiple individual legally binding decisions issued by several authorities concerned, coordinated by the one-stop-shop. The one-stop-shop 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;
- In the collaborative scheme, the comprehensive decision is coordinated by the one-stop-shop based on individual, legally binding decisions by other concerned authorities. Where Member States opt to choose the collaborative scheme, they should inform the Commission of the reasons for that choice.

The table below shows, for each Member State, the scheme chosen and the form in which this choice was made public.

Table 3 – Scheme adopted and form in which the choice was made public

Member State	Scheme adopted			Form in which the choice was made public
	Integrated	Coordinated	Collaborative	
BE			√	Cooperation Agreement 27 February 2014
BG		√		Not laid down in law or in the manual of procedures but confirmed in interviews
CY			√	Decision of the Council of Ministers No 75.948 of 23 October 2013
CZ			√	Manual of procedures
DE			√	Manual of procedures
DK	√	√	√	Not laid down in law or in the manual of procedures but confirmed in interviews
EE			√	Order of the Government of Republic of 25 November 2014
EL		√	√	Manual of procedures
ES		√		Not laid down in law or in the manual of procedures but confirmed in interviews
FI			√	Law on permitting procedure for energy projects of common European Union interests (Law 684/2014)
FR		√		Not laid down in law or in the manual of procedures but confirmed in interviews
HR			√	Commission Pilot procedure on Croatia No. 6273/14 ENER
HU			√	Manual of procedures
IE			√	Manual of procedures
IT		√		Manual of procedures
LT			√	Resolution No. 101 of 5 February 2014
LU			√	Not laid down in law or in the manual of procedures but confirmed in interviews
LV			√	Protocol Decision of the Cabinet of Ministers
MT		√		Manual of procedures
NL		√		Not laid down in law or in the manual of procedures but confirmed in interviews
PL		√		Ordinance of the President of the Council of Ministers of 16 February 2015 regarding the Working Group for the support during the process of issuing permits and decisions for projects in the field of energy infrastructure which are the subject of PCIs
PT		√		Not laid down in law or in the manual of procedures but confirmed in interviews
RO	√			Manual of procedures
SI		√		Not laid down in law or in the manual of procedures but confirmed in interviews
SK			√	Manual of procedures
SE			√	Ordinance (2013:752) on the granting of permits in relation to Trans- European energy infrastructures, adopted on 3 October 2013
UK			√	Ministerial Statement of 18 November 2013
TOTAL	1 (+1)[11]	9 (+2)[12]	15 (+2)[13]	

[11] DK has chosen more than one scheme and is therefore placed here between brackets.

Given the choice of schemes, each with different levels of organisational arrangements, most Member States (15) opted for the collaborative scheme (the least cohesive) with only one Member State, Romania, choosing the integrated scheme. Nine Member States favour a coordinated scheme, and two (Denmark and Greece) have chosen more than one scheme.

The one-stop-shops interviewed for this study stated that the collaborative scheme was chosen as closest to the existing permit granting process and requiring fewer or no amendments to the existing legislative and/or administrative procedure. In many cases this choice has not been stated explicitly either in legislation or in the manual.

Compliance with Article 8(3) of the TEN-E Reg.

The following overview table shows - for the 15 Member States with practical experience in applying the TEN-E Reg., the correspondence between the permit granting process and the scheme they have chosen.

Table 4 – Compliance with Article 8(3) of the TEN-E Reg.

Member State	Compliant	Non-compliant
BE	√	
CZ		√
DE		√
DK		√
EL		√
FR	√	
HR		√
IE	√	
LT		√
NL	√	
PL		√
RO		√
SI		√
SE		√
UK	√	
TOTAL	5	10

Of the 15 Member States with experience of implementing Chapter III of the TEN-E Reg., 10 have not properly applied the scheme chosen according to Article 8(3) and are therefore non-compliant. Analysis reveals two reasons for non-compliance:

- In two Member States (Denmark and Greece), more than one scheme appears to be used, without relating to Article 8(4) of the TEN-E Reg., which allows the application of different schemes to onshore and offshore PCIs. Denmark chose to apply all three permit granting schemes, as the country maintains its pre-existing permit granting schemes and applies them to PCI applications as well, thus ending up with schemes within all three categories. Greece has selected to apply two schemes, the coordinated scheme as well as the collaborative scheme, on a case-by-case basis.
- In the remaining Member States, non-compliance is caused by the lack of powers given to the competent authority, in particular where the one-stop-shop has not been (legally) attributed some of the tasks described in the TEN-E Reg. Issues arise with respect to enforcement of the

[12] DK and EL have chosen more than one scheme and are therefore counted between brackets.
[13] Idem.

time limits or to the taking of decisions on behalf of other authorities. The one-stop-shop has no influence on the time limits within which the individual decisions shall be issued in the cases of Croatia, Lithuania, Poland, Romania, Sweden and Slovenia. In the Czech Republic, no collaboration, coordination, consultation or setting of time limits or their monitoring has yet been undertaken by the one-stop-shop.

Germany is a particular case as the manual of procedures lists the collaborative scheme as the chosen scheme but, in practice, for projects for which the Federal Network Agency issues the comprehensive decision, the integrated scheme applies, as this comprehensive decision is the sole legally binding decision resulting from the statutory permit granting procedure.

Main problems identified

The most common problems identified with regard to the permit granting scheme are:

- The choice for the integrated, coordinated or collaborative scheme is often not explicitly made.
- Non-compliance with Article 8(3) of the TEN-E Reg. is caused mainly by the lack of powers given to the one-stop-shop.

Finally, it is noted that none of the Member States have made use of the option provided in Article 8(4) of the TEN-E Reg., i.e. to apply different schemes to onshore and offshore PCIs.

4.3 EXISTENCE OF A PRIORITY STATUS

Article 7(3) of the TEN-E Reg. requires Member States to allocate the status of the highest national significance possible to PCIs, where such status exists in national law. Such status should ensure that the permitting (including spatial planning and EIA) of PCIs is given the most rapid treatment legally possible[14], '*in the manner such treatment is provided for in national law applicable to the corresponding type of energy infrastructure*' (Article 7(3) TEN-E Reg.).

The table below shows the Member States in which a status of the highest national significance or a similar status exists. Statuses which do not have consequences on the permit granting process (where this process is neither facilitated, simplified or accelerated in relation to the other projects), were not considered. For this reason, although Malta allows for a status of 'national interest' or the 'higher national status', this relates to procedures in court rather than to permitting and is not, therefore, included in the table.

Table 5 – Status of the highest national significance

Member State	Status in place	No status in place
BE		√
BG	√	
CY		√
CZ		√
DE	√[15]	
DK		√
EE		√
EL	√	
ES		√

[14] Preamble 28 to the TEN-E Reg.

[15] Such a status exists but only for projects which fall under the Power Grid Expansion Act and the Grid Expansion Acceleration Act, which account for most of the cases. Please see the German country-specific report for more details.

Member State	Status in place	No status in place
FI	√	
FR		√
HR	√	
HU	√	
IE	√	
IT	√	
LT	√	
LV	√	
LU		√
MT		√
NL	√	
PL	√	
PT	√	
RO	√	
SI	√	
SK	√	
SE		√
UK		√
TOTAL	16	11

As the table shows, the status of the highest national significance possible exists in the national law of 16 Member States. For three countries, however, the situation is less clear.

- In Belgium, the current building permit procedure for 'projects of general interest' in Flanders is slightly faster than for other projects, with this status automatically granted to all PCIs. As this status of 'project of general interest' only exists in Flanders, and only for the building permit, it has been assumed that the general status of 'project of the highest national significance' does not exist in Belgium as a whole;
- In the United Kingdom, the status of Nationally Significant Infrastructure Projects – equivalent to the status of the highest national significance possible – only applies in England and Wales, and, therefore, it has been assumed that Article 7(3) of the TEN-E Reg. does not apply;
- In Germany, for projects falling under the Grid Expansion Acceleration Act (NABEG)[16], the status of the highest national significance possible automatically applies to PCIs. This means that the necessity and the priority needs of these projects are recognised, leading to faster approval, while for other projects the necessity must first be determined by the competent authorities. The same applies to PCIs falling under the Power Grid Expansion Act (EnLAG)[17]. For the other projects (electricity and gas) falling under the Energy Industry Act (EnWG)[18], as well as for oil PCIs, there is no special priority clause and therefore they are not treated as projects of the highest national significance possible.

Preamble 40 to the TEN-Reg. states that *'Member States that currently do not provide for a legal status of the highest national significance possible that is attributable to energy infrastructure projects in the context of permit granting processes should consider introducing such a status, in particular by evaluating if this would lead to a quicker permit granting process.'* To our knowledge, only one

[16] In brief, the NABEG applies to all projects named in the Federal Requirements Plan Act, which are *Länder* overlapping or cross-border transmission lines or connection lines from offshore wind parks to onshore grid connection points.
[17] The EnLAG identifies 23 (initially 24) projects to be realised with priority. Section 1(2) EnLAG determines the necessity and the priority needs of all 23 projects, leading to a faster approval procedure.
[18] The EnWG applies to the construction, operation and modification of high-voltage overhead lines with a nominal voltage of 110 kilovolts or more. For electricity PCIs, distinctions must be made between high-voltage transmission lines which need to be permitted according to the NABEG or according to the EnWG, and according to the EnLAG.

country (Luxembourg) is considering the introduction of a status of (overriding) public interest, while the remaining countries were either not familiar with Article 7(3) of the TEN-E Reg., or did not see any added value in introducing such a status.

The type of 'status of the highest national significance possible' differs from country to country. Three aspects can be differentiated: type of projects to which the status can be given, benefits which stem from the status, and method of allocating the status.

- Type of projects to which the priority status can be given

The practice of the Member States shows that the priority status can be given in any of a number of ways - to all energy infrastructure projects, to all PCIs, to only some PCIs, to all projects that comply with certain requirements (such as job creation, development of the national economy, investment above a certain threshold), etc. Three examples are given in the following:

- Portugal has a special regime for *Projetos de Interesse Nacional* (Projects of National Interest, PIN), set out in Decree-Law 154/2013 of 5 November. The classification of a project as PIN depends on the fulfilment of a series of requirements, including being presented by project promoters of recognised reputation, representing an investment above EUR 25m, creating a minimum of 50 jobs, and relating to the development of the national economy. This classification results in a simplified and faster permit granting procedure;
- In Poland, only gas PCIs benefit from a faster permit granting process: the status given to these projects through the Act of 24 April 2009 on investments relating to regasification terminal for liquefied natural gas does not apply to electricity and oil PCIs. The latter can still, however, be categorised as so-called 'projects' or 'investments of public interest' under the Act on Real Estate Management. As a consequence, certain administrative decisions regarding land use can be taken, such as the obligation for house owners to accept compensation for their land, where investments with a public aim are planned. However, this still does equate to 'the most rapid treatment legally possible';
- Slovenian PCIs are granted the status of the highest national significance possible and are treated as such in the permit granting process. This is not because any specific exemptions or particular requirements are in place for PCIs, but, rather, because the same legislation which is valid for other infrastructure projects of national significance under the 'Act regarding the siting of spatial arrangements of national significance in physical space' applies equally to PCIs.

- Benefits which stem from the priority status

The consequences of a priority status may range from a faster permit granting procedure to a simplified single authorisation procedure. For example:

- In Ireland, the status of 'strategic infrastructure' only relates to a faster spatial planning procedure, and not to the general permit granting process;
- In Italy, the authorisation process of energy infrastructure projects of national interest takes place within a single procedure aimed at the location, the EIA and the final authorisation to perform the works. The simplified procedure for the issuing of a single authorisation allows coordination of all authorities involved in the permit granting process.

- Method of allocating the priority status

The priority status can be allocated automatically, through a dedicated procedure, or on an ad hoc basis. Article 7(3) of the TEN-E Reg. does not expressly regulate how the priority status is allocated to PCIs. A few examples of such allocation are given in the following:

- The priority status to PCIs in Bulgaria is allocated through a national procedure to obtain a status of 'national project' (according to the State Property Law) or 'project of national importance' (according to the Energy Act), i.e. a Decision of the Council of Ministers is required to obtain the priority status;
- In Greece, all PCIs are automatically categorised as 'strategic investments', meaning that the Fast Track Law will apply and that the permit granting process will be accelerated and facilitated;
- In Finland, a special priority status exists under certain sectorial laws and even though the law does not grant PCIs such a status automatically, this occurs in practice;
- Hungarian national legislation ensures timely and effective planning and permitting of priority projects – based on the provisions of Act LIII of 2006 on the Simplification and Acceleration of the Execution of Investments with National Priority. Even though the classification as a 'priority project' is dependent on the case-by-case decision of the Hungarian Government, in practice all PCIs have been granted this status;
- In the Netherlands, the 2008 Law on the application of the national coordination procedure on energy infrastructure states that specific energy projects of a certain capacity will automatically fall under its scope. In addition, the law applies automatically to those projects aiming at the extension or construction of certain parts of the national grid, where the project concerned is included on the Union list of PCIs. PCIs therefore enjoy the benefits of a faster and more effective decision-making process.

Compliance with Article 7(3) of the TEN-E Reg.

As Article 7(3) of the TEN-E Reg. only requires granting the status of the highest national significance possible where this exists in the national law, all Member States which do not have such a status are automatically in compliance with the TEN-E Reg. For those countries where a status of the highest national significance possible exists, Article 7(3) of the TEN-E Reg. requires that this status is allocated to all PCIs of the corresponding type of energy infrastructure. The following overview table shows that this is not always the case:

Table 6 – Compliance with Article 7(3) of the TEN-E Reg.

Member State	Compliant	Non-compliant
BG	√	
DE	√	
EL	√	
FI	√	
HR		√
HU	√	
IE		√
IT	√	
LT		√
LV	√	
NL	√	
PL	√	
PT		√
RO		√
SI	√	

Member State	Compliant	Non-compliant
SK		√
TOTAL	10	6

Of the 16 Member States that have a priority status in place, six are not compliant with Article 7(3) of the TEN-E Reg. In many Member States, not all PCIs have been granted the priority status. In other countries, the status can only be attributed if the PCI meets certain criteria. Hungary is a special case whereby, even though the classification as a 'priority' project is dependent on the case-by-case decision of the Hungarian Government, in practice all PCIs have been granted this status, thus ensuring compliance with Article 7(3) of TEN-E Reg.

Some examples of non-compliance are given in the following:

- In Croatia, the legal system recognises the status of 'strategic investment projects', which are given the status of highest importance, and the authorities are bound to treat these projects with particular urgency. Project promoters need to initiate separate proceedings to attain the status of 'strategic investment project' for PCIs, as there is no automatic allocation. Because only one project (PCI 6.5.1) has been granted the status of 'strategic investment project' following such proceedings thus far, it cannot be guaranteed that all PCIs will eventually be allocated the priority status;
- In Lithuania, national legislation allows for two specific instances in which a project can be allocated the status of the highest national significance possible. The status of 'Project of national economic significance' (PNES) can be awarded to those projects which aim to fulfil the strategic, sectorial and/or regional policy objectives of the country, or in cases where the implementation of these objectives would have a significant influence on economic, social, or political life. The status of 'Project of special national significance' (PSNS) is attributed to projects that require private land to be taken for public needs, but can only be attributed to those projects related to energy infrastructure, transport or national security. Only two PCIs, Gas Interconnection Poland-Lithuania and Capacity Enhancement Klaipėda-Kiemėnai pipeline, were assigned the status of PNES;
- In Portugal, all energy infrastructure projects (including PCIs) need to fulfil a series of requirements before obtaining the status of highest national significance possible, including being presented by project promoters of recognised reputation, representing an investment above EUR 25m, creating a minimum of 50 jobs, and relating to the development of the national economy.

PCIs which have been given the status of the highest national significance possible should benefit from 'the most rapid treatment legally possible' (Article 7(2) TEN-E Reg.).

- This is not the case in Romania. Despite the fact that some PCIs (such as the electricity infrastructure PCIs) may qualify as 'projects of national interest', the highest national significance possible, they do not benefit from 'the most rapid treatment legally possible', as the Nabucco Law (Law No. 169/2013 regarding some measures required for the development of the Nabucco gas pipeline), which had the purpose of speeding up the permitting process of the works required for the implementation of the Nabucco pipeline project, applies only to this specific project and not to all PCIs in general.

<u>Main problems identified</u>

The most common problems identified with regard to the priority status are:

- The status of 'highest national significance possible' does not always exist across the whole territory of a country (e.g. Belgium, UK) and it is not clear whether Article 7(3) of the TEN-E Reg. is applicable in this case;

- In some Member States, the priority status is in practice allocated to all PCIs – sometimes contrary to applicable legislation – while, in other Member States, it cannot be guaranteed that all PCIs will be allocated the priority status as a given competent authority has the power to refuse such allocation.

4.4 WORKFLOW

Article 10 of the TEN-E Reg. describes the permit granting process of PCIs, which consists of two procedures – the pre-application procedure and the statutory permit granting procedure. While this provision does not elaborate on the statutory permit granting procedure, it describes, in some detail, the various steps of the pre-application procedure:

- project notification;
- acknowledgment of notification;
- definition of scope and detailed schedule for application;
- drawing up and submission of the public participation concept;
- approval of public participation concept;
- preparation of application, including environmental reports and minimum of one public consultation;
- draft application;
- request for additional information;
- revised application and acceptance of application.

The detail is necessary as the pre-application procedure is a new feature introduced by the TEN-E Reg., while all Member States already have rules in place for the statutory permit granting procedure. Therefore, in relation to the workflow, the study focused mainly on the pre-application procedure (even though the statutory permit granting procedure is still analysed under 'time frames').

Our study shows that Member States have organised their workflows differently. While the manuals of procedures of some Member States refer to Strategic Environmental Assessment (SEA) as one of the first steps of the procedure (e.g. Portugal), others do not mention it at all. Some Member States include spatial planning within the pre-application procedure, while others do not raise the issue. This may be because, for example, spatial plans are established taking into account the ten-year network development plan produced by the European Networks of Transmission System Operators (ENTSOs) and submitted to the Commission, meaning that spatial planning is already adapted to the possible needs of PCIs (e.g. Belgium). The EIA procedure is almost always mentioned, but, again, different approaches can be observed. While, typically, the EIA procedure is one of the first steps in the pre-application procedure, some Member States stipulate that it must be completed within this same procedure before the statutory permit granting procedure can start (as the EIA report needs to be submitted as part of the permit application file (e.g. Latvia or Sweden)), while, in other Member States, the EIA procedure continues in parallel with the permitting process (e.g. Spain). For still other Member States, the EIA procedure starts well in advance of the official start of the pre-application procedure.

<u>Compliance with the workflow requirements</u>

To assess Member States' compliance with the requirements set out by the TEN-E Reg. concerning the workflow, the following provisions were considered:

- Article 10(1)(a) and Article 10(4)(a), (b) and (c) – on the pre-application procedure:
    - Article 10(1)(a) states that the pre-application procedure covers the period between the start of the permit granting process and the acceptance of the submitted application file by the one-stop-shop. The start of the permit granting process takes

place through a notification by the project promoter to the one-stop-shop. The one-stop-shop shall acknowledge this notification within three months;
    - According to Article 10(4)(a), the one-stop-shop shall identify the scope of material and level of detail of information to be submitted by the project promoter, as part of the application file;
    - The one-stop-shop shall then, following Article 10(4)(b), draw up a detailed schedule for the permit granting process;
    - Upon receipt of the draft application file, the one-stop-shop shall, if necessary, make further requests regarding missing information to be submitted by the project promoter (Article 10(4)(c)). Within three months of the submission of the missing information, the one-stop-shop shall accept for examination the application.
- Article 10(1)(b) – on the statutory permit granting procedure:
    - Article 10(1)(b) states that the statutory permit granting procedure covers the period from the date of acceptance of the submitted application file by the one-stop-shop until the comprehensive decision is taken.

As explained above (see Section 3), only 15 Member States[19]- are already implementing the TEN-E Reg. in practice or have legislation in place for at least some of the relevant requirements, and these formed the assessment group. Issues relating to the time limits (for the overall procedure, as well as for the pre-application and statutory permit granting procedures individually) are dealt with in a separate section.

The table below shows the assessment of compliance with the workflow requirements of the TEN-E Reg., assessing Member States as compliant (C), non-compliant (NC) or partially compliant (PC).

[19] Belgium, Czech Republic, Germany, Denmark, France, Croatia, Greece, Ireland, Lithuania, the Netherlands, Poland, Romania, Sweden, Slovenia and the UK.

Table 7 – Compliance with the pre-application procedure and statutory permit granting procedure requirements

Member State	Pre-application				Statutory permit granting	Total per Member State
	Article 10(1)(a) on project notification to the one-stop-shop	Article 10(4)(a) on the material to be submitted	Article 10(4)(b) on the detailed schedule for application	Article 10(4)(c) on the draft application file and the request for additional information	Article 10(1)(b) on the acceptance of the application file	
BE	C	N/A[20]	N/A[21]	NC	C	**C=2 NC=1 N/A=2**
CZ	NC	NC	NC	NC	C	**C=1 NC=4**
DE	C	C	C	PC	C	**C=4 PC=1**
DK	C	NC	C	NC	C	**C=3 NC=2**
FR	C	C	C	C	C[22]	**C=5**
HR	NC	NC	NC	NC	NC	**NC=5**
EL	C	C	C	C	C	**C=5**
IE	C	C	C	C	C	**C=5**
LT	NC	NC	NC	NC	C	**C=1 NC=4**
NL	C[23]	C	C	C	C	**C=5**
PL	NC	NC	NC	NC	NC	**NC=5**
RO	NC	NC	NC	NC	NC	**NC=5**
SE	NC	NC	NC	NC	C	**C=1 NC=4**
SI	C	NC	C	NC	C	**C=3 NC=2**
UK	C	C	PC	C	C	**C=4 PC=1**

[20] Belgium is assessed here because it has applicable legislation for some of the requirements. However, when there is neither applicable legislation nor practical experience in implementing the TEN-E Reg., no assessment could be made.
[21] Idem.
[22] In the country-specific report this is assessed as NC since the time limit is not complied with. Given that the time limit requirement is addressed in a separate section of this report, the assessment has been changed to C.
[23] Idem.

Member State	Pre-application				Statutory permit granting	Total per Member State
	Article 10(1)(a) on project notification to the one-stop-shop	Article 10(4)(a) on the material to be submitted	Article 10(4)(b) on the detailed schedule for application	Article 10(4)(c) on the draft application file and the request for additional information	Article 10(1)(b) on the acceptance of the application file	
TOTAL	C =9 PC=0 NC=6	C=6 PC=0 NC=8	C=7 PC=1 NC=6	C=5 PC=1 NC=9	C=12 PC=0 NC=3	

Of the 15 Member States assessed, only four – France, Greece, Ireland and the Netherlands – were considered to be fully compliant with the workflow requirements laid down in Article 10 of the TEN-E Reg. Two Member States – Germany and the UK – were compliant with all the assessed requirements except one, and they were considered partially compliant.

The reasons for non-compliance are, in all cases, related to non-compliance with aspects of the pre-application procedure requirements, although in three cases – Croatia, Poland and Romania – problems have also been identified concerning compliance with the statutory permit granting procedure requirements.

- **Pre-application procedure**

Since, prior to the entry into force of the TEN-E Reg., the pre-application procedure was not organised in such detail, almost all Member States had to adapt their workflow significantly. Although the majority of Member States (which already have PCIs going through the permit granting process) have put in place a pre-application procedure, some Member States continue to apply their pre-existing rules – in particular, Croatia, Czech Republic, Lithuania, Poland, Romania and Sweden.

Article 10(4) describes the steps that the pre-application procedure should follow. As the table above shows, when Member States have a pre-application procedure in place – Belgium, Germany, Denmark, France, Greece, Ireland, the Netherlands, Slovenia and the UK–, this tends to be generally in line with the requirements of the TEN-E Reg., although with some smaller non-compliances observed. Only four Member States were considered to be fully compliant: France, Greece, Ireland and the Netherlands.

A few examples of problems with the implementation of the pre-application procedure are given in the following:

- In Slovenia, the pre-application procedure is not initiated with a notification by the project promoter to the one-stop-shop;
- Also in Slovenia, the application file is submitted to the Government and not to the one-stop-shop (Article 10(4)(c)).
- In Denmark, while a project notification is in place, this step is rarely as formal as described in the TEN-E Reg., as project promoters and the relevant authorities are usually in contact even before the project is initiated.
- Also in Denmark, the one-stop-shop does not formally lay down the scope of material and level of detail of information to be submitted by the project promoter[24] (Article 10(4)(a)).
- In Lithuania, it is not always guaranteed that the notification is made to the one-stop-shop for the purpose of Article 8(1) of the TEN-E Reg. and not to other authorities involved in the permitting.
- Belgian legislation appears to state that missing information, such as the decision on a permit procedure, may be requested in all cases and not only in those mentioned in Article 10(4)(a) of the TEN-E Reg.

- **Statutory permit granting procedure**

Article 10(1)(b) of the TEN-E Reg. requires Member States to have a statutory permit granting procedure in place, and, the majority of Member States with PCIs going through the permit granting process, satisfy this requirement. Most of the Member States are in compliance with the (few) rules on the statutory permit granting procedure set out in the TEN-E Reg. The existing framework in three Member States (Croatia, Poland and Romania) does not allow, for different reasons, the one-stop-shop to take the comprehensive decision. This led to an assessment of non-compliance.

[24] This can be explained by the close link between the one-stop-shop and the single project promoter currently operating in Denmark.

Main problems identified

The most common problems identified with regard to the workflow are:

- The pre-application procedure is not yet properly applied in most Member States and seems non-existent in others.
- A pre-application procedure fully in line with the TEN-E Reg., although described/copied in the manual of procedures, does not appear to be followed in practice.

4.5 TIME LIMITS

One of the main objectives of the TEN-E Reg. was to shorten the time required for the permitting of PCIs. Recital 25 of the TEN-E Reg. expressly states that '*projects of common interest should be implemented as quickly as possible'*. The TEN-E Reg. therefore includes various tools to accelerate the permitting process, such as the creation of the one-stop-shop and the imposition of a priority status to PCIs. To the same end, Article 10 of the TEN-E Reg. establishes a maximum period for the conclusion of PCI permitting of three years and six months. Individually, the two procedures should take no longer than two years (pre-application) and one year and six months (statutory permit granting). An extension of nine months maximum for both procedures combined is allowed.

Compliance with the time limits

The TEN-E Reg. entered into force on 1 June 2013. It is therefore too early to assess compliance with the overall time limit of three years and six months. Nor is it possible to assess compliance with the two-year time limit of the pre-application procedure for those PCIs where the application file was submitted before 16 November 2013, as these PCIs have not implemented the pre-application procedure as laid down in the TEN-E Reg. In addition, the problems identified above regarding the workflow have also had an influence on Member States' compliance with the time limits. As the national workflows only rarely completely correspond to the TEN-E Reg. workflow, the time limits will be affected - the time limits for each of the procedures (pre-application and statutory permit granting), and also the overall time limit of three years and six months. Current practical experience is therefore very limited and this study can only give insights into the 'probability' of time limits being adhered to.

The table below summarises (per Member State) whether or not compliance with the time limits is possible, and, if not, the main reason for potential non-compliance. Possible full compliance is assessed as √, with risk of non-compliance represented by *.

Table 8 – Potential compliance problem(s) identified with regard to the time limits applicable to the permitting of PCIs

Member State	2 year time limit – pre-application procedure	1.5 year time limit – statutory permit granting procedure	Potential compliance problem
BE	*	*	No time limit for certain steps or permits and not enforceable
BG	√	*	Certain permits are a pre-condition for other permits
CY	*	*	The time limits are expected to be followed, but the one-stop-shop lacks the power to enforce the time limits
CZ	*	*	The pre-application procedure for gas PCIs may take longer. There is no comprehensive permit decision foreseen, but only sectoral decisions and opinions, the addition of which could go beyond the 1.5 year limit. Lastly, time limits are not enforceable on public administration
DE	*	*	Under NABEG, problems with the deadlines may arise when the project promoter makes use of the possibility to create individual sections in federal

Member State	2 year time limit – pre-application procedure	1.5 year time limit – statutory permit granting procedure	Potential compliance problem
			sector planning. Spatial planning procedures can delay the process
DK	√	√	
EE	√	*	No time limit for certain steps or permits
EL	√	√	
ES	*	*	No time limit is foreseen for the permit granting procedure, while a time limit is set for the pre-application procedure. However, the one-stop-shop lacks the powers to enforce these time limits
FI	*	*	Time limits are not enforceable on public administration, although very likely to be followed
FR	√	*	No time limit for certain steps or permits
HR	*	*	Significant delays can occur in practice, and some of the time limits are flexible and will depend on the complexity of the PCI
HU	√	√	The time limits set for the individual decisions required for the permitting appear to be sufficiently short to ensure compliance
IE	√	√	The time limits are feasible due to the priority status given to PCIs
IT	√	*	Significant delays can occur in practice for the permit granting procedure
LT	*	*	As most of the permits are applied for during the pre-application procedure, it is unlikely that this procedure will be concluded within the time limit. The permit granting process does not follow the time frames and deadlines set out in the TEN-E Reg.
LV	√	√	
LU	*	*	No time limit for certain steps or permits, and time limits are not enforceable on public administration
MT	√	√	
NL	*	√	Whether the time limits can be met will depend on the type of project
PL	*	*	Significant delays can occur in practice (for electricity and oil PCIs)
PT	*	*	No time limit for certain steps or permits. The one-stop-shop lacks the powers to enforce the time limits
RO	*	*	Significant delays can occur in practice due to the lack of a comprehensive permit decision
SI	*	√	Significant delays can occur in practice (for the pre-application procedure) as there are no time limits foreseen for some steps
SK	*	*	No time limit for certain steps or permits and time limits are not enforceable on public administration
SE	*	*	Time limits are not enforceable on public administration
UK	√	√	There is no overall time limit in the legislation but the TEN-E Reg. time frame should be respected in practice

The table demonstrates that most Member States are likely to face problems in complying with the time limit to issue the comprehensive decision. Although the TEN-E Reg. is directly applicable, the lack of intermediate time limits or the lack of enforceability of the time limits laid down by national law, was perceived by several project promoters and one-stop-shops to be an issue of concern. The most common problems are:

- In some Member States, such as Bulgaria and Estonia, national law prescribes that a particular permit is a precondition to another permit and this may block the entire permit granting process;
- In other Member States, such as Belgium and Estonia, there are no time limits for some of the necessary individual permits, which can affect the entire process. Similarly, some Member States, such as France, do not foresee time limits for several steps in the pre-application procedure and/or the statutory permit granting procedure, which may have an impact on implementation and application in practice with the deadlines;
- In Finland, Luxembourg and Spain, for example, the existing time limits are not enforceable on the public administration, as the law does not provide any instrument with which to ensure

compliance with those limits. Similarly, in some Member States, such as Italy and Slovenia, although the existing time limits appear to be in line with the TEN E-Reg., that does not necessarily mean that they are complied with in practice;
- Spatial planning, EIA and SEA are typically the steps of the permit granting process causing delays, and are, therefore, often referred to as the justification for extensions of the applicable time limits.

In summary, it appears that only Denmark, Greece, Hungary, Ireland, Lithuania, Malta and the UK can follow the time limits without major problems.

Main problems identified

The most common problems identified with regard to the time limits are:
- The permit granting process is sequential, thus a delay in issuing individual permits is likely to lead to delays in issuing other decisions and permits at a later stage. This is a particular problem where the one-stop-shop does not have the power to set out any time limits nor the power to ensure that these time limits would be followed by different authorities involved in the permit granting process.
- Even if the national legislation sets out time limits for the whole process and/or for its component procedures, these time limits are not always followed in practice as they may be non-enforceable.

4.6 PUBLIC CONSULTATION

Public participation is one of the most important and traditional elements of EU environmental law. The transposition of the relevant EU directives (Directive 2003/4/EC on public access to environmental information, Directive 2003/35/EC on public participation, etc.) has ensured a common framework across Member States. Typically the public has been involved at an early stage, the concept of 'public concerned' has included NGOs and information has been widely disseminated. This applies to both PCIs and non-PCIs. All Member States, therefore, already had their national public participation rules in place before the entry into force of the TEN-E Reg.

According to the TEN-E Reg., facilitation and acceleration of permitting of PCIs should not be made in prejudice of the involvement of the general public in the process. Recital 30 of the TEN-E Reg. states that *'despite the existence of established standards for the participation of the public in environmental decision-making procedures, additional measures are needed to ensure the highest possible standards of transparency and public participation for all relevant issues in the permit granting process for projects of common interest.'* Public participation is one of the essential elements of the TEN-E Reg., and its Article 9 sets out a series of rules that must apply without prejudice of existing rules stemming from international and EU law obligations. These include:

- The publication of a manual of procedures;
- The drawing up of a concept for public participation, which must be approved by the one-stop-shop;
- The realisation of at least one public consultation before the submission of the application file i.e. before the statutory permit granting process is initiated;
- The submission of a public participation report together with the application file;
- The early involvement of neighbouring Member States affected;
- The obligation for project promoters to create an information website.

In addition, Annex VI to the TEN-E Reg. provides guidelines for transparency and public participation, including details on the content of the manual of procedures, the concept for public participation and the project website, as well as the basic principles for the public participation

procedure (early involvement, ensuring participation at local and regional level of a wide public, grouping public consultations, setting rigid timeframes for accepting comments).

However, despite the directly applicable public participation requirements, our study has shown that, as a rule, most Member States have not fully implemented the requirements of Article 9 and Annex VI to the TEN-E Reg.

Compliance with the public participation requirements

Limited experience exists with applying the public participation requirements of the TEN-E Reg. to PCIs, or, at least, there is limited evidence of these requirements being followed in practice. In addition, project promoters and one-stop-shops have expressed uncertainty as to the interpretation of some of these requirements, in particular Article 9(4) (see below). This study therefore focused on whether existing legal requirements were contradictory to the TEN-E Reg. and whether the available practical experience could give an indication of compliance or non-compliance.

Based on existing legislation (adopted both before and after the entry into force of the TEN-E Reg.) and existing practice on the permitting of PCIs, it appears that the implementation of its specific requirements is not without problems. Below, a brief focus is provided on the new features introduced by the TEN-E Reg. on public participation. As explained above (see section 3), only 15 Member States[25] which are already implementing the TEN-E Reg. in practice, or which have legislation in place for at least some of the relevant requirements, have been assessed.

- Article 9(3) – public participation concept

Article 9(3) of the TEN-E Reg. requires project promoters to draw up and submit a concept for public participation to the one-stop-shop. The concept for public participation has to be approved by the one-stop-shop, which can then request modifications. Analysis suggests that only four Member States (France, Greece, Ireland and the UK) have applied the public participation concept in practice. Furthermore, one Member State (Belgium) has reflected the need to draw up a public participation concept in national law, in what might be considered as an indication of future compliance with this requirement.

The table below shows those Member States that have implemented a concept for public participation in their practice of PCI permitting.

Table 9 – Compliance with Article 9(3) of the TEN-E Reg.

Member State	Compliant	Non-compliant
BE	√	
CZ		√
DE		√
DK		√
FR	√	
HR		√
EL	√	
IE	√	
LT		√
NL		√
PL		√
RO		√

[25] Belgium, Czech Republic, Germany, Denmark, France, Croatia, Greece, Ireland, Lithuania, the Netherlands, Poland, Romania, Sweden, Slovenia and the UK.

Member State	Compliant	Non-compliant
SE		√
SI		√
UK	√	
TOTAL	5	10

The table above shows that, of the 15 Member States assessed, only five – Belgium, France, Greece, Ireland and the United Kingdom – are compliant with the requirement to draw up and submit a concept for public participation to the one-stop-shop, as laid down in Article 9(3) of the TEN-E Reg. The remaining 10 Member States have not drawn up anything similar to the required concept for public participation. A possible reason for this non-compliance lies with the project promoters, who have raised questions about the content of the concept for public participation and the level of detail required.

- Article 9(4) – public participation before the submission of the application file

Article 9(4) of the TEN-E Reg. requires that at least one public consultation takes place before the submission of the application file (i.e. before the beginning of the statutory permit granting procedure). This Article proves to be very difficult to implement in practice, mainly because it has been interpreted differently across Member States: some argue that only one public consultation during the pre-application procedure is mandatory, while others are of the opinion that this one public consultation should be in addition to those public consultations taking place in the framework of the EIA. Still other Member States have argued that an additional public consultation is not necessary in cases where the EIA public consultation is sufficiently broad.

The table below shows those Member States where at least one public consultation has taken place[26] before the submission of the application file.

Table 10 – Compliance with Article 9(4) of the TEN-E Reg.

Member State	Compliant	Non-compliant
CZ		√
DE	√	
DK		√
FR	√	
HR		√
EL	√	
IE	√	
LT	√	
NL		√
PL		√
RO	√	
SE		√
SI	√	
UK	√	
TOTAL	8	6

Out of 14 Member States, eight have held a public participation procedure other than the one envisaged in the framework of the EIA. In a few Member States - Croatia, the Netherlands and Sweden - it was confirmed that a public consultation as required by Article 9(4) of the TEN-E Reg., had not taken place for some or all of the PCIs already in the permit granting process.

[26] Belgium is not included in this table.

Annex VI (5) of the TEN-E Reg. refers to the publication of an information leaflet and providing information to all stakeholders affected in the context of this public consultation. For the eight Member States where the required public consultation took place, no instances of non-compliance with Annex VI (5) have been reported. The only exception is Sweden, where, even though the public information leaflets fulfil the requirements under Annex VI (5) to the TEN-E Reg., they do not include a reference to the web addresses of the transparency platform referred to in Article 18 or to the manual of procedures.

- Annex VI (3)(b) – Grouping of public consultations

Annex VI (3)(b) of the TEN-E Reg. states that public consultation procedures for PCIs must be grouped together where possible. Although national law for most Member States does not foresee the possibility of grouping public consultations (raising some doubt on whether this would then be possible in practice without being expressly stated in the laws regulating the specific procedures), at least one has done so (Latvia).

- Other requirements

Article 9(7) of the TEN-E Reg. obliges the project promoter (or the one-stop-shop, if national law so requires) to establish and regularly update a website with relevant information about each PCI, linked to the Commission website, and which meets the requirements specified in Annex VI.6. Although this Article has not been specifically assessed by the legal experts, unclear or insufficient information on the project promoter's websites – where those websites exist – was problematic in the country-specific analyses and research. Whether or not the websites included the minimum information referred to in Annex VI (6) has not been investigated in this study.

Annex VI (3)(a) and (c) of the TEN-E Reg. include further principles to increase public participation, information and dialogue in the permit granting process. None of the Member States have shown non-compliance with applying these principles to PCI permitting.

Main problems identified

The most common problems identified with regard to public participation are:

- There is uncertainty regarding the interpretation of Article 9(4) of the TEN-E Reg. related to the establishment of at least one public consultation before the submission of the application file.
- The one-stop-shop does not always have the power and means to ensure that the project promoter is actively supported in its public participation activities.
- Project promoters have raised questions about the content of the concept for public participation and the level of detail required.

5 COMPARATIVE OVERVIEW – TRENDS ON THE MANUALS AND ASSESSMENT OF COMPLIANCE

5.1 MANUAL ISSUANCE AND RELATED PROCESS

Article 9(1) of the TEN-E Reg. requires Member States to publish a manual of procedures for the permit granting process applicable to PCIs by 16 May 2014. Where applicable, other authorities concerned should collaborate with the one-stop-shop in the development of the manual, which should be updated as necessary and made available to the public.

Deadline for issuance

All Member States have published their manual of procedures, with the sole exception of Austria. However, only six Member States (Cyprus, Denmark, Spain, France, Ireland and Slovenia) published the manual by the 16 May 2014 deadline. Most of the remaining 21 Member States, although late, published their reports shortly after the deadline: six manuals were adopted within a month of the deadline, and eight within the following five months.[27] In the case of Romania, the manual was only published as a draft at the time of the study. This indicates that, of the EU-28 Member States, only two had not formally adopted a manual within a year of the TEN-E Reg. deadline (Austria and Romania).

The table below summarises compliance with the deadline set by Article 9(1) of the TEN-E Reg.

Table 11 – Compliance with the deadline set by Article 9(1) of the TEN-E Reg.

Member State	Compliant	Non-compliant
BE		√ (13/02/2015)
BG		√ (02/10/2014)
CY	√ (16/05/2014)	
CZ		√ (30/05/2014)
DE		√ (30/05/2014)
DK	√ (15/05/2014)	
EE		√ (12/09/2014)
EL		√ (10/2014)
ES	√ (16/05/2014)	
FI		√ (28/08/2014)
FR	√ (27/03/2014)[28] (17/05/2014)[29]	
HR		√ (09/2014)
HU		√ (20/06/2014)
IE	√ (15/05/2014)	
IT		√ (11/02/2015)
LT		√ (08/10/2014)
LV		√ (2014)[30]
LU		√ (15/08/2014)
MT		√ (09/2014)
NL		√ (09/2014)
PL		√ (26/08/2014)
PT		√ (12/01/2015)

[27] In Latvia, the date of issuance of the manual of procedures is uncertain and only the year 2014 was provided to the expert. In Slovakia, the date is also uncertain, as only the month of May 2014 was provided.
[28] For electricity. It was revised 6 February 2015.
[29] For gas. It was revised 30 January 2015.
[30] It was revised 24 February 2015.

Member State	Compliant	Non-compliant
RO		√ (02/03/2015)[31]
SI	√ (11/04/2014)	
SK		√ (05/2014)[32]
SE		√ (23/05/2014)
UK		√ (18/05/2014)
TOTAL	6	21

Process of adoption

The Member States have applied various approaches when preparing their manuals of procedures. In some cases, the manual has been prepared by the one-stop-shop alone - with or without a consultation process. In others, a Working Group or another authority prepared the manual. The degree of cooperation and consultation with other authorities varied from one Member State to another.

1) The manual of procedures was prepared by the one-stop-shop - with or without consultation.

In most cases (20 Member States), the manual of procedures was prepared by the one-stop-shop, in consultation with other authorities and/or stakeholders during the drafting process. Only three Member States (Denmark, Estonia and France) did not consult other authorities or stakeholders in the process of drafting the manual. For the most part, the one-stop-shop prepared a first draft of the manual of procedures and asked for feedback from the authorities and/or stakeholders, either by organising a meeting to discuss the manual or by sending them a draft or comment.

For example:

- In Luxembourg, the one-stop-shop prepared the draft manual of procedures and used an Interministerial platform to carry out a large consultation process, involving all competent ministries and authorities;
- In Greece, only the Ministry of Environment was consulted.

The majority of the Member States (15) consulted other authorities and 14 Member States consulted stakeholders - mostly the project promoters and in a number of Member States also the Transmission System Operators, the industry or NGOs.

For example:

- In Italy, consultations encompassed both project promoters and other private stakeholders. It is unclear whether or not NGOs were involved;
- In Malta, the project promoter was consulted and involved in several discussions prior to and during the drafting of the manual of procedures, ensuring a consensus between the one-stop-shop and the project promoter about the contents of the document. The changes proposed by the project promoter were taken into account during the drafting process;
- In Romania, the different project promoters and representatives of the industry were involved.

2) The manual of procedures was prepared by an authority other than the one-stop-shop, with consultation

In one Member State (Croatia) an authority other than the one-stop-shop prepared the manual of procedures. In this case, it was drafted by the Centre for Monitoring Business Activities in the Energy Sector and Investments, i.e. the authority responsible for the implementation of the well-established notion of 'strategic investment projects'. In the drafting process, other ministries were consulted,

[31] It is still a draft.
[32] It was revised on 19 June 2015.

including the one-stop-shop. Yet, it is the Croatian one-stop-shop that officially issued the final manual of procedures.

3) The manual of procedures was prepared by dedicated working groups consisting of relevant national authorities and/or the project promoters

Six Member States opted to have a working group draft the manual of procedures. In each of these countries, the working group was composed of representatives of different ministries and authorities, sometimes of regional authorities (Finland and Belgium). In Slovakia and Slovenia, the working group also included the project promoter.

In particular:

- A working group prepared and issued the manual of procedures in Lithuania. This working group was specifically created by ministerial order for this purpose, and consisted of representatives of the Ministry of Energy, Ministry of Environment, Ministry of Economy and Ministry of Agriculture;
- In Slovenia, the manual of procedures was prepared by a Project Group, now also tasked with the daily implementation of PCIs. This group consists of the Ministry of the Environment and Spatial Planning (department for Spatial Planning), the Ministry of Infrastructure (department in charge of energy), and the Slovenian project promoters. In addition, the Ministry of Culture and the Ministry of the Environment and Spatial Planning (department for the Environment) have also participated;
- In the case of Belgium, due to the Federalist system in place that requires strong cooperation between the regional levels and the state level, an existing working group within the Federal Ministry that includes the one-stop-shop for PCIs, created the structure of the manual of procedures. The different sections of the manual were then completed by each of the different Federal and Regional authorities, and issued by the aforementioned Federal Ministry.

The case of the United Kingdom is somewhat similar to Belgium, in that a consultation process including separation of drafting was organised, yet no working group was created.

- In the United Kingdom, the one-stop-shop consulted with the different authorities concerned in order to map out the systems in place, establish a comparison with the TEN-E Reg. requirements, and agree the process with these authorities (i.e. the preparation of a single manual of procedures rather than different ones for England, Northern Ireland, Scotland, and Wales). Each authority drafted sections under its respective competence, which the one-stop-shop then collated.

In three Member States (Bulgaria, Finland and Slovakia), the working group consulted with stakeholders in the process of the drafting of the manual of procedures.

- In Finland, representatives of the industry, including project promoters, as well as academia were consulted;
- In Bulgaria, the main project promoters were invited to the first meeting of the working group. They were consulted on the main challenges they face during the permit granting process;
- In Slovakia, the manual of procedures was jointly prepared and discussed with the working groups from the one-stop-shop, the Ministry of Environment and the Ministry of Transport, Construction and Regional Development. The project promoter for gas was also included in the consultations and provided input on some sections in the manual.

Revision clauses and updates

The manuals of procedures published in nine Member States (Belgium, Finland, Germany, Ireland, Italy, Malta, the Netherlands, Romania, and Slovenia) contain specific review clauses. Almost all of the one-stop-shops interviewed for the study, however, stated that the manuals of procedures would be updated ‘as necessary’.

Three Member States have updated their manual of procedures since their first issuance, including France (which updated both of its manuals), Latvia, and Slovakia. In Luxembourg, an update is underway.

The table below shows how Member States have prepared and adopted the manual procedures and whether or not the manual contains a review clause.

Table 12 – Authorities responsible for the publication of the manual of procedures, involvement of other authorities and stakeholders, and existence of a review clause

MS	Who prepared the Manual	Who has issued the Manual	Involvement of other authorities	Involvement of stakeholders	Review clause
BE	Working Group	Ministry to which the one-stop-shop belongs	√		√
BG	Working Group	One-stop-shop	√	√	
CY	One-stop-shop	One-stop-shop	√	√	
CZ	One-stop-shop	One-stop-shop		√	
DE	One-stop-shop	One-stop-shop	√	√	√
DK	One-stop-shop	One-stop-shop			
EL	One-stop-shop	One-stop-shop	√		
EE	One-stop-shop	One-stop-shop			
ES	One-stop-shop	One-stop-shop	√	√	
FI	Working Group	One-stop-shop	√	√	√
FR	One-stop-shop	One-stop-shop	√[33]		
HR	Authority other than the one-stop-shop	One-stop-shop	√		
HU	One-stop-shop	One-stop-shop	√	√	
IE	One-stop-shop	One-stop-shop	√		√
IT	One-stop-shop	One-stop-shop	√	√	√
LT	Working Group	Working group	√		
LU	One-stop-shop	One-stop-shop	√	√	
LV	One-stop-shop	One-stop-shop		√	
MT	One-stop-shop	One-stop-shop	√	√	√
NL	One-stop-shop	One-stop-shop	√	√	√
PL	One-stop-shop	One-stop-shop	√	√	
PT	One-stop-shop	One-stop-shop			
RO	One-stop-shop	A department of the Ministry of Energy other than the one-stop-shop	√	√	√
SE	One-stop-shop	One-stop-shop	√		
SI	Working Group	Project group	√	√	√
SK	Working Group	One-stop-shop	√	√	
UK	One-stop-shop	One-stop-shop	√	√	

Multiple manuals of procedures in one Member State

Some Member States have issued and published more than one manual of procedures. This is because some Member States have adopted a manual in all (or almost all) of their official languages, with one Member State publishing a separate manual of procedures for gas and for electricity.

[33] This only applies for the gas manual.

1) The language of the manual of procedures

In three Member States, more than one manual of procedures has been adopted in order to cover all the official languages, or to cover an additional language.

- Belgium and Ireland have published their manuals in other State official languages: Dutch and French in Belgium, English and Gaeilge in Ireland;
- The Netherlands have, in addition to the Dutch version of their manual of procedures, also published the manual in English.

Some Members States, however, have not published the manual of procedures in all of their official languages, which, in additional to possible legal implications, also raises issues of accessibility of the information.

- Both Luxembourg and Malta have adopted their manuals of procedures in only one of their official languages. In Luxembourg, the manual of procedures is in French, while three official languages are recognised by the State: French, German and Lëtzeburgesch. In Malta, the manual of procedures was issued in the State official language of English but not in Maltese;
- In the case of Belgium, while German is also recognised as an official language, only French and Dutch versions are provided.

2) A manual of procedures per energy sector

Only one Member State (France) has made a distinction according to the energy sector when publishing its manuals of procedures.

- France has one manual of procedures for electricity infrastructure projects and one manual of procedures for gas infrastructure projects.

5.2 COMPLIANCE WITH ANNEX VI REQUIREMENTS

Pursuant to Article 9(1) of the TEN-E Reg., the manual of procedures to be published by the Member States must include, at a minimum, the information specified in Annex VI(1):

a) Relevant legislation upon which the decisions are based for the different types of projects of common interest, including environmental law;
b) Relevant decisions and opinions to be obtained;
c) Names and contact details of the one-stop-shop and other authorities and major stakeholders concerned;
d) The work flow, outlining each stage in the process, including an indicative time frame and a concise overview of the decision-making;
e) Information about the scope, structure and level of detail of documents to be submitted with the application for decisions, including a checklist;
f) The stages and means for the general public to participate in the process.

In addition, the manuals of procedures must demonstrate compliance with the specific characteristics of the permit granting procedures that Member States must apply to energy infrastructure projects granted PCI status, as set out in Chapter III of the TEN-E Reg. The table below provides an overview of compliance per requirement, assessing Member States as compliant (C), non-compliant (NC) or partially compliant (PC).

Table 13 – Compliance with the requirements of Annex VI (1) of the TEN-E Reg.

Member State	Annex VI (1)(a) on relevant legislation	Annex VI (1)(b) on relevant decisions and opinions	Annex VI (1)(c) on names and contact details	Annex VI (1)(d) on the work flow	Annex VI (1)(e) on the documents to be submitted	Annex VI (1)(f) on the public participation	Total per Member State
BE	PC	PC	PC	PC	PC	C	C=1 PC=5
BG	C	C	PC	PC	NC	PC	C=2 PC=3 NC=1
CY	PC	C	PC	C	PC	PC	C=2 PC=4
CZ	C	C	PC	PC	PC	PC	C=2 PC=4
DE	PC	PC	PC	C	PC	C	C=2 PC=4
DK	C	C	PC	C	C	PC	C=4 PC=2
EE	PC	NC	PC	NC	NC	PC	PC=3 NC=3
EL	C	C	PC	C	PC	PC	C=3 PC=3
ES	PC	PC	NC	PC	PC	PC	PC=5 NC=1
FI	PC	PC	PC	C	C	C	C=3 PC=3
FR	C	C	PC	PC	C	PC	C=3 PC=3
HR	C	PC	C	PC	NC	PC	C=2 PC=3 NC=1
HU	C	C	PC	C	C	PC	C=4 PC=2
IE	PC	C	PC	C	PC	PC	C=2 PC=4
IT	C	C	PC	PC	PC	C	C=3 PC=3
LT	C	C	PC	PC	NC	C	C=3 PC=2 NC=1

Member State	Annex VI (1)(a) on relevant legislation	Annex VI (1)(b) on relevant decisions and opinions	Annex VI (1)(c) on names and contact details	Annex VI (1)(d) on the work flow	Annex VI (1)(e) on the documents to be submitted	Annex VI (1)(f) on the public participation	Total per Member State
LU	PC	PC	PC	PC	PC	PC	PC=6
LV	PC	PC	PC	PC	NC	PC	PC=5 NC=1
MT	PC	NC	PC	C	C	C	C=3 PC=2 NC=1
NL	PC	PC	C	PC	NC	C	C=2 PC=3 NC=1
PL	PC	PC	NC	PC	NC	PC	PC=4 NC=2
PT	PC	PC	PC	PC	PC	PC	PC=6
RO	PC	NC	PC	NC	NC	PC	PC=3 NC=3
SE	C	C	PC	C	C	C	C=5 PC=1
SI	C	PC	PC	PC	PC	C	C=2 PC=4
SK	PC	PC	PC	PC	PC	C	C=1 PC=5
UK	C	C	PC	PC	PC	PC	C=2 PC=4
TOTAL	**C: 12** **PC: 15** **NC: 0**	**C: 12** **PC: 12** **NC: 03**	**C: 02** **PC: 23** **NC: 02**	**C: 09** **PC: 16** **NC: 02**	**C: 06** **PC: 13** **NC: 08**	**C: 10** **PC: 17** **NC: 00**	

No manual of procedures was assessed as fully compliant with all of the requirements laid down in Annex VI(1) of the TEN-E Reg. but nor was there any manual of procedures completely non-compliant. In most instances, non-compliance was only partial.

The frequent justification provided by the one-stop-shops for non-compliance was the risk of overburdening the manual. While the specificity of each PCI needs to be acknowledged and often leads to complex and parallel procedures in different Member States, providing fit-for-all explanations may not always be practical and may cause confusion for the reader.

Relevant legislation –Annex VI(1)(a)

Pursuant to Annex VI(1)(a), the manuals of procedures must include the relevant legislation upon which the decisions and opinions are based for the different types of relevant PCIs, including environmental law. About half the manuals of procedures produced by Member States are considered fully compliant, while the remaining manuals are considered partially compliant. Typically, partial compliance means that while all key pieces of legislation (e.g. spatial planning, EIA, electricity, gas) were included in the manual, it did not refer to certain sectoral laws that may also be relevant for the permitting of PCIs.

Relevant decisions and opinions to be obtained - Annex VI(1)(b)

Pursuant to Annex VI(1)(b), the manuals of procedures must include the relevant decisions and opinions to be obtained. Twelve Member States are considered fully compliant, another 12 are considered partially compliant, with the remaining three (Estonia, Malta and Romania) non-compliant. Generally, the manuals of procedures which are considered partially compliant with Annex VI(1)(b) fail to refer to the relevant decisions and opinions falling under the legislation which has been omitted from the manuals (in breach of Annex VI(1)(a)).

Names and contact details of the one-stop-shop and other stakeholders - Annex VI(1)(c)

Only the manuals of procedures of two Member States (Croatia and the Netherlands) include all of the relevant names and contact details of the one-stop-shop, other authorities and major stakeholders concerned, as required by Annex VI(1)(c). Two manuals did not indicate any competent authority. The manuals of procedures of the remaining 23 Member States only include partial information regarding the necessary names and contact details.

Comprehensive workflow – Annex VI(1)(d)

Eighteen manuals of procedures are found to be non-compliant or partially compliant with Annex VI(1)(d) of the TEN-E Reg., which states that the manuals should include the workflow, outlining each stage in the process, including an indicative time frame and a concise overview of the decision-making process.

As the TEN-E Reg. requirements should be interwoven with the national system, non-compliance in this specific domain can be interpreted as showing a clear issue with regard to understanding and implementation of the TEN-E Reg. as a whole by the authorities.

For example:

- In the case of Romania – despite an effort to describe the stages of the permit granting process, to elaborate a workflow and to provide an indicative time frame – the work flow has not been merged with the TEN-E Reg. requirements. As a result, this work flow is not currently followed for PCIs;
- In Luxembourg, only an electricity PCI workflow and time frame has been included in the

manual of procedures. This workflow and time frame has not been merged with the requirements of the TEN-E Reg. and it omitted some important steps of the process, such as the modifications to local urban plans and road permits. As a result, the workflow mainly consists of explanations of national law.

Scope, structure and level of detail of documents to be submitted, including a checklist – Annex VI(1)(e)

Annex VI(1)(e) of the TEN-E Reg. requires the manuals of procedures to include information about the scope, structure and level of detail of documents to be submitted with the application for decisions, including a checklist. Only six Member States are considered fully compliant with this requirement, while 13 Member States are considered partially compliant and the remaining eight non-compliant (Bulgaria, Croatia, Estonia, Latvia, Lithuania, the Netherlands, Poland and Romania). Where the manuals of procedures are considered partially compliant with Annex VI(1)(e), issues largely related to the checklist. In some cases, no checklist is provided at all (e.g. Ireland), while in others (e.g. Portugal) a checklist is provided but not for all types of PCIs.

- In Bulgaria, the manual of procedures only provides that the scope of information/material to be submitted is specified and coordinated with the relevant competent authorities and with the project promoters. No checklist of documents is provided, but, rather, only reference made to applicable legislation. The one-stop-shop explained that, as a number of decisions/opinions have to be obtained by the project promoters, the case-by-case approach is considered the most appropriate.

Stages and means for the general public to participate- – Annex VI(1)(f)

Pursuant to Annex VI(1)(f), the manuals of procedures must include the stages and means for the general public to participate in the process. Only the manuals of procedures of 10 Member States are considered fully compliant with this requirement, with the other 17 considered partially compliant. In several cases, the manuals of procedures have a section on public participation but the information included general and not comprehensive enough to effectively inform the public on the stages and means of participation in the process. In other cases, the manuals of procedures have just reproduced the TEN-E Reg. requirements, without making any link to the national framework.

- In Luxembourg, the section of the manual of procedures dealing with public participation is divided according to electricity and gas projects. Each part includes a bullet-point list with only a reference to the relevant laws and provisions on public participation. The manual of procedures does not, therefore, detail the stages and means for the general public to participate in the PCI permit granting process. In addition, this section includes references to and quotes from the public consultation provision of a law assessed by the legal expert as irrelevant for PCIs.

Ensuring an effective public participation is one of the two key priorities of the TEN-E Reg. (together with the need to speed-up the permitting process of PCIs), but this has not been adequately reflected in the manuals of procedures.

6 RECOMMENDATIONS ON GOOD PRACTICES WITH REGARD TO THE PERMIT GRANTING PROCESS

This section presents several good practices identified at the national level and which could be useful to other Member States[34].

Early coordination and information exchange

Early information exchange between the permitting authorities, the general public and the project promoters on an informal basis and before the start of the pre-application procedure, facilitates the subsequent permitting process and allows for the identification and discussion of many issues up-front. Such an early coordination phase (or pre-pre-phase) can take the form of informal 'open houses' or meeting sessions. The affected parties can be informed in advance of the project and have the opportunity to discuss their concerns before the start of the project. This can prevent potential misunderstandings and opposition to the project.

- In Belgium, given the number of permits and acts needed, the earlier that coordination and exchange of information takes place between the concerned authorities, the public and the project promoters, the better. Such pre-pre-phase already occurs on an informal basis. Such practices should be encouraged in order to avoid delays in the permit granting procedures, partly due to the 'not in my backyard' attitude that often characterises the positions of concerned municipalities, pressure groups and the public.

Facilitating public participation

Public participation and/or consultation can be facilitated by the appointment of a local coordinator or supervisor, who can streamline the whole process and ensure that all interested parties are invited to take part in the public consultation. Some country studies also pointed out to the grouping of public consultations (as laid down in Annex VI.3 of the TEN-E Reg.) when the national legislation requirements lead to many parallel consultation processes (e.g. in all municipalities affected by the project).

- In the Netherlands, the project promoter actively enters into dialogue with the stakeholders – not just within the formal structure of the procedure, but also beyond the legal requirements. Stakeholders are provided with target-specific information about projects and their potential impact. In addition, working groups (in which the project promoters participate) are established for each PCI to ensure that the project promoters have a precise understanding of the applicable legislation and required permits, and to provide and update the required information. Reference to these discussion groups can be found on the website of the Energy Projects Office (Ministry of Economic Affairs) and within the manual of procedures.
- In France, the Law on Energy Transition provides for a simplification of the public debate. A supervisor is systematically appointed by the National Commission for Public Debate to oversee the public debate organised by the project promoter, replacing the ad-hoc committee in charge of organising the public debate. In addition, Recommendation 5756 of 12 December 2014, calls for the nomination of *sous-préfets* acting as facilitators in permit granting procedures. The facilitator would coordinate the examination of applications, seek consensus between different stakeholders and avoid deadlock situations. This recommendation applies to any investment project. The initiative is, however, too new for conclusions to be drawn on its effectiveness.

[34] Country-specific recommendations can be found in each country-specific report.

Use of electronic systems

The use of an electronic submission system or online sharing platform can simplify and help to centralise the permitting process at the Member State level. Such systems require the project promoter to upload all of the information he needs to provide within the permit granting process only once, while the relevant permitting authorities can then 'pick and choose' the information they need for the respective permit application to be completed. The project promoter is thereby freed from the burden of multiple submissions of the same information to multiple authorities. This so-called sharepoint can then also be used to gather 'the final and complete application file', which contains all of the documents needed for the different individual permits that are required. In addition, by using an electronic system, the permitting authorities can be in direct contact with each other and can follow each individual permitting procedure. In cases where, for example, one permit can only be applied for after another permit has been granted, the sharepoint system will be extremely useful as it can send out a notification to the next authority in line that it can now start its permitting procedure, allowing better monitoring and triggering implementation and application in practice with the TEN-E Reg. time limits. Also, sharepoint – or at least a section of the sharepoint system – could be open to the public, so that the public at large is given the opportunity to access any relevant document online, monitor the whole procedure, and submit its comments directly in electronic format.

- In Luxembourg, the one-stop-shop devises a timetable with the project promoter via an online shared software platform based on SharePoint technology, 'Interministerial Platform for PCIs', which allows the one-stop-shop and the project promoter to share documents, communications, and other management documents as required throughout the entire permit granting process. The expert has also recommended that a part of the documentation or time schedule or other information devised and exchanged on the SharePoint platform, be made accessible to concerned municipalities and to the general public.

Streamlining of the permitting process

There is still substantial scope for streamlining the various permitting and authorisation procedures. Some countries are already merging, for example, the building and the environmental permit, which is generally well-received. In one Member State, the one-stop-shop has signed a Memorandum of Cooperation with the most important permitting authorities (both at the local and regional level), which constitutes an agreement as to the different detailed steps and procedures in the permitting process (especially for PCIs). Such an agreement may reduce the administrative burden, while simplifying and accelerating the permit granting process. The establishment of working groups for each PCI and in which the project promoters participate, can help to ensure that the project promoters have a precise understanding of the applicable legislation and the required permits. Finally, for those countries where different permits can only be granted in consecutive order, they should be encouraged to process applications in parallel.

- In Greece, the one-stop-shop has developed, agreed and signed a Memorandum of Cooperation with the Ministry of Environment, Energy and Climate. This serves as a basis for the procedures to be followed, especially for PCIs, given that the Ministry of Environment holds a key role in the overall permitting procedure. The Ministry of Environment has also signed a Memorandum of Cooperation with the Hellenic Federation of Enterprises, providing for the founding and operation of a Permanent Committee for Environmental permit granting. The aim of the Committee is, through the cooperation of the administration with representatives from the industrial sector (mainly), to focus on facilitating environmental licensing without jeopardising the protection of the environment. While this Committee does not focus specifically on PCIs, the one-stop-shop and the project promoters agreed that it constitutes a good practice which could benefit PCIs by reducing the administrative burden, and simplifying and accelerating procedures.

Legal implementing/facilitating measures

As this report has highlighted, some articles of the TEN-E Reg. are open to interpretation (e.g. what constitutes 'the' application file, the 'without prejudice' clause in Article 9(4), the content of the concept for public participation and the detail requested), and merging national provisions with the TEN-E Reg. recommendations is not always straightforward. In addition, the manual of procedures does not have any legally binding value, remaining a guidance document. Due to these uncertainties, it can be beneficial to further detail some of the TEN-E Reg. provisions in national legislation - although the TEN-E Reg. is directly applicable in the national legal order. The following provisions can be considered:

- It is recommended that the competences of the one-stop-shop are effectively established in national legislation, so that it has the necessary powers to facilitate, monitor and influence the permit granting process and to establish and enforce time limits if necessary.
- Absence of concrete time frames for permit granting in the national legislation seem to constitute a potential threat for not achieving the comprehensive decision within the deadlines set by the TEN-E Reg. It would be advisable to add legislative safeguard clauses, for example, imposing maximum periods for each individual permit and enabling legal enforcement of the time limits. A provision that an unjustified failure to meet the deadline will be considered a disciplinary offence for the competent public authority would also accelerate the whole process, or at least help to avoid any delay.
- It is recommended that the public consultation procedure is also provided for by national legislation, within the framework of the existing measures on public consultation. Such legislation could incorporate all the relevant provisions of the TEN-E Reg., but could also specify the type, methods and processes to be followed, thus providing for a detailed framework within which the project promoters could develop their public participation concept.

There is, of course, a risk involved if legislation is to be adopted at the national level, and the role of the TEN-E Reg. should not be undermined. However, national legislative implementation would allow the reflection of the national specificities of PCI permitting. Another alternative could be to review the TEN-E Reg., or at least to provide some specific guidance notes.

7 RECOMMENDATIONS ON GOOD PRACTICES WITH REGARD TO THE MANUAL OF PROCEDURES

This section presents several recommendations identified at the national level and which could be useful to other Member States' manuals of procedures[35].

Usefulness and user-friendliness of the manual of procedures

The usefulness of the manuals of procedures for the one-stop-shops, other authorities concerned and project promoters was questioned in several interviews. This was not only related to the comprehensiveness of the manuals of procedures themselves, but also to the expertise of the stakeholders, already very much acquainted with the PCI permitting process. In several cases, the one-stop-shops admitted that they didn't consider the audience of the manual of procedures, an important question to understand the level of detail required from the manual of procedures. In any case, a global checklist of all documents and acts needed for an application file to be considered complete and admissible would render the manual of procedures more useful for project promoters. Also, the lack of clarity as to which steps of the national permitting process fall under each of the two procedures established by the TEN-E Reg. (the pre-application procedure and the statutory permit granting procedure) is particularly problematic. Therefore, the manuals of procedures in general need to be more user-friendly and make a better link between the TEN-E Reg. and the national permit granting process.

- The Bulgarian expert recommended that the manual of procedures should provide clear and concise information about the two stages of the permit granting process. i.e. it should include those elements of the existing permit granting process of multiple decisions which will be covered by the pre-application procedure and those that will be covered by the statutory permit granting procedure.

Practical public participation section

The manuals of procedures were rarely considered to be useful for the general public or NGOs, for whom the sections on public participation would need to be significantly improved. Some manuals of procedures have just reproduced the TEN-E Reg. requirements without actually explaining how public participation is going to be implemented in practice.

- In Denmark, the manual of procedures would benefit from revising its description of access to public participation, since the current text predominantly refers to public participation within other regulatory frameworks, without describing them in detail.
- A recommendation for the French manual of procedures, also relevant for other Member States, would be to include the new elements brought by the TEN-E Reg., i.e. compulsory public participation before submission of request for authorisations, and the concept for public participation, in order to demonstrate more clearly how the permit granting process as laid out in national legislation and the TEN-E Reg. jointly apply.

The involvement or consultation of stakeholders such as industries and NGOs in the preparation or revision of the manual of procedures may also prove beneficial in ensuring that the manuals include clear practical information on implementing the requirements.

- In Romania, the draft manual was published on the Ministry's website and opened for public consultation. In addition, the one-stop-shop invited a number of stakeholders to comment on the draft and to participate in a consultation meeting, which resulted in a manual of procedures

[35] Country-specific recommendations can be found in each country-specific report.

considered to be a useful tool for stakeholders and the public in general.

Dissemination

Even a perfect manual of procedures will not be useful if it does not reach its audience, whether these are authorities, project promoters, the general public or NGOs. In several cases, interviewees mentioned the lack of an appropriate dissemination of the manuals of procedures and the difficulty in finding them on the websites of the one-stop-shops. It is important that manuals of procedures are made available in a more efficient way, so that they can fulfil their intended function of ensuring the transparency of the permitting of PCIs.

- The Polish expert recommended that it would be beneficial to have a special website created for PCIs on the portal of the one-stop-stop and/or the relevant ministry, featuring the manual of procedures and links to the websites of the project promoters and the relevant Commission website.

Language

The lack of publication in all official languages of the Member State also prevents a wider dissemination of the manuals of procedures.

- The manual should be made available in German in Belgium, and in German and Luxembourgish in Luxembourg.

In addition, an example can be taken from the Netherlands, a country that also published its manual of procedures in English, despite it not being one of its official languages. An English manual of procedures in all Member States would greatly enhance cross-border cooperation and collaboration, as project promoters would have information to hand to better understand the PCI permitting process in their neighbouring country(ies).

Providing examples

While the specificity of each PCI needs to be acknowledged and often leads to complex and parallel procedures in the different Member States, providing fit-for-all explanations may not always be practical, and may indeed lead to more confusion for the reader. In order to ascertain the inherent complexity relative to each PCI, a logical compromise would be for the one-stop-shop to comply with the TEN-E Reg. requirements, such as the checklist and public participation, in a cohesive manner, and to provide this actual, full and comprehensive information for all commissioned PCIs, past PCIs and PCIs on the current Union list.