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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

**Proposal for a Regulation of the European Parliament and of the Council
on streamlining measures for advancing the realisation of the trans-European transport
network**

{COM(2018) 277 final} - {SEC(2018) 228 final} - {SWD(2018) 179 final}

Glossary

<i>Term or acronym</i>	<i>Meaning or definition</i>
AA	Appropriate Assessment
ACER	Agency for the Cooperation of Energy Regulators
CBA	Cost Benefit Analysis
CBS Report	Former European Commission Vice-President H. Christophersen, Professor K. Bodewig, European Coordinator, Professor C. Secchi, European Coordinator in the "Action Plan – Making the best use of new financial schemes for European transport infrastructure projects", June 2015,
CEF	Connecting Europe Facility
CNC	Core Network Corridor
ECJ	European Court of Justice
EFSI	European Fund for Strategic Investments
EIA	Environmental Impact Assessment
EIAH	European Investment Advisory Hub
ESIF	European Structural Investment Funds
EU	European Union
GDP	Gross Domestic Product
JASPERS	Joint Assistance to Support Projects In European Regions
MS	Member State
NGO	Non-governmental organisation
NPV	Net Present Value
OPC	Open Public Consultation
OSS	One-Stop-Shop
PO	Policy Option
PPP	Public-Private Partnership
SEA	Strategic Environmental Assessment
SME	Small and medium sized enterprises
TEN-E	Trans-European Network for Energy
TEN-T	Trans-European Network for Transport
TEN-T Regulation	Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU OJ L 348, 20.12.2013, p. 1–128

1 INTRODUCTION: POLITICAL AND LEGAL CONTEXT

1.1 Political context

The European Commission holds stimulating economic growth and boosting investment in the real economy at the heart of its priorities. The Investment Plan for Europe, which translates this overarching goal into operational terms, has three objectives: to make smarter use of financial resources, to provide visibility and technical assistance to investment projects, and to remove obstacles to investment, the so-called third pillar of the Plan. The present initiative aims at contributing to this third pillar by helping removing obstacles to investments in the infrastructure projects in the transport sector. Currently, some of the most complex projects require up to 10 years¹ to clear all necessary administrative procedures to start works, and for the more routine ones up to five years. It is therefore not possible to fully reap the expected benefits of infrastructure projects in terms of growth and jobs but also wider socio-economic benefits. The time between the political decision and the delivery of the infrastructure asset is in fact too long to bear fruit in the short term². Therefore, it is necessary to unlock the potential of key transport infrastructure investments with high EU added value, namely the Trans-European Transport Network (TEN-T).

The EU TEN-T policy³ recognises the importance of a strategic approach to developing a Europe-wide smart, efficient and sustainable network of transport infrastructure. The TEN-T has a dual layer structure – the comprehensive network shall ensure connectivity of all regions of the EU whereas the core network consists of those elements of the network which are of the highest strategic importance for the EU and are shown on the maps contained in Annex I of the TEN-T regulation⁴. The TEN-T Regulation defines binding targets for implementation, as the core network needs to be implemented by 2030 and the comprehensive network by 2050. The TEN-T policy⁵ also establishes Core Network Corridors which are operational tools to facilitate the coordinated and timely implementation of the core network.

The recent Commission Communication on boosting the potential of cross-border regions in the EU⁶ highlights that transport is a key enabler of exchanges between regions across national borders. This also underlines the crucial role TEN-T is playing for the integration of the Single Market. Infrastructure projects on cross-border connections are nevertheless the most difficult to be developed. Especially public transport services not only help integration processes but also enhance the sustainability of cross-border connectivity. Yet, insufficient or low-quality public transport services are still a reality for many citizens in border regions.

Supporting the Investment Plan for Europe

The analysis carried out by the Commission on the Core Network Corridors allows for the identification of bottlenecks and missing links as well as other relevant infrastructure projects to ensure compliance with EU standards and the efficiency of the EU transport⁷. It is estimated that the investments needed from 2021 until 2030 to complete the TEN-T core

¹ Milieu Ltd., *Study on permitting and facilitating the preparation of TEN-T core network projects*, study for DG MOVE 2017, (Henceforth: Milieu et al.), section 3.1.2, p. 36

² Report on Public Finances in EMU, 2016, DG ECFIN, ISSN 2443-8014 (online), https://ec.europa.eu/info/sites/info/files/ip045_en_0.pdf

³ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU, (Henceforth the TEN-T Regulation)

⁴ Art. 38(1) of the TEN-T Regulation.

⁵ TEN-T Regulation

⁶ Communication from the Commission to the Council and the European Parliament Boosting growth and cohesion in EU border regions, 20.9.2017, COM(2017) 534 final

⁷ The CNC work plans along with their supporting studies are available at: https://ec.europa.eu/transport/themes/infrastructure/downloads_en

network amount to about €500 billion for the EU, based on inputs from Member States. The total needs, including TEN-T comprehensive network, as well as investments in decarbonisation, digitalisation, urban transport and maintenance are estimated to amount to about € 1,500bn between 2021 and 2030. The achievement of the TEN-T core network and its corridors is expected to generate additional € 4,500bn or 1.8% of GDP and 13 million additional job-years by 2030⁸.

The effective and timely delivery of the TEN-T is essential for the efficient functioning of the Single Market and also an enabler for the decarbonisation and digitalisation of transport and the transition to low carbon mobility⁹. The recent Commission communications emphasise the need to mobilise private investments in sectors critical to Europe's future¹⁰ and where market failures remain¹¹ as well as reiterate that cross-border and sustainable transport and TEN-T infrastructure is critical for the EU to shift to a low-carbon and resource-efficient economy¹².

Political impetus to streamlining permitting for TEN-T

The Council of Ministers adopted conclusions¹³ on 3 December 2014 where they considered "that permitting procedures are an essential part of the planning of (transport) projects, that an early consultation and coordination of parties is crucial to streamline these procedures, accelerate projects and avoid additional costs, thereby increasing investors' confidence". The Council then invited the Commission to take stock of good practices and identify ways to simplify procedures for projects of the core network.

The simplification of permitting rules and administrative arrangements as a means of accelerating the implementation of the TEN-T has been identified as one of the recommendations in the so-called CBS Report Action Plan¹⁴, presented by European Coordinators Bodewig and Secchi as well as former Vice President H. Christophersen. In January 2018, a progress report of the implementation of their recommendations reiterated the call to consider setting up of special (single) procurement rules for cross-border projects and setting time limits for the permitting procedure¹⁵.

The complex permitting processes delaying the implementation of transport infrastructure projects are not a typically European problem. The complexity of regulation affecting the

⁸ Delivering TEN-T, Facts & Figures, https://ec.europa.eu/transport/sites/transport/files/delivering_ten_t.pdf, September 2017.

⁹ In the conclusions adopted on 5 December 2017, the Council reiterated its strong commitment to the implementation of the TEN-T and the necessity to continue this policy to boost investment in transport and contribute to global objectives in particular in terms of climate action. 15425/17 TRANS 541, available at: <http://data.consilium.europa.eu/doc/document/ST-15425-2017-INIT/en/pdf>

¹⁰ European Commission (2016), Europe Investing Again: Taking stock of the Investment Plan for Europe and next steps, COM(2016) 359

¹¹ "Rail infrastructure funding from governments budgets is the prevailing source of funds which hardly can be extended because of increasing budget constraints. New instruments to foster private-type funding such as LGTT or Project Bonds have not been successful for railway projects as they require sufficient cash flows stemming from the projects. Recently a better blending of instruments has been suggested by the use of concession-like funding which allows for constructing availability-based PPPs with modest revenue streams or mixed funds combining different financial sources including road user or externality charges." - The Results and Efficiency of Railway Infrastructure Financing within the European Union, Study for the European Parliament, October 2015

http://www.europarl.europa.eu/RegData/etudes/STUD/2015/552308/IPOL_STU%282015%29552308_EN.pdf

¹² European Commission (2016), A European Strategy for Low-Emission Mobility, COM(2016)501

¹³ Informal meeting of EU Transport Ministers, Building Infrastructure to Strengthen Europe's Economy, September 2014.

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/trans/146017.pdf

¹⁴ Former European Commission Vice-President H. Christophersen, Professor K. Bodewig, European Coordinator, Professor C. Secchi, European Coordinator in the "Action Plan – Making the best use of new financial schemes for European transport infrastructure projects", June 2015, available at http://ec.europa.eu/transport/themes/infrastructure/ten-t-guidelines/doc/2015_06_03_cbs_action_plan_final.pdf. (Henceforth: CBS Report)

¹⁵ Progress Report of the Action Plan Making the best use of new financial schemes for European transport infrastructure projects, January 2018, https://ec.europa.eu/transport/sites/transport/files/cbs2_report_final.pdf. (Henceforth: CBS Progress Report)

efficient permitting procedure has been debated in the G7 format and in the Declaration of the Ministers adopted at the G7 Transport Ministers Meeting in Cagliari in June 2017, where the Ministers stressed the importance of building public acceptance of infrastructure projects, of efficient administrative procedures and of streamlining the regulatory environment¹⁶. Efforts to streamline the procedures are also made at national level, for example in Germany with the *Strategy for speeding up the planning process* which has similar objectives to this initiative¹⁷.

Long term investments need long term strategy

The TEN-T policy was completely revamped in 2013 with the adoption of a new regulation defining a holistic strategy based on the establishment of the core network by 2030 and the comprehensive network by 2050.

The TEN-T policy has nevertheless existed for 25 years and at the time of the preparation of the current TEN-T framework, evidence already existed on the existence and impacts of delays in permitting and other regulatory procedures. Initially it was planned to integrate the simplification measures also for TEN-T framework, but it was in the end considered premature due to several factors. Namely, the reshaped TEN-T framework included already an ambitious set of innovations, in particular in connection with the new funding instrument. Moreover, the respective horizontal pieces of legislation such as directives on public procurement and on environmental assessments were planned to be reviewed and adapted also to the needs of the transport infrastructure developments. For these reasons, the current TEN-T Regulation does not provide for specific solutions as regards the permit granting procedures, unlike the TEN-E Regulation. As a result, the present initiative could also not be developed as part of the REFIT programme.

Finally, it should be highlighted that no evaluation of the TEN-T Regulation is planned in the near future. The TEN-T regulation was conceived as long term plan for at least two multi-annual financial frameworks to provide stability, as most of the projects need ca. 10 years to be implemented. The co-legislators have foreseen that the evaluation of the TEN-T Regulation would only take place in 2023 to feed into a possible revision of the regulation for the multi-annual framework post 2027.

1.2 Legal context

The investments on the core network consist of the construction of new parts of the network as well as the rehabilitation and upgrading of existing infrastructure parts which already exist but, either are not of sufficient quality and capacity to meet the current needs, or do not meet the required TEN-T standards. In this context, all key EU pieces of legislation that relate to infrastructure investments apply to TEN-T projects: in particular environment¹⁸, public procurement¹⁹ and State aid²⁰.

National legislation transposing EU Directives directly govern the procedures at Member State level, but these must be in conformity with EU legislation. The main areas for which

¹⁶ http://www.g7italy.it/sites/default/files/documents/Final%20Declaration_0.pdf. This is also in line with the efforts in the past years and still on-going in the United States: <https://www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf>

¹⁷ https://www.bmvi.de/SharedDocs/DE/Publikationen/G/innovationsforum-planungsbeschleunigung-abschlussbericht.pdf?__blob=publicationFile

¹⁸ In particular: Strategic Environmental Assessment Directive 2001/42/EC, Water Framework Directive 2000/60/EC, Environmental Impact Assessment Directive 2011/92/EU amended by 2014/52/EU, Habitats Directive 92/43/EEC, Birds Directive 2009/147/EC, Seveso Directive 2012/18/EU

¹⁹ Concessions Directive 2014/23/EU Public Procurement Directive 2014/24/EU, Services Procurement Directive 2014/25/EU, Remedies Directive for the utilities sector 92/12/EEC amended by 2007/66/EC, Remedies Directive for the public sector 89/665/EEC amended by 2007/66/EC

²⁰ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, p.9-29

Member State authorities have sole competence are spatial planning²¹ and land use and linked sectoral planning (e.g. transport plans); and other areas such as archaeological considerations, forestry etc. All this creates a quite complex set of rules which the project promoters have to comply with when designing and implementing the projects of EU importance.

The authorisation framework stems from different obligations, and sets forth the process that projects must go through to apply for and receive development consent and procure the works and services necessary for implementation. This occurs at two levels: the strategic level – planning the development of the transport network at national and/or regional level; and the project level – including the planning phase and the permitting procedure, as shown in Figure 1 below. Three inter-linked and often overlapping phases can be distinguished:

- **Strategic planning:** The ministry or authority responsible for transport devises a national transport plan which provides for the long-term development and modernisation of the transport network. It defines strategic priorities for different transport modes. A Strategic Environmental Assessment (SEA)²² is generally carried out, along with Appropriate Assessment (AA) if required according to the relevant EU Directive²³.
- **Project planning:** This phase assesses the timeliness and feasibility of a proposed project, including alternatives to achieving the objectives of the project. Feasibility studies set out the infrastructure needs and defined solutions and can include traffic analyses, cost-benefit analyses (CBA) and environmental assessments. These may or may not be regulated by national standards, or by the requirements of EU funding programmes such as the Connecting Europe Facility (CEF) or the European Structural Investment Funds (ESIF). Various alternative options are assessed on the basis of economic, social and environmental criteria. The preferred option is then integrated into the spatial plan(s). In certain countries, the approval of the project will automatically result in amendments of the spatial plans, while in others, a specific land-use permit will be required in addition to the construction permit. In some cases, a major modification to a spatial or other plan to take into account a new project may require revision to the SEA.
- **Permitting procedure:** The permitting procedure generally covers the activities required to prepare an application for development consent, and follows on closely from project planning. This phase includes the Environmental Impact Assessment procedure (EIA), the spatial planning decision(s), and all the other permits to be granted. This phase concludes with the acquisition and/or expropriation of the necessary land.

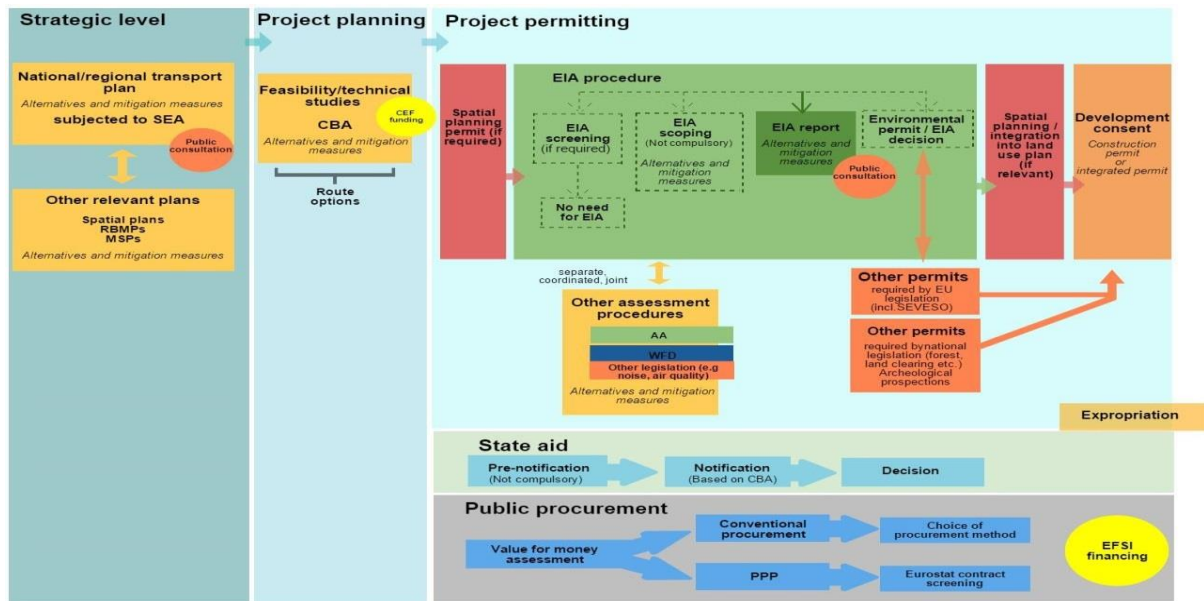
Public procurement procedures, State aid control, potentially other regulated procedures and the applications for funding also form part of the preparation of an infrastructure project as presented in the authorisation framework in Figure 1: Generic authorisation framework

²¹ Although the EU enacted the Maritime Spatial Planning Directive 2014/89/EU

²² Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

²³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

Figure 1: Generic authorisation framework



Building upon the existing possibilities

Various developments in the regulatory framework applicable to the implementation of the TEN-T projects took place in the recent years, notably a revised EIA Directive was adopted in 2014²⁴, a new set of directives in the field of the public procurement²⁵. In the field of State aid, the Notice on the Notion of Aid²⁶, the revised General Block Exemption Regulation²⁷ and the infrastructure grids have been adopted, providing further clarifications on the rules applicable to transport infrastructure.

However, these measures have a horizontal scope. The analysis of their application so far allows the Commission services to assess the level of additional measures necessary for addressing the specific needs of TEN-T projects and to define the different level of intervention in different areas targeted on those needs – going from a broader perspective in the permitting procedures where the impact of the revised measures is the least visible so far, to public procurement where limited adjustments would only be needed in the cross-border context. As regards State aid control, the recent clarifications address the needs of project promoters to understand the rules applicable to transport infrastructure leaving only the issue of the procedure.

²⁴ Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L124, p. 1-18

²⁵ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC OJ L 94, pp. 65-242 and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L94, p. 243-347.

²⁶ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C262 p. 1-50

²⁷ Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, OJ L 156, p. 1-18

2 PROBLEM DEFINITION

2.1 What are the problems?

The problems identified in the analytical work leading to this initiative are the **delays** and **legal uncertainties** which impact the effective delivery of the TEN-T core network projects.

Experience with the implementation of the TEN-T projects located on the core network corridors, as well as those in the previous legislative setting²⁸, has shown that the completion of the projects is very often **delayed** due to the complex regulatory and administrative arrangements. If a given project is delayed, the positive economic and social effects meant to be generated by this project will happen later than planned. At the same time, the problems that the project is expected to address (e.g. congestion, bottlenecks or pollution) are going to persist over a longer period. Moreover, the overall implementation of the core network risks to be delayed and completion by 2030 as foreseen by the TEN-T Regulation is unlikely.

Given the transnational nature of the TEN-T, any delay impacting one project has an adverse effect on the whole stretch of a corridor. The TEN-T framework adopted in 2013 moves from a project driven approach (patchwork of individual projects) to a network approach based on a dual layer TEN-T to be realised. This requires a synchronised approach for the development of projects across the borders, both in terms of project preparation and permitting. This is even more relevant as regards cross-border public procurement. In the case of cross-border projects developed together by the neighbouring Member States, the joint tendering procedures are necessary to better grasp synergies and benefits of scale.

TEN-T infrastructure projects are not often attractive to private investors. There may be different reasons, which are also addressed in the context of the third pillar of the Investment Plan for Europe as well as in the Progress Report of January 2018 to the CBS Report. The complexity of some regulatory procedures in the area of project financing is one of them. This, next to the other inefficiencies of the permit granting process, concerns in particular perceived uncertainties with regard to State aid control but also the way permitting procedures may affect public-private partnerships.

The Netherlands – a dynamic market of PPP in transport

The Netherlands is a prominent example of the development of the PPP market. According to the EPEC Market Update 2017²⁹ it is currently the 4th largest PPP market in the EU, also beyond Germany which is the biggest economy overall. The clarity of rules topped up with constant development of expertise in this field bore fruit with materialisation of a high number of projects – also in the transport sector financed with an EFSI guarantee.

The TEN-T network as a whole cannot properly function and offer all of its benefits at EU level before all the elements are completed. The delayed implementation of the TEN-T network will put off the benefits the EU expects from a smart, efficient, sustainable and well-functioning transport network, especially in light of its objectives to foster low emission mobility in Europe. It is very well illustrated by a sequence of sections to be upgraded in one of the busiest transport corridors across the continent – the Rhine Alpine CNC:

²⁸ Under the former legislative framework, the TEN-T policy identified 30 Priority Projects. Several of them have been completed but some are still on-going, the experience with Priority Projects also shows that there issues related to permitting procedures impacted the delivery of several projects (e.g. PP17, PP18/30, PP24), Implementation of the Priority Projects, November 2012; DG MOVE based on data from Member States, https://ec.europa.eu/transport/sites/transport/files/themes/infrastructure/ten-t-policy/priority-projects/doc/pp_report_nov2012.pdf

²⁹ Market Update Review of the European PPP Market in 2017, EIB, March 2018

Zevenaar – Emmerich – Oberhausen

This cross-border section located on the RhineAlpine CNC is in fact composed of two different projects – one implemented by the Dutch RIM (ProRail) and the second by the German RIM DB Netz. This section is crucial to provide capacity for growing traffic on one of the EU's busiest rail freight routes and fully use the potential of the newly built Betuwe Line in NL. The Dutch part has already been completed; however the works on the DE part are yet to start and currently are not foreseen to be finished before 2022, while originally planned for 2013, i.e. **9 years of delay**.

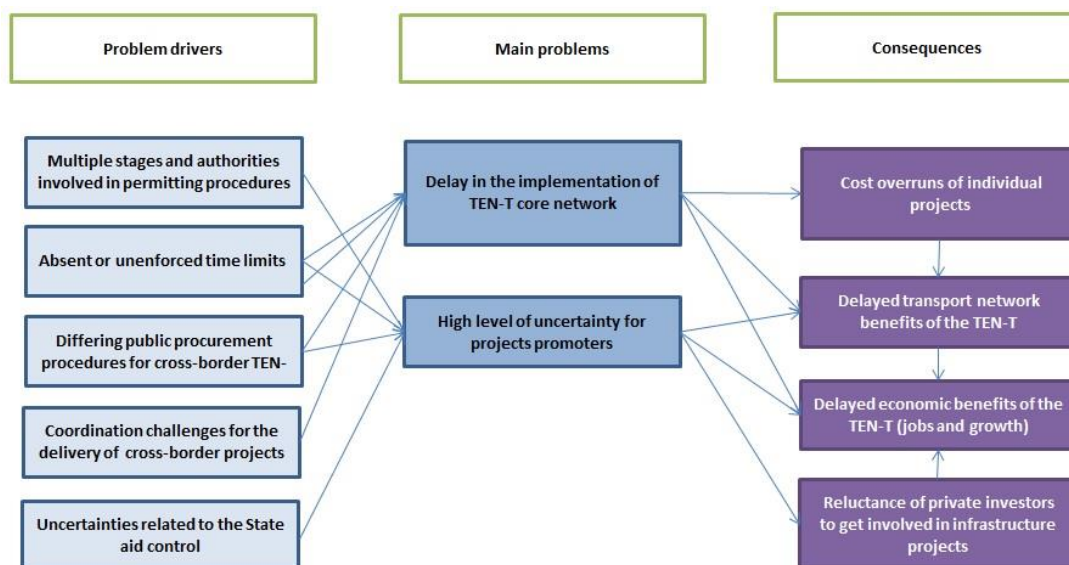
This delay, even if the project from the procedural point of view is a purely German national project, affects the development of the Corridor and TEN-T network as a whole.

In addition, unnecessary costs can also arise when regulations or procedures are not clear enough and the time needed for their application cannot be foreseen with an acceptable level of certainty. The lack of predictability in the procedures leaves a **high level of uncertainty** for projects promoters and potential private investors leading ultimately to sub-optimal investment choices. Finally, such legal uncertainty can also deter private investment from participating in TEN-T infrastructure projects and results in increased costs in terms of access to capital.

Several Member States have already started to develop measures at national level to address the issue. The approach under the present initiative should not lead to unnecessary burden on Member States that face fewer difficulties because they already have established a one stop shop and meet the deadlines. However, a synchronised approach would trigger innovation and improvements for the Member States that are lagging behind.

It should be borne in mind that the annual administrative costs currently incurred by the authorities and project promoters are estimated at €21 million.

Figure 2: Problem tree



Several **root causes** leading to these problem drivers have been identified.

First, investment projects in transport infrastructure are highly complex and multidimensional ventures which combine different elements which can create potential problems – these are technical complexities related to engineering challenges, several impacts on different areas (environmental, economic, social, political) as well as complexities related to their size and capital required. Finding resources for their delivery can generate problems related to funding and financial procedures.

Another root of the problem is the fact that many of the transport infrastructure projects are linear, i.e. located in a long stretch of land having impacts along its way on all the neighbouring pieces of land and their occupiers resulting in a high number of stakeholders affected and multiple administrative proceeding (e.g. spatial planning in different regions and localities).

The projects are highly susceptible to generate conflicts, as the procedures and requirements to properly address their expected impacts may stem from different legislations and acts adopted at different levels (from local to the EU and international level). Some project promoters are confronted with multiple use of the infrastructure next to water supply, power generation, agriculture etc³⁰.

On top of this comes the additional complexity of the cross-border projects where all the procedures are handled differently across the borders, also due to diverging national transposition of relevant EU directives.

These root causes are inherent to transport infrastructure projects. However, there are other problem drivers that impact delays and uncertainties in the TEN-T project implementation, which range from technical (project preparation capacity, feasibility, engineering complexity and other technical issues), to political and funding issues. They remain outside the scope of this impact assessment and the present initiative.

In particular, the problems related to the availability of funding (beyond the EU contribution), technical challenges as well as administrative capacity of either project promoters or supervising authorities, cannot be effectively address by the present initiative. Either it is beyond the mandate of the EU action or it is addressed already elsewhere, for example via dedicated instruments such as technical assistance in funding programmes (e.g. CEF programme support actions) or horizontal mechanisms (e.g. voluntary ex ante assessment in the public procurement area). However, the problems referred to above – delays due to procedures and high level of uncertainty due to procedures – can be effectively addressed by tackling the above problem drivers as presented in this impact assessment.

2.2 Lessons learnt from the TEN-E experience

Since 2013, the TEN-E Regulation³¹ contains provisions aiming at reducing the timeframes for authorising the projects of common interest in the TEN-E. It also introduced the concept of the single authorising authority for all the permit granting processes. The TEN-E experience has therefore been duly taken into account.

This was done in the context of the two supporting studies for the present impact assessment by also interviewing the relevant services in the Directorate General for Energy of the European Commission and reviewing any available useful analysis.

According to the Commission's recent assessment; it has proven successful with bringing the average duration of the permit granting process in energy transmission projects from 10 years to an expected 3.5 years and is a useful guidance for the solutions presented in this initiative³².

³⁰ This is particularly the case with waterborne projects where the transport function of the infrastructure is only one of its objectives.

³¹ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 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, p.39

³² According to the analysis of ACER, the average duration of permitting expected by PCI promoters in the pool of 96 electricity PCIs is 3.5 years. For gas, the average permit granting duration for the pool of assessed 54 PCIs was 3.2 years. Commission Staff Working Document Accompanying the document Commission Delegated Regulation amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest, Annex II, SWD (2017) 425 final

2.3 Who is affected by the problem?

The problem mainly affects three categories of actors: project promoters, public administrations at local, regional or national level and civil society often represented by NGOs. A detailed analysis on the categories of actors which are affected by the problem is presented in Annex 3 to the present impact assessment report.

2.4 Getting evidence to evaluate the current situation

To best evaluate the situation, the Commission carried out an extensive analysis of the situation and possible solutions. It completed an exploratory study, which made recommendation to improve and better coordinate authorisations procedures for infrastructure projects³³. This exploratory study conducted an extensive analysis of the problem and 17 pre-selected cases were screened. Further in-depth studies examined the regulatory and administrative frameworks for transport projects in ten selected Member States to identify the sources of delay, cost and uncertainty, as well as good practices. The selection of countries, in combination with the countries represented in the ten project case studies, has ensured that the research reflected the general picture across the EU³⁴.

The study findings regarding the organisation of the permitting procedure were that delays in permitting often occur due to overly complex procedures, involving multiple steps and multiple authorities. A single permitting authority was proposed for TEN-T projects, together with overall time limits for the permitting procedures. It also found that projects face considerable delays when challenged by the public or stakeholders due to the quality of the procedures used to engage the public and due to timing, i.e. the point at which those procedures take place during the process of project preparation. It suggested measures such as requirement for public involvement before a permitting application is submitted, establishing principles for the conduct of public consultation procedures for TEN-T projects, carrying out public information campaigns and improvements to the process for appeals of decisions on development consent.

For delays due to environmental assessment, it proposed mandatory joint procedure for all environmental assessment procedures stemming from EU legislation, various technical clarifications and providing more dedicated external technical assistance services for the preparation of TEN-T projects, focused on environmental assessments. In public procurement, the delays would be partly addressed once the recent revisions of relevant EU directives are fully implemented in the coming years. A special procurement regime aiming at speeding up cross-border procurement and review procedures was proposed. As regards State aid notifications, the study identified two key issues at the Member State level driving delays and uncertainty, namely late notification by the Member State and the poor quality of notifications (including information gaps). In addition, the study suggested reducing State aid decision timeframes for selected TEN-T projects.

2.5 What are the problem drivers?

Five underlying causes to the problems have been identified and are described below as problem drivers.

2.1.1 Multiple stages and authorities involved in permitting procedures

Permitting procedures in the Member States differ greatly in the number of necessary permits and decisions to be obtained, as illustrated in Table 1. The number of authorities and levels of

³³ Milieu et al

³⁴ The TEN project case studies concern the following Member States: Czech Republic, Germany, Hungary, Italy, the Netherlands, Poland, Romania, United Kingdom, Austria and Spain.

governance that may be involved in permitting procedures, as well as their competence and power in the procedure also vary significantly across Member States. Among the ten Member States analysed in detail in the exploratory study³⁵, four have a single-stage permitting procedure³⁶, where all permitting decisions (environment, spatial planning etc.) are handled through a single development consent procedure. While only one permitting authority grants the final decision, consultation of other authorities generally remains a prerequisite, as the different assessments may relate to policy areas that are within the domain of other authorities. The other six countries have multi-stage permitting procedures³⁷.

In addition to the statutory permits and decisions, binding opinions or decisions of a number of authorities can be necessary before the permitting authority can issue a permit. The large number of permitting authorities involved is in part due to the wide scope of impacts considered in environmental assessments. The internal organisation of Member States and the level of decentralisation are others relevant factors potentially increasing the number of authorities involved in the procedure.

Five of the Member States analysed in the exploratory study have integrated various steps – environmental permit, spatial planning and construction permit – into a single permitting procedure (Austria, Germany, Italy, the Netherlands, and the United Kingdom). In Austria, Italy, the Netherlands and the United Kingdom, environmental and spatial planning decisions are integrated into a single development consent procedure. In Germany, all decisions on environmental assessments and other permits are integrated in the plan approval procedure; however spatial planning remains separate (Regional planning procedure), and precedes the plan approval procedure. In the Netherlands, land use plans are automatically updated when the development consent is granted, avoiding the completion of a separate spatial planning decision³⁸.

These efforts, even if in many cases effective, are not sufficient to form an EU-wide approach and provide for a synchronised implementation of the TEN-T. First, they are not systematically coupled with time limits (see specifically Section 00) and secondly these measures are not undertaken by the other Member States (even if some of their streamlined approaches are very successful – e.g. integrated permitting in Poland for national roads and railways). But since even the purely national projects affect the developments on the other parts of the Corridors and TEN-T network, as explained also in the Problem section, a harmonising effort across the EU is needed.

Furthermore, the 2018 CBS Progress Report highlights that delays in permitting are often due to multiple steps and authorities and recommends the introduction of a simplified process or at least a mandatory joint procedure for all environmental assessments at project level.

The situation of multiple stages and authorities involved in permitting procedures is described in further details in Annex 5, section 1. The results of the Open Public Consultation carried out for this initiative show that all the categories of stakeholders (98 respondents) with one exception fully or rather agree that permitting procedures are complex and lengthy when it comes to the TEN-T projects (Figure 2 in Annex 2). Moreover, permitting procedures in relation to the TEN-T projects are perceived as suboptimal by most respondents (59 out of 95) to the Open Public Consultation (Figure 5 in annex 3).

It is worth noting that all categories of respondents including governments disagree with the statement that permitting procedures are organised in an optimal way (Figure 3 in Annex 3).

³⁵ Annex 3 to the Milieu et al., Country executive summaries.

³⁶ Germany, Italy, the Netherlands and the United Kingdom

³⁷ Austria, Czech Republic, Hungary, Poland, Romania, and Spain. For details see Table 2 in the Annex 1 to Milieu et al.

³⁸ Milieu et al. Annex 6 Guide of good practices, p. 11

Why does it drive the problem?

As evidenced in the exploratory study³⁹, factors of delay, costs and uncertainty in permitting procedures are often rooted in procedural aspects. TEN-T projects have multiple impacts on land-use and the environment, often require conducting multiple environmental assessments, and, given their size, can fall under several jurisdictions if the procedure is handled at regional or local level. Consequently, in some Member States, permitting procedures are complex, involving many steps and permitting authorities, leading to duplication of permits and applications to be submitted by project promoters, duplication of or overlaps in assessment procedures, and significant administrative burden and costs for both the project promoters and permitting authorities. The higher the number of different authorities involved in the permitting procedure (either as permitting authority or consulted authority), the more complex it becomes to gather all of the intermediate decisions required to grant the final permit.

Cross-border projects are particularly vulnerable to the problems described above. The number of permits, the sequence of approvals, time limits, and requirements for public consultation can vary greatly between countries and can result in permitting procedures happening at different speeds on either side of the border⁴⁰.

2.1.2 Absent or unenforced time limits

In some Member States, time limits are set out in the legislation for the main permits (EIA, spatial planning) and public consultations, as illustrated in Table 1. However, global time limits for the entire permitting procedure have not been fixed in any Member State, even where an integrated permitting procedure exists (e.g. Germany). Time limits for environmental assessments generally exist, at least for certain procedures, in particular for screening and scoping, and public consultation. The 2014 amendment to the EIA Directive introduced time limits for screening decisions. However, the competent authority has the possibility, in exceptional cases related to the nature, complexity, location or size of the project, to extend this deadline⁴¹.

Stakeholders often mentioned that missing documentation or documentation of poor quality was the reason why the permit cannot be issued within the time limit, as additional data had to be requested to the applicant, which often stops the procedure⁴².

In most of the Member States analysed in the exploratory study⁴³, sanctions are not applied in case of missed deadlines. Only in Romania, authorities responsible for issuing different certificates or notifications can be fined if they do not respect the timelines for issuing documents, as required by the law.

Why does it drive the problem?

Case studies conducted for this impact assessment showed that large cross-border infrastructure projects generally exceed ten years from early planning to construction. In the ten Member States studied, the duration of the permitting procedure (from the submission of the application to the last permit granted) was, according to interviewed stakeholders, between two and five years⁴⁴. Regardless of the source of the problem, one way of addressing

³⁹ Milieu et al., section 3.1.1, p. 31

⁴⁰ A prime example is the Fehmarn Belt Fixed Link project, where the approval process went quite smoothly in Denmark, while the approval in Germany is still dependent on the completion of several rounds of public hearings.

⁴¹ In that event the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected (Article 4(6)).

⁴² For details see consultations done in the context of the exploratory study – Annex 5 to the Milieu et al.

⁴³ Annex 1 to Milieu et al., Problem Definition, Section 1.1.3

⁴⁴ Only countries where stakeholders provided information on the duration of the permitting procedure (excluding preparation of the application) were considered in this average.

lengthy procedures is to establish time limits, to incentivise permitting authorities to adopt measures and/or administrative practices accelerating the granting of permits. However, global time limits for the entire permitting procedure have not been fixed in any Member State, even where an integrated permitting procedure exists⁴⁵.

Table 1: Permit granting procedures in selected Member States

Member State	Number of procedures required	Number of permitting authorities	Time Limits	Average duration according to stakeholders	Fast-track procedures
Austria	1-3	1-2 (+)	9-12 months for EIA	15 years	n/a
Czech Republic	4 (+ 10-15 opinions)	2	45-90 days per procedure Final approval: no time limit	3-4 years	n/a
Germany	1	1	No legal time limits	2 years	n/a
Hungary	7-9	4-6	30-42 days per procedure	1-4 years	Possibility to conduct several procedures in parallel
Italy	1	2	150 days for EIA	Up to 10 years	Legge Obbiettivo (2001), Development consent granted on preliminary project Tighter time limits for decision-taking
The Netherlands	1	1	2 years	6 years	Limitations of legal standing of municipalities, time limits for judgements in appeals
Poland	2-4	2-3	1-2 months (standard rules of the code of administrative procedures)	1.5-4 years	Number of permits needed reduced to 2 or 3, land covered by permit becomes automatically property of State Treasury
Romania	6-7	6-7	6-12 months EIA, 5-165 days per other procedures	2-5 years	Development consent granted with preliminary approvals regarding forest land and utilities Automatic change of agricultural land into constructible land once the ownership title is transferred to the state Extension of validity of permits until the end of the construction works
Spain	3	2	24 months for SEA 9 months for EIA	Not available	n/a
United Kingdom	1	1	12 months (9 in Scotland)	Two years	n/a

Source: European Commission based on Milieu et al., 2016.

2.1.3 Differing public procurement procedures for cross-border TEN-T projects

Challenges related to public procurement

Public procurement can bring major challenges to TEN-T projects. The research carried out for the exploratory study⁴⁶ showed that problems in the procurement phase can result in delays and increased costs for projects. Delays in the completion of the procurement phase

⁴⁵ In most of the Member States selected for analysis in the exploratory study, time limits have been set out in the legislation for the main permits (EIA, spatial planning) and public consultations (Milieu et al. Annex 3, Country Executive Summaries).

⁴⁶ Milieu et al., Section 3.4, p. 56

appear to be the consequence of a complex legal framework, the absence of time limits for the award procedure and, in particular, the long review procedures to challenge the award decision. Increased costs are directly related to delays but also to the selection of poor quality projects, which appears to be mainly driven by the lack of capacity of contracting authorities to conduct procurement procedures. These challenges are even more prominent for cross-border projects and still remain to be addressed as explained below.

The legal framework for public procurement within the EU is set out in Directive 2014/23/EU, on the award of concession contracts; Directive 2014/24/EU, on public procurement; and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. The ‘new’ EU Public Procurement Directives had to be transposed into the Member States’ national legal orders by 18 April 2016. The main objective of the new Directives is to simplify procedures and at the same time make these procedures more flexible⁴⁷; this is likely to contribute to tackling some of the problems identified above.

The problems linked to cross-border cooperation and differences in the ways in which Member States have transposed the legislation may not be fully tackled by the new legislation. This clearly comes out as a result of the targeted workshop organised specifically on public procurement⁴⁸. Moreover, the full extent of potential problems linked to partial or incorrect transposition, gold-plating, and differences across Member States will only be known once a conformity-checking exercise of transposition of these new Directives has been completed⁴⁹. It may therefore be the case that the new measures will improve the situation regarding complexities and delays related to public procurement procedures for TEN-T projects, and this needs to be taken into account when assessing policy options in this area.

One of the main purposes of EU public procurement is ‘to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds’⁵⁰. However, public procurement procedures can be a challenge for the smooth implementation of large infrastructure transport projects. This has been recognised in the 2015 CBS Report ‘Action Plan *Making the best use of new financial schemes for European transport infrastructure projects*’ which included a series of recommendations to ‘streamline and simplify procurement procedures’⁵¹.

Remaining complexity of the legal framework

The exploratory study⁵² found that, within the transport sector, and more specifically within the context of TEN-T projects, in six out of the ten Member States covered by the study the perception is the same – the complexity of the applicable rules (mainly resulting from the transposition and application of the old EU Public Procurement Directives) is considered an obstacle to a quicker public procurement procedure.

⁴⁷ The simplification of procurement procedures is envisaged to take place through the establishment of shorter procedural deadlines or the resort to e-procurement and other measures to reduce paperwork. Flexibility is improved through the possibility of using innovation partnerships, broader possibilities for negotiation with tenderers (competitive procedure with negotiation) and the use of best quality-price award criteria (including the total lifecycle cost). See for instance DG MARKET leaflet “New Rules on Public Contracts and Concessions – Simpler and More Flexible”, available at http://ec.europa.eu/internal_market/publications/docs/public-procurement-and-concessions_en.pdf.

⁴⁸ Conclusions of the Stakeholders Workshop Smart and effective public procurement for TEN-T cross-border projects, Brussels, 15 June 2017,

⁴⁹ A conformity checking of the three Directives will be conducted by DG GROW in 2017. The contract notice for consultancy services for completeness and compliance checks of national transposition measures and other legal assessment services in the field of EU public procurement law, no. 2016/S 125-222903, was published on 21 June 2016. The notice is available on TED.

⁵⁰ See e.g. Recital 4 of Directive 2014/25/EU

⁵¹ CBS Report

⁵² Annex 1 to Milieu et al., Problem Definition, Section 2.1.2

It appears therefore that the complexity of the legal framework and the application of differing public procurement rules to projects developed in a cross-border context can also lead to delays and increase legal uncertainty.

Recent developments in the area of public procurement

Since 2017, the Commission has taken some initiatives to accompany the implementation of public procurement legislation. In particular, a voluntary ex-ante mechanism has been set up⁵³ to enable the project promoters and other relevant actors to get targeted assistance and assessment from the Commission when developing the procurement strategies for their projects as well as the stage of launching the procurement procedures. This mechanism consists of three elements: a helpdesk⁵⁴, a notification mechanism⁵⁵ and an information exchange mechanism.

Notwithstanding, the usefulness of all these elements for contracting authorities and project promoters, the mechanism is however not binding, only provides a compliance assessment and is not automatically open to all TEN-T projects. Certain thresholds apply – as a principle only project beyond 500 million EUR can ask for advice. TEN-T projects of common interest may use the mechanism but only if a decision on the admissibility which will be taken on a case by case basis. This may limit the attractiveness of the instrument to promoters of medium-sized projects.

Why do complexities specific to cross-border procurement drive the problem?

Cross-border projects face specific difficulties in conducting public procurement. This has been highlighted by the project promoters for a long time was confirmed in the public consultation carried out for the exploratory study. They include legal barriers, language barriers and lack of experience in doing business in other countries⁵⁶.

Brenner Base Tunnel

This cross-border project is one of the emblematic TEN-T projects aiming at linking together different parts of the EU. Since the very beginning it was conceived as a long-term asset worth in total 8bn EUR.

In the case of project of this size, a delay of the EIA procedure of 1.5 years in 2006-2007 generated significant losses as a result of inflation and cost of financing.

Moreover, as a result of procurement issues, delays in the start of phase III/works (2011) of about 19 months caused a shift of the finalisation of the project from 2025 to 2026 and led to additional costs of about 20mn EUR (including additional time till finalisation).

Some of these deficiencies were addressed with the adoption of the new procurement directives in 2014. Nevertheless, there are other issues that are still not regulated at EU level, as noted in the 2015 CBS Action Plan, namely ‘the use of a single language in tender and contracting documents’. These problems were reiterated in the Progress Report presented in January 2018.

According to the new rules, the participating contracting entities can agree to apply the

⁵³ Communication from the Commission to the Institutions: Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects, COM(2017) 573

⁵⁴ National authorities can contact the helpdesk on specific issues they face when developing the procurement plan for a project. These questions could, for example, concern the applicable EU legal framework governing the project (procurement or utilities directives; concessions directive, etc.), conditions for exclusions from the directives, procurement procedures to be used, selection and award criteria, etc.

⁵⁵ The notification mechanism is designed to enable the project promoters to receive the Commission's views on the compliance with EU procurement legislation.

⁵⁶ For example, the case studies also showed that differences in national legislation can lead to significant delay. The complex legal framework for procurement applied in France and Italy in the Lyon-Turin case gave rise to prolonged discussions between both countries on the implementation of the applicable EU rules. The implementation of specific measures to prevent criminal infiltrations in public procurement was one of the specific points of discussion, since French and Italian law did not implement European law in a similar way at national level.

national procurement rules of the Member State where the joint entity has its registered office or the national provisions of the Member State where the joint entity is carrying out its activities. In addition, they can choose to apply this agreement for an undetermined period, when fixed in the constitutive act of the joint entity, or limit its application to a certain period of time, certain types of contracts or to one or more individual contract awards.

The new public procurement directives allow for a margin of discretion in the choice of the applicable law, the participating contracting entities struggle to decide on which law to apply and that the scope of application of the agreement ends up being significantly reduced (e.g. applying only during a certain period of time). In addition, these new rules do not seem fully satisfactory for infrastructure projects promoters who still mention the application of different national legal frameworks as the most difficult area for public procurement in the context of cross-border projects⁵⁷.

2.1.4 Coordination challenges for the delivery of cross-border projects

Cross-border projects face particular challenges that impact the timing and efficiency of delivery. The involvement of more than one Member State, and often of multiple regional and/or local authorities, can particularly impact the timely completion of permitting procedures. Any delay or obstacle on one side of a border will necessarily impact project delivery on the other side, as project promoters will not proceed with a project until the delivery on both sides of the border can be assured. Given the priority that TEN-T policy gives to cross-border projects⁵⁸, TEN-T core network projects are likely to be particularly impacted by these challenges.

Fehmarn Belt Fixed Link

According to the latest information the German plan approval process for the Fehmarn Belt Fixed Link project could only be finalised by summer 2018. Initially, the plan approval process was expected to be completed by autumn 2015, which means **so far more than 3 years of delay**. Only after this approval, the construction of the tunnel and access routes on Danish and German side could start. However, it is expected that the plan approval will be brought to the federal administrative court which could result in additional two years of delay. This planning process concerns the German part of the Fixed Link itself, as well as the German access routes and is a prerequisite for the construction phase.

Why does it drive the problem?

Cross-border projects encounter specific problems arising out of inconsistencies between legal permitting frameworks and procedures across Member States. As demonstrated in previous section of this report, the number of permits, the sequence of approvals, time limits, requirements for public consultation can vary greatly between countries and can result in permitting procedures happening at different speeds on either side of the border. Increased coordination of procedures is key in cross-border projects to ensure that the project can develop at roughly the same pace. Different procedures and sequence of permitting procedures generally impact the whole approval process and create time gaps between authorisations in both countries. Detailed description on how the cross-border contexts (such as transboundary EIAs and strategic planning) affect the permitting of the TEN-T projects is contained in Annex 5.

⁵⁷ Results of the open public consultation being part of the IA process. The Complex procurement in the Rail Baltica cross-border project is illustrated in the Progress Report of the Action Plan Making the best use of new financial schemes for European transport infrastructure projects. It highlights the difficulties regarding public procurement for the Joint Venture RB RAIL AS which has the sole responsibility for defining the procurement contracts. However, contracts are governed by the law of the state where the works are performed.

⁵⁸ See, for example, recital 13 of the TEN-T Regulation.

2.1.5 Perceived uncertainties related to State aid procedures

State aid control makes sure that State resources mobilised for investments do not lead to unjustified distortion of competition. Some transport authorities may however find State aid notifications challenging, given that in the past investments in transport infrastructure was considered to fall outside State aid rules⁵⁹.

Given the objective to attract more investors to the sector (blending of private and public financing), there will be more and more situations where the State aid control clearance will be of importance in the implementation of the TEN-T projects. Some streamlining measures in this respect have already been applied in the context of the implementation of the European Fund for Strategic Investments which provided for the possibility of priority treatment of the projects benefitting from the support of the European Fund for Strategic Investments⁶⁰.

Why does it drive the problem?

The exploratory study⁶¹ determined that the two main problems at the Member State level driving delays and uncertainty in State aid notifications are late notification and the poor quality of notifications (including information gaps). Cases of late notification generally come from a lack of awareness from authorities or project promoters of the need to notify potential State aid cases to the Commission. In addition, the lack of experience with State notifications in some authorities may lead to notifications that are of a lower quality. This can result in the Commission having to request further information to clarify the facts, lengthening the time needed to have a complete notification necessary for adopting a decision. Some project promoters may also be uncertain about the applicability of State aid rules to their project may also need to seek expert opinions, contributing to additional project costs. There has been important progress in clarifying the State aid rules applicable to the transport infrastructure projects in recent years. In May 2016 the Commission adopted the Notice on the Notion of aid⁶² where the Commission clarified in particular when public funding for infrastructure projects falls within the scope of EU State aid control. In 2014 new Aviation Guidelines⁶³ were adopted and in May 2017 the revised General Block Exemption Regulation as regards aid for port and airport infrastructure⁶⁴ was adopted in 2017. In addition, the Commission services published so-called "analytical grids" on the application of State aid rules to the public financing of infrastructure (e.g. for ports, airports, road and rail infrastructure)⁶⁵.

However, the CBS Progress Report proposes to make further steps, also in light of the request of some stakeholders (for example in the light of what already exists as regards the priority treatment of certain cases on mobilising investments⁶⁶). As acknowledged by stakeholders during the workshop devoted to governance and State aid issues, ex-ante appraisal of State aid compliance is crucial for the financial sector to engage in a project. Therefore, the Progress

⁵⁹ Case T-128/98, *Aéroports de Paris v Commission of the European Communities*, European Court of Justice, 2000; Joined Cases T-443/08 and T-455/08 *Freistaat Sachsen, Flughafen Leipzig/Halle et al v Commission of the European Communities*, European Court of Justice, 2011, ECR II-1311

⁶⁰ European Commission, MEMO/15/5419

⁶¹ Milieu et al., Section 3.5, p. 66

⁶² Commission Notice on the notion of State aid pursuant to Article 107(1) TFEU, OJ C 262 of 19.7.2016, p.1-50

⁶³ Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p. 3.

⁶⁴ Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, OJ of 20.06.2017, L 156, p.1-18

⁶⁵ http://ec.europa.eu/competition/state_aid/modernisation/notice_aid_en.html

⁶⁶ Under the Investment Plan for Europe, projects benefiting from the EFSI may combine in their financial schemes also sources of financing which are considered as State aid, also e.g. ESI Funds. In order to simplify and accelerate their implementation, the Commission has committed to assess the compliance of ESI Funds with State aid rules as a matter of priority and to give it fast-track treatment. The Commission aims to complete its assessment within six weeks of receiving the complete notification from the Member State. European Commission, MEMO/16/313

Report recommends a swift appraisal procedure by the European Commission if a project is in conformity with State aid rules to be generalised in order to clear the project upfront and thus provide legal certainty and predictability about the overall investment.

The Commission carries out its assessment of State aid compliance only once the notification is complete. Therefore, it encourages Member States to make use of the pre-notification procedure which can help the Member States to submit complete notifications. In addition, the Commission gives the possibility to Member States for important and complex projects to establish a mutually agreed planning clearly setting out the timeline and milestones, and the information that needs to be delivered, ensuring a swift adoption of the decision once the notification takes place. This provides Member States with the possibility to agree with the Commission to a priority treatment of the case.

2.6 How will the problem evolve?

Without EU intervention, the implementation of the current legislative framework will continue to result in **delays** and **legal uncertainties** which impact the effective delivery of the TEN-T projects. As explained in section 2.2, given the transnational nature of the TEN-T, any delay impacting one project has an adverse effect on the whole stretch of a corridor. Overall, the implementation of the core TEN-T network, as foreseen by the TEN-T Regulation, is unlikely to be achieved by 2030.

This situation is not expected to be significantly changed by the transposition of the amendments to the EIA Directive which is meant to be effective as of May 2017. While these amendments are expected to facilitate EIAs for cross-border projects, they do not foresee the complete integration and coordination of permitting procedures, do not introduce an overall time limits for all authorisations and provide for a possibility of optional schemes for conducting cross-border consultations through a joint body. The provisions in the revised EIA directive do not suffice for the needs of the TEN-T projects also as they only allow for integrating assessments required under the EIA, Habitats and Birds directives where appropriate and as the integration of assessments based on other pieces of EU legislation (e.g. water framework directive) remains optional.

In a similar way, this situation would not be significantly changed for the needs of TEN-T projects by the latest revisions of the EU Public Procurement Directives which were meant to be effective in national law since nearly two years. In case of the cross-border procurement, the Directives leave to the Member States to choose the applicable legal framework. The application of the rules to cross-border TEN-T projects would not improve the current situation as the decision will still be taken *ad hoc*, subject to changing political priorities, without providing the necessary stability to the project promoters.

Furthermore, the mentioned EU law on environmental assessment and public procurement has general nature and broader scope while for TEN-T infrastructure projects, more targeted measures appear necessary.

The risk of inadequate transposition or in diverging ways of this transposition across the borders of these recent pieces of legislation cannot be excluded on the basis of the current experience. Further explanations are made in chapter 5.1 regarding the baseline scenario.

The administrative costs incurred by the authorities is estimated at €185 million for 2018-2030 (expressed as present value) in the baseline scenario and for project promoters at €937 million over the same time period. Overall, the administrative burden is projected at €1,122 million for 2018-2030, expressed as present value.⁶⁷

⁶⁷ Source: Panteia, PwC, M-FIVE Impact Assessment support study (2018) (henceforth: Panteia et al). More details on the assumptions used for the administrative burden are provided in Annex 4.

Finally, the suboptimal framework for the involvement of private investors remains on top of the other problem drivers and has a direct consequence: the investors' base will not expand and transport infrastructure projects will remain unattractive for private investors in many areas of the EU. This will limit the number of projects going ahead as the biggest financial burden will remain on the public expenditures.

3 WHY SHOULD THE EU ACT?

3.1 The EU's right to act

The EU's competence to act in relation to transport networks is set out in Article 170 of the TFEU, which requires the EU to 'contribute to the establishment and development of trans-European networks' in the area of transport. In detailing what EU action in this area could include, Article 171(2) states that 'Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact' on the objective of the establishment of trans-European networks, and the 'Commission may, in close cooperation with the Member States, take any useful initiative to promote such coordination'.

Hence, EU action to set out a framework to streamline the permitting and preparation of projects integral to the establishment of the TEN-T network is within the scope of the EU's right to act. The EU shares competence in this area with the Member States.

3.2 Subsidiarity: necessity of EU action

The transnational nature of the TEN-T network is clear. This is particularly evident in relation to cross-border projects; however, the corridor approach adopted in the TEN-T Regulation is inherently transnational – this approach is intended to 'coordinate different projects on a transnational basis and synchronise the development of the corridor'⁶⁸. This coordinated, transnational approach is unlikely to be adequately addressed by Member State action alone.

Permitting procedures in Member States differ greatly in the number of necessary permits and decisions to be obtained. The number of authorities and levels of governance that may be involved in permitting procedures, as well as their competence and power in the procedure also vary significantly across Member States. The delays stemming from these procedures have however significant impact on the TEN-T core network completion.

In terms of public procurement, problems appear to be more related to the way applicable public procurement framework is organised at national level, in particular the long review procedures which appear to be main cause of delays. In case of cross border projects, the problems also stem from the differences in transposition of relevant EU law at national level. For cross-border projects, Member States face similar difficulties when it comes to coordination of public procurement and interpretation of the applicable EU rules, as well as coordination of transboundary environmental assessments.

While according to the results of the Open Public Consultation, national and regional authorities appear less confident that the EU should act, still the majority of stakeholders who participated in this consultation express themselves in favour of the EU taking action in this field (75 out of 99 respondents). The vast majority of individual respondents believe in the effectiveness of the EU action in this field (16 out of 21 answers). In this sense, the results of the Open Public Consultation confirmed the conclusions of the three dedicated workshops carried out in 2017 and as well as of the interviews and consultations run in the Exploratory Study as shown in Figure 4 Annex 2.

⁶⁸ Recital 43, TEN-T Regulation

3.3 Subsidiarity: Added value of EU action

The completion of the TEN-T core network by 2030 aims at delivering an efficient, smart and sustainable transport network that underpins the single European transport area. This overall strategy is expected to promote low emission mobility, to enable the decarbonisation and digitalisation of transport, to benefit all users of the EU transport systems – businesses and citizens but also to generate investments, economic growth and jobs.

The implementation of the TEN-T requires significant coordination efforts of the various projects in order to fully exploit the overall network benefits at EU level. In this respect, the delivery of the TEN-T network relies on the efficient synchronisation not only of the investments but also of the implementation pace of individual projects to avoid time gaps and reap all benefits from a network approach. This is the approach that has been developed with the TEN-T regulation adopted in 2013. Several tools have been established to generate the European added value expected from the TEN-T network. These include the definition of harmonised standards for greater interoperability, sustainability and efficiency, the development of core network corridors to bridge missing links and remove main bottlenecks, the appointment of European coordinators to facilitate the coordination of relevant actors and the creation of the Connecting Europe Facility and other funding instruments to provide EU support for investments. However, no coordination tools or mechanisms are yet in place in the transport sector – and contrary to others such as energy – to address the needs for synchronisation, coherence and efficiency in the delicate phase of the planning and the implementation of infrastructure projects.

Indeed, infrastructure projects on the TEN-T core network face a number of challenges in regulatory and administrative processes that impact effective and efficient planning and implementation of TEN-T network. Such challenges in permitting procedures, environmental assessment procedures and public procurement practices contribute to increased delays, cost and uncertainty during the planning and preparation of core network projects. This is particularly the case of TEN-T cross-border projects which may be implemented across one or more Member States by a single entity (joint venture) like for Rail Baltica, Brenner Base Tunnel, Fehmarn Belt etc. Unnecessary complexity and duplication of efforts can be avoided by applying the same or coordinating the procedures across the border with a view to maximise synergies and reap the benefits of a European approach. Otherwise, these infrastructure projects are confronted with a multitude of national procedures, differing requirements and regulatory fragmentation.

The policy options presented aim to help the EU achieve the overall objectives of TEN-T policy. They specifically address some of the problems faced by TEN-T core network projects by seeking to streamline permitting, environmental assessment, procurement and State aid processes without prejudice of the content of the legislation underpinning these procedures. The objective of reducing delays and uncertainties can be more efficiently met by providing a stable and clear framework at the EU level

3.4 Why act now?

Several reasons plead for introducing now streamlining measures for the implementation of the TEN-T projects.

The TEN-T Regulation requires the completion of the core network by 2030. This means that there are less than 13 years left to complete all the necessary projects. Based on the fact that in extreme cases the process of project preparation in terms of obtaining permits and designing the technical and financial structure of project lasts around 10 years, no delays can be afforded to meet the deadline. Of course, not all projects are at that level of complexity and it may take less time to prepare them.. A conservative calculation as explained in Section 5.1

shows that in average projects are delayed by approximately 2 years.

The EU economy is still recovering from the economic and financial crisis which resulted in a clear drop in public and private investment in infrastructure. The European Commission has placed the relaunch of investment in the real economy at the very centre of its priorities for 2014-2019. This is the main *raison d'être* of the Investment Plan for Europe, which third pillar concentrates on the removal of administrative barriers hampering investments and the related benefits.

As a result, many of the TEN-T projects are planned only now to start being implemented in the coming years. These projects will benefit from the streamlined measures and be less prone to delays. This is particularly relevant to foster an effective implementation of TEN-T infrastructure projects in the current and next multi-annual financial frameworks.

The present initiative results from a long reflection process launched at the beginning of the current Commission to contribute to implementing its priorities. As already presented before, the CBS Progress Report clearly summarises the evolution of the reforms of the permitting processes and other authorisations procedures of which are subject TEN-T infrastructure projects are still not sufficient and more ambitious solutions are needed. After a long period of consultation and analysis – started already in 2014 with the Council conclusions under the Italian Presidency – the material and evidence gathered is solid enough to identify the main problems and propose solutions with initiating the legislative proposal. Recently, the TTE Council adopted in December 2017 conclusions on the progress of the Trans-European Transport Network (TEN-T) implementation and the Connecting Europe Facility (CEF) for transport which very much support the continuation of this infrastructure policy and encourage the Commission to give follow up to the reflections on the regulatory environment of the implementations of TEN-T projects⁶⁹.

4 OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1 General objectives

The general objective of initiative on streamlining TEN-T implementation is addressing the delays and the high level of uncertainty which impact the effective delivery of the TEN-T core network projects. It will contribute to the objective set in Article 170 TFUE to establish and develop the trans-European transport network as well as to promote the interconnection and interoperability of national networks.

In particular, this initiative aims at accelerating the benefits of the implementation of a fully interoperable and interconnected transport network linking the main economic centres and all the Member States. It will help maximise the impact of the existing national networks requiring upgrades to meet the TEN-T interoperable parameters as well as bridge missing links in Europe. Since the development of the TEN-T focuses on the sustainable modes of transport, this initiative directly contributes to the transition to low emission mobility⁷⁰.

4.2 Specific objectives

To achieve this general objective the following specific objectives (SO) have been defined:

- SO1: minimising the risk of delays faced by individual TEN-T projects;

⁶⁹ 15053/17 TRANS 525, <http://data.consilium.europa.eu/doc/document/ST-15053-2017-INIT/en/pdf>

⁷⁰ The initiative is listed in the action plan attached to Communication A European Strategy for Low-Emission Mobility, COM(2016) 501 final

- SO2: increasing legal certainty for project promoters thus attracting more private investors to transport infrastructure

The **specific objective 1** (SO1) aims at addressing the important delays encountered in the implementation of TEN-T infrastructure projects which are confronted to a series of difficulties as explained above.

SO1 will tackle the Problem Driver 2 (absent or unenforced time limits), Problem Driver 3 (differing public procurement procedures for cross border TEN-T core projects) and Problem Driver 4 (coordination of delivery of for cross border TEN-T core projects).

The **specific objective 2** (SO2) aims at bringing greater clarity in the processes which project promoters need to follow in order to implement the projects, in particular through permitting and other administrative authorisations, public procurements and State aid control.

SO2 will tackle the Problem Driver 1 (multiple stages and authorities involved in permitting procedures), Problem Driver 2 (absent or unenforced time limits), Problem Driver 3 (differing public procurement procedures for cross border TEN-T core projects) and Problem Driver 5 (reluctance of private investors to TEN-T core network infrastructure projects)

The initiative will in addition also provide more coherence in implementation of different EU policies. The perceived regulatory obstacles and legal uncertainties for TEN-T projects promoters are very often result of the diverging implementation of EU policies and diverging national implementation of EU rules and complementing them with additional requirements. The achievement of the specific objectives is planned without derogating to any objectives and standards required by the EU policies but by integrating them better together for the benefit of the TEN-T implementation. No trade-offs are expected between the various EU policies.

The objectives are also in line with the policy of attracting private capital to the areas traditionally reserved for public intervention as well as re-launching investment in the real economy. The increased investment in TEN-T infrastructure is necessary to at least partly address the backlog in the transport infrastructure investment being the result of the financial crisis⁷¹.

The initiative will contribute to closing the infrastructure gap, in particular time gaps in procedures, between different Member States and it will specifically address the cross-border projects which are the priority in the TEN-T core network corridors.

Finally, the initiative is planned to reduce the administrative cost due to over complex procedures and delays in permitting procedures borne by the project promoters. Since the material rules are not planned to be changed, the compliance cost of the initiative is not expected to be high.

⁷¹ "In 2008, annual investment in transport infrastructure in the EU28 was approximately € 130 billion, which was broadly consistent with historical levels of about 1% of GDP. However, investment fell during the financial crisis and the following period. It is therefore estimated that investment now needs to rise to €160 billion a year until 2020, as a minimum, to address the backlog and restore investment to pre-crisis levels. " Commission non-paper with a view to the Ministerial lunch debate taking place at the Transport Council on 1 December 2016
<http://data.consilium.europa.eu/doc/document/ST-14826-2016-INIT/en/pdf>

5 WHAT ARE THE AVAILABLE POLICY OPTIONS?

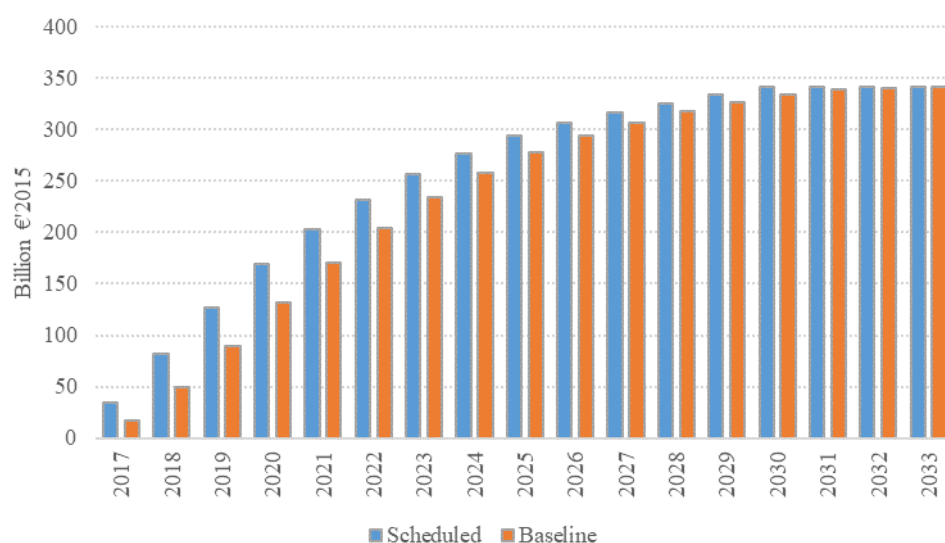
5.1 What is the baseline from which options are assessed (baseline scenario)?

Building on previous priority project reports (2012)⁷², the impact assessment support study assumes that in the baseline scenario only 50% of investments would occur on schedule while 25% of the investments would be delayed due to permitting procedures by one year, 15% by two years, and 10% by three years under a conservative approach.

An analysis of the likely pattern of delays has been made, based on the findings from previous priority project reports (2012). A selection of 34 projects was made. Amongst these projects, 16 projects finished later than planned, delayed on average by 4.25 years. The cross-border projects were on average delayed more than the others. Amongst the 34 projects, delays were caused by a range of factors; technical, political, funding, and procedural. It was not possible to isolate empirically the level or probability of delay linked to specific permitting procedures. However, it is possible to conclude that delays are not occurring on all projects, and that the delays attributed to permitting procedures should be lower than the total length of the delays, as other delay factors are present. Therefore, a “conservative approach” has been chosen for the Baseline scenario that considers an average delay of 2 years due to the permitting procedures.

The baseline scenario builds on the updated EU Reference scenario 2016 but assumes the delays in the implementation of the core TEN-T network investments due to the permitting procedures.⁷³ The scheduled cumulative investment profile and the investment profile including delays are provided in Figure 3.

Figure 3 : Cumulative investment profile – scheduled and with delays (baseline scenario)



In the baseline scenario, EU transport activity is expected to continue growing beyond 2015. Freight transport activity for inland modes is projected to increase by 28% between 2015 and 2030 (51% for 2015-2050). Passenger traffic growth would be lower than for freight at 17%

⁷² Implementation of the Priority Projects, November 2012; DG MOVE based on data from Member States, https://ec.europa.eu/transport/sites/transport/files/themes/infrastructure/ten-t-policy/priority-projects/doc/pp_report_nov2012.pdf

⁷³ The updated EU Reference scenario 2016 assumes the completion of the core TEN-T network by 2030 and of the comprehensive TEN-T network by 2050. A full description of the updated EU Reference scenario 2016 is provided in the Impact Assessment accompanying the revision of the Eurovignette Directive: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017SC0180>.

by 2030 (36% for 2015-2050). Road transport would maintain its dominant role within the EU for both passenger and freight transport. Rail transport activity is projected to grow faster than for road: passenger rail activity would go up by 33% between 2015 and 2030 (70% for 2015-2050); rail freight activity by 39% by 2030 (75% for 2015-2050). Inland navigation (i.e. inland waterways and national maritime) activity is projected to go up by 23% by 2030 and 43% for 2015-2050. However, delays in investments due to permitting procedures would lead to lower activity than in the updated EU Reference scenario for both rail and inland navigation already over 2015-2020. A description of the baseline scenario assumptions and more detailed results are provided in Annex 4 on Analytical methods.

The administrative costs incurred by the authorities is estimated at €185 million for 2018-2030 (expressed as present value) in the baseline scenario and for project promoters at €937 million over the same time period. Overall, the administrative burden is projected at €1,122 million for 2018-2030, expressed as present value.⁷⁴

Considering the uncertainty, an alternative baseline has been used for the assessment of the policy options where 60% of investments would occur on schedule while 20% of the investments would be delayed due to permitting procedures by one year, 10% by two years, and 10% by three years. The alternative baseline scenario shows higher investments taking place in the beginning of the period. A description of the alternative baseline scenario and more detailed results are provided in Annex 4 on Analytical methods.

The lack of predictability in the procedures is expected to continue, leaving high level of uncertainty for projects promoters and ultimately leading to sub-optimal investment choices. In addition, such uncertainty would not help attract more investments from private capital to transport infrastructure projects which is an objective of the Investment Plan for Europe. This would also limit the impact of financial schemes such as the European Fund for Strategic Investments as well as other innovative financial instruments in the infrastructure field.

5.2 Description of the policy options

The stakeholder consultation, the expert meetings, independent research and their own analysis have allowed the Commission services to identify different policy measures, which served as a basis for the identification of the main policy options (in the form of policy option packages). The following process was applied for establishing the policy options:

- **Step 1:** Identify an extensive list of policy measures addressing the problems (considered policy measures);
- **Step 2:** Consider policy measures which are retained after a preliminary assessment;
- **Step 3:** Combine the considered policy measures into policy options and identify options which can be discarded.

The analysis led to a clear conclusions that not the same level of ambition is necessary in every area and a stepwise approach would be appropriate.

In the case of the permit granting procedures, the situation is diverging in many Member States and no harmonised approach has been taken at EU level yet. A higher level of intervention is necessary to cater for a synchronisation of the procedures across the border and allow for a concerted implementation of projects.

In the case of public procurement, a modernised framework started to apply in the last years. However, a gap remains in the area of cross-border procurement and commonly developed projects by two or more Member States. Here, the intervention may only target this specific situation.

⁷⁴ Source: Panteia, PwC, M-FIVE Impact Assessment support study (2018) (henceforth: Panteia et al). More details on the assumptions used for the administrative burden are provided in Annex 4.

In the case of State aid control, the newly adopted clarifications already removed a majority of the uncertainty which hampered the development of projects in the last years. In the case of complex project with sophisticated financial structures, it seems nevertheless necessary that the European Commission is contacted early in the process by the competent national authorities, making use of pre-notifications, which in turn allows complete notifications and facilitates the State aid assessment. The prioritisation of the case, following a mutually agreed timetable between the Member States and the Commission, may allow the swifter adoption of the decision.

Table 2: Available policy measures

Policy measures	Description	Preliminary assessment
<i>Policy Measure 1: Changing the existing legal framework</i>	This measure would envisage changing the legal framework which is applicable to the TEN-T projects. It would require in particular adaptation of the EU directives which are applicable for environmental assessments at project level, EU public procurement rules as well as specific rules on State aid. The foreseen changes would introduce simpler solutions and less stringent requirements for TEN-T projects. This special treatment would derive from the fact that the TEN-T core network projects are <i>per se</i> of specific EU importance and relevance.	The option is feasible from a legal point of view, as the acts to be changed are already in place and there is no doubt that the EU has the competence to act in this field. From a technical point of view the option is also feasible; however, additional analysis would be necessary to determine which minimum requirements would need to remain compulsory. The option would also likely foster project implementation with more flexible approach to certain requirements causing particular problems to project promoters. However, the option does not seem to be possible or opportune from a political point of view. Firstly, the EU acts most likely to be changed have been very recently revised (for example, new or recently revised public procurement directives) or amended (the EIA directive). Reopening of this legislation would not be rational from the effectiveness and efficiency point of view as well as from the political point of view vis-à-vis the co-legislators. For these reasons, the measure has been discarded.
<i>Policy Measure 2: Exempting TEN-T core network projects from the requirements of the EU legal framework</i>	This measure would provide for a general exemption from the application of certain EU requirements for TEN-T core network projects – modelled e.g. on the similar rules applied for defence purposes. This would be justified by the EU importance of the TEN-T infrastructure overriding other policy objectives.	The option would be very effective from the point of view of transport stakeholders and project promoters. However, the option is not considered legally and politically feasible as there are no sufficient legal grounds for such an intervention into other policy objectives. Moreover, depriving other actors (notably citizens) of the rights acquired by virtue of other pieces of EU legislation for the benefit of project promoters does not seem legitimate and proportionate. The measure is therefore discarded from further analysis.
<i>Policy measure 3: Optimisation of the permitting procedures at national level</i>	This measure would leave the responsibility and authority for delivering the relevant permits at Member State level with the introduction of requirements about the organisation of the proceedings. The procedure would be handled by a single competent authority or ‘one-stop-shop’, designated by each Member State, along with integration of administrative procedures from the point of view of the project promoter.	The measure is considered feasible from the political and legal points of view as the competence related to the territory remains at national level and the EU has right to act based on the clauses in the Treaty on the trans-European networks. The measure is considered to be effective by addressing directly the key problem drivers. The measure has been already applied in the TEN-E setting. The measure will be further analysed.
<i>Policy measure 4: Introduction of an EU authorisation procedure</i>	This measure would define the EU framework for authorisation as well as a separate public procurement framework to be applicable for TEN-T cross-border projects by replacing the national rules. The responsibility and the authority for delivering authorisation for TEN-T core network projects would be shifted to the EU level. The procedure would be handled by an EU authority. A possible variant of this measure is to define the framework at EU level but to keep its application at national level.	The measure is considered feasible from the political and legal points of view, but as the competence is split between EU and Member States, a detailed analysis is required to examine all possible implications. From the technical point of view, the measure requires greater analysis, in particular to determine the key European standards to be applied. The proportionality of the measure is preliminarily considered to entail risks such as the misperception by civil society, NGOs or citizens that their rights to be heard in the context of authorisation procedures would be limited or compromised. The measure is nevertheless considered to be effective by addressing directly the key problem drivers. This policy measure will therefore be further analysed.
<i>Policy measure 5: Introduction of</i>	This measure would define the maximum duration for permitting procedures. This	The measure is considered feasible from the political and legal points of view with a precedent being in place in the TEN-E framework. The

<i>time limits for permitting and other procedures</i>	requirement would apply at national level.	measure does not target the objectives of the EU policies in place but limits itself to the organisation and efforts made and engaged resources in case of certain limited number of projects. The measure is considered to be effective by addressing directly the key problem drivers and will be further analysed.
Policy measure 6: Limiting time for appeals in the procedures related to TEN-T	This measure would further develop policy measure 5 by adding time limits to appeal against the administrative authorisations. This may encompass also remedies in public procurement.	The measure is preliminarily considered feasible from the political point of view; however, it requires further analysis from legal point of view as the EU may not be competent to interfere in this part of the national administrative and judicial legal frameworks. This also true in case of remedies in the public procurement where remedies are treated by courts, due to the national procedural autonomy. However, some proceedings and requirements are derived from EU pieces of law, clarifying their application as regards e.g. the statute of repose may be also assessed by this option. The proportionality of the measure is considered appropriate as it limits the time for appeals while safeguarding the rights of the interested parties. It also addresses the problem drivers leading to the legal uncertainty. Hence, it will be further analysed.
Policy measure 7: Targeted technical assistance	This measure would introduce technical assistance for project promoters and authorities involved in authorisation of TEN-T projects.	The measure is considered feasible from the political and legal point of view as this kind of support is already widely used in different policies. From the financial point of view the measure would require analysis and defining the resources to be used to support the mechanism. The proportionality of the measure is considered appropriate since it contributes to addressing problem drivers. As a consequence, it will be further analysed.
Policy measure 8: Guidelines and clarification of the existing legislation, targeted use of existing mechanisms	This measure would consist of developing a set of soft law instruments meant to clarify and provide more certainty on the application of existing EU legislation. This would in particular concern the rules related to the environmental assessments at project level (including purely indicative time frames), as well as rules on public procurement. It would also build upon the existing support mechanisms – e.g. EIAH, voluntary ex ante mechanism in the public procurement, support/helpdesk on the environmental assessment, etc.	The measure is considered feasible from the political and legal point of view as developing the soft law as well as guiding principles is the competence of the Commission. The effectiveness of the option is not considered optimal as the implementation of the guidelines remains voluntary. The measure has the potential to address part of the problem drivers and should be further analysed.
Policy measure 9: Simplified rules on cross-border procurement	This measure would consist of introducing simplified rules for cross-border procurement, in particular as regards the definition of the applicable EU public procurement rules. It may consist of developing an EU framework for cross-border procurement of TEN-T projects or better targeting the rules of the existing legal acts at EU level.	The measure is considered feasible from the political and legal point of view as the rules on the public procurement are regulated at EU level. Difficulties may arise from the fact that level this solution would eliminate the current flexibility given to the different Member States through the public procurement directives. The specific problems faced by cross-border projects would be effectively and proportionally addressed by this measure. Further analysis is needed on the specific content of the measure as well as the appropriate instrument in relation to the previous policy measures. The measure will be further analysed.
Policy measure 10: Priority treatment of State aid notifications for TEN-T core network projects	The measure would foresee the prioritisation of the related cases, following a mutually agreed timetable between the Member State and the Commission, setting out clearly the milestones and information to be delivered by the Member State. It would build on existing best practices and allow a swifter adoption of the decision after notification. The use of pre-notification would be encouraged.	The measure is considered feasible from the political and legal point of view as certain arrangements already exist. In addition, State aid control being the exclusive prerogative of the European Commission, the measure would not raise particular legal or institutional difficulties. The measure would imply that the Commission commits to make its best endeavours efforts to handle State aid cases related to TEN-T core network projects in a speedy way while respecting all requirements of State aid control. The Commission would foresee the priority treatment of TEN-T core network projects, notably as regards mutually agreed planning. This could be addressed in the context of the current identification of best practices for the conduct of State aid control procedures. The measure addresses problem drivers rooted in the EU role in the context of projects' implementation. The measure will be further analysed.
Policy measure 11: Promotional Campaign on the	This measure would aim at mitigating the inherent resistance that some stakeholders may have to the idea of 'European'	The measure is considered feasible from the political and legal points of view. Sources of funding would need to be defined. However, the measure does not seem to be effective and would not adequately address

<i>importance of TEN-T networks at EU level</i>	projects. It would consist of conducting public information and awareness raising activities dedicated to the aim of explaining the relevance of EU transport networks. The campaign would target both civil society and authorities involved in the permitting procedures.	the problem drivers. The measure will not be further analysed.
<i>Policy measure 12: Increased use of strengthened coordination mechanisms foreseen in TEN-T policy</i>	This measure would reinforce the mandate of the European Coordinators appointed by the Commission to facilitate the implementation of the TEN-T core network corridors. The reinforced mandate would enable the European Coordinator to facilitate or ensure adequate coordination of the work of the national authorities involved in the permit granting or (if PM 3 is applied) the national one-stop-shops.	This option is considered feasible from the legal and political point of view as the role of the European Coordinators is positively assessed by the Member States and stakeholders. The option would require reinforcing the Coordinators' secretariats placed in the European Commission. As the measure targets seem to be addressing effectively the problem driver related to the cross-border nature of certain projects, it will be further analysed.

Table 3: Retained policy measures

Driver 1 Multiple stages and authorities involved in the permitting procedures

Measures		Description
3	<i>Optimisation of the permitting procedures at national level</i>	Establishment of a one-stop-shop (OSS) at national level. The OSS would continue to apply national permitting rules (transposed from EU directives). Integration of various administrative procedures at national level (notably all environmental assessments EIA, Habitat, Water, Seveso, Waste, Birds etc.. currently optional) – legal requirement needed / similar to TEN-E
4	<i>Introduction of an EU authorisation procedure</i>	Definition of a specific framework for the authorisation of TEN-T core network projects to be applied at EU level. This would include integrated procedures, time limits, cases for overriding public interest and make requirement under existing Directives directly applicable legal requirement needed
8	<i>Guidelines and clarification of the existing legislation, targeted use of existing mechanisms</i>	Guidelines for TEN-T project promoters and better orientation of existing instruments (such as the voluntary ex-ante assessment mechanism in the public procurement)
7	<i>Targeted technical assistance</i>	Targeted technical assistance measures for TEN-T core network projects(including high quality and efficient packaging of routine projects). The technical assistance may be modelled on the current JASPERS or EIAH initiatives or use these initiatives if decision is made on their extending to the new MFF.

Driver 2 - Absent or unenforced time limits

Measures		Description
8	<i>Guidelines and clarification of the existing legislation, targeted use of existing mechanisms</i>	Guidelines for TEN-T project promoters with purely indicative time frames
5	<i>Introduction of time limits for permitting and other procedures</i>	Introduction of time limits for overall permitting procedures by the way of recommendation or by legal requirement / similar to TEN-E
6	<i>Limiting time for appeals in the procedures related to TEN-T</i>	Introduction of time limits for legal appeals while preserving access to justice

Driver 3: Differing public procurement procedures for cross-border TEN-T projects

Measures		Description
9	<i>Simplified rules for cross-border procurement</i>	Requirement to opt for a single legal framework for public procurement of cross-border TEN-T core network projects (currently optional) – legal requirement needed
6	<i>Limiting time for appeals in the</i>	Introduction of binding time limits for remedies while preserving access to justice

	<i>procedures related to TEN-T</i>	for unsuccessful tenderers
8	<i>Guidelines and clarification of the existing legislation, targeted use of existing mechanisms</i>	Guidelines for TEN-T project promoters and better orientation of existing instruments in the public procurement area (such as the voluntary ex-ante assessment mechanism)

Driver 4 Coordination challenges for the delivery of cross-border projects

Measures		Description
12	<i>Increased use of strengthened coordination mechanisms foreseen in TEN-T policy</i>	Reinforced mandate of the TEN-T European Coordinators to facilitate the cooperation of national permit granting bodies

Driver 5: Perceived uncertainties related to State aid control procedures

Measures		Description
7	<i>Targeted technical assistance</i>	Technical assistance measures for TEN-T core network projects (including high quality and efficient packaging of routine projects) – targeted for project promoters, national authorities and contracting authorities
10	<i>Priority treatment of State aid notifications for TEN-T core network projects</i>	Priority treatment of TEN-T core network projects, following a mutually agreed timetable between the Member State and the Commission, setting out clearly the milestones and information to be delivered by the Member State.

5.3 Combining the policy measures into policy options

Table 4 below provides a description of the three policy options which are envisaged. They have been defined so as to reflect an increasing level of regulatory intervention, in particular the intervention into the national and regional legal systems and the possible adverse effects on the other affected stakeholders than the project promoters, in particular citizens.

The policy options address all the problem drivers however they entail an increasing level of expected impacts.

The policy packages are cumulative, in the sense that some measures in policy option 1 are also part of policy option 2, which itself includes further measures. This is valid also for policy option 3 that adds the definition of the rules to be applied in authorisations and public procurement. The only exception is for policy option 3b where the authorisations at EU level would not require the OSS and national level.

It is also worth noting that some policy measures, notably those in policy option 1, involve both non-regulatory instruments (non-binding measures) and/or regulatory instruments.

Detailed description of the policy options by the affected policy areas

Policy option 1 (PO1) – Minimal change to the existing instruments and development of soft law as well as accompanying measures.

This option would consist in particular of developing a series of guidelines for TEN-T project promoters and better orientation of existing instruments (such as planned public procurement helpdesk, JASPERS or EIAH support) as well as of developing targeted technical assistance measures for TEN-T projects of common interest. It would recommend indicative time frames for overall permitting procedures.

- *Authorisations and permits:*
 - Guidelines for the permit granting procedures and application of the EU acquis in this field, including indicative time frames.

- Systematic encouragement in soft law instruments (e.g. guidelines) to apply joint and/or coordinated procedures under Article 2(3) of the revised EIA Directive⁷⁵.
- *Public procurement*
 - Guidelines for TEN-T project promoters and better orientation of existing instruments (such as planned public procurement helpdesk, JASPERS or EIAH support)
- *State aid: No change*
- *Other*
 - Targeted technical assistance measures for TEN-T core network projects (including high quality and efficient packaging of routine projects).
 - Effective technical assistance (e.g. modelled on the JASPERS or the European Investment Advisory Hub, or directly using these initiatives if decision is made on their extending to the next MFF) to support project preparation and horizontal issues affecting the implementation of TEN-T projects, both at the Member State and EU level (systematically involving cooperation Member States – JASPERS (or other initiatives of this type) –European Commission to develop tailor-made solutions for individual Member States);
 - Reinforced mandate of the TEN-T European Coordinators to facilitate the coordination of national permit granting bodies

Policy option 2 (PO2) – Limited binding action to be decentralised and implemented at national level.

This option would foresee the legal requirement for Member States to introduce one-stop-shop for TEN-T core network projects and ensure that the most rapid treatment legally possible is given to them. The key elements of this option would consist of a set of the following measures:

- *Authorisations and permits:*
 - Establishment of a mandatory one-stop-shop (OSS) at national level. The OSS would continue to apply national permitting rules (transposed from EU directives)
 - Mandatory integration of various administrative procedures at national level (notably all environmental assessments EIA, Habitat, Water, Seveso, Waste, Birds etc.. currently optional)
 - Introduction of time limits for overall permitting procedures
 - Introduction of time limits for legal appeals while preserving access to justice.
- *Public procurement*
 - Requirement to mandatory opt for a single legal framework for public procurement of cross-border projects (currently optional)
 - Guidelines for TEN-T project promoters and better orientation of existing instruments (such as planned public procurement helpdesk, initiatives modelled on the JASPERS or EIAH support, or directly using these initiatives if decision is made on their extending to the next MFF)
- *State aid*

⁷⁵ Commission guidance document on streamlining environmental assessments conducted under Article 2(3) of the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU), (2016/C 273/01)

- No modification of legislative nature
- Priority treatment of State aid notifications for TEN-T core network projects, following a mutually agreed timetable between the Member State and the Commission
- *Other*
 - Targeted technical assistance measures for projects of common interest (including high quality and efficient packaging of routine projects)
 - Reinforced mandate of the TEN-T European Coordinators to facilitate the coordination of national permit granting bodies

Policy option 3 (PO3) –An EU framework for authorisation of the TEN-T core network projects.

This option includes elements of the Policy option 2 however instead of the mandatory one-stop-shop and integration of administrative procedures at the national level it introduces a specific EU framework for the authorisation of TEN-T core network projects (including integrated procedures, time limits, cases for overriding public interest and directly applicable requirements) and the definition of a specific (supranational) set of rules to be applied in public procurement of cross-border projects. Policy option 3 contains two sub-options which differ in the level of application and therefore include further measure:

- PO3a: the measures regarding EU authorisation procedure with time limits are defined at EU level but remain applied at national level, with national institutions implementing them in practice and following the national administrative procedural rules with possibility for appeal and access to justice based on the national administrative procedural law;
- PO3b: the measures regarding EU authorisation procedure with time limits are applied at EU level by the Commission (or its agencies). Usual EU rules on procedures and possibility for appeal apply with EU judicial remedies to the Court of Justice of the European Union.

Scope of the measures:

The analysis of policy options is made on a three different categories of projects which are the following:

- All TEN-T core network projects, as identified through the TEN-T framework;
- Projects identified on the Core network corridors – with a particular role for the European Coordinators to identify these projects;
- Projects which are pre-identified as those eligible to benefit from Union financial support through CEF (as well as from other sources such as EFSI etc.) and which would be reflected in Annex I to the CEF regulation.

Table 4: Definition of policy options

Policy option 1 - Minimal change to the existing instruments and development of soft law as well as accompanying measures
<ul style="list-style-type: none"> • Measures aimed at providing guidelines and clarification of the existing legislation (including indicative time frames), targeted use of existing mechanisms in all of the fields identified as problem drivers (environmental assessments, public procurement, State aid and development of alternative financing for

the TEN-T core network projects);

- Measures aimed at introduction of time limits for permitting and other procedures
- Measures aimed at targeted technical assistance;
- Measures aimed at increased use of strengthened coordination mechanisms foreseen in TEN-T policy.

Policy option 2 - Limited binding action to be decentralised and implemented

- Measures aimed at optimisation of the permitting procedures at national level (one stop shop, most rapid treatment legally possible);
- Measures aimed at targeted technical assistance;
- Measures aimed at introduction of time limits for permitting and other procedures;
- Measures aimed at limiting time for appeals in the procedures related to TEN-T core network;
- Measures aimed at requiring the national authorities to opt for a single legal framework for public procurement of cross-border projects (law of the seat of the contracting authority);
- Measures aimed at increased use of strengthened coordination mechanisms foreseen in TEN-T policy;
- Measures aimed at giving priority treatment of State aid notifications for TEN-T core network projects.

Policy option 3a An EU framework for authorisation of the projects of common interest to be applied at national level

In addition to the measures in policy option 2, this policy option intends to establish a common set of EU rules for authorising TEN-T core network projects at national level and includes the following policy measures:

- Measures aimed at introduction of an EU authorisation procedure with time limits to be applied at national level;
- Measures aimed at targeted technical assistance;
- Measures aimed at limiting time for appeals in the procedures related to TEN-T core network;
- Measures aimed at simplifying rules for cross-border procurement;
- Measures aimed at increased use of strengthened coordination mechanisms foreseen in TEN-T policy;
- Measures aimed at giving priority treatment of State aid notifications for TEN-T core network projects.

Policy package 3b An EU framework for authorisation of the projects of common interest to be applied at EU level

In addition to the measures in policy option 2, this policy option intends to establish a common set of EU rules for authorising TEN-T core network projects and apply them at EU level. It includes the following policy measures::

- Measures aimed at introduction of an EU authorisation procedure with time limits to be applied at EU level;
- Measures aimed at targeted technical assistance;
- Measures aimed at limiting time for appeals in the procedures related to TEN-T core network;
- Measures aimed at simplifying rules for cross-border procurement;
- Measures aimed at increased use of strengthened coordination mechanisms foreseen in TEN-T policy;
- Measures aimed at giving priority treatment of State aid notifications for TEN-T core network projects.

Table 5 below links the individual policy measures with the problem drivers identified in the problem definition and the respective policy options.

Table 5: Presentation of policy options related to mapping of measures and drivers (V: voluntary; M: mandatory)

Policy measure	P1	P2	P3a	P3b
Driver 1: Multiple stages and authorities involved in permitting procedures				
1. Optimisation of the permitting procedures at national level	x	✓ M	x	x
2. Introduction of an EU authorisation procedure applied at national level	x	x	✓ M	x
3. Introduction of an EU authorisation procedure applied at EU level	x	x	x	✓ M
4. Guidelines and clarification of the existing legislation, targeted use of existing mechanisms	✓ M	✓ V	✓ V	✓ V
5. Targeted technical assistance	✓ M	✓ V	✓ M	✓ M
Driver 2: Absent or unenforced time limits				
6. Introduction of time limits for permitting and other procedures	✓ V	✓ M	✓ M	✓ M
7. Limiting time for appeals in the procedures related to TEN-T	V	✓ M	✓ M	✓ M

Driver 3: Differing public procurement procedures for cross-border TEN-T projects				
8. Simplified rules for cross-border procurement	x	✓ M	✓ M	✓ M
9. Limiting time for appeals in the procedures related to TEN-T	x	✓ M	✓ M	✓ M
10. Guidelines and clarification of the existing legislation, targeted use of existing mechanisms	✓ M	✓ V	✓ V	✓ V
Driver 4: Coordination challenges for the delivery of cross-border projects				
11. Increased use of strengthened coordination mechanisms foreseen in TEN-T policy	✓ M	✓ M	✓ M	✓ M
Driver 5 Perceived uncertainties related to State aid control procedures				
12. Targeted technical assistance	✓ M	✓ V	✓ M	✓ M
13. Priority treatment of State aid notifications for TEN-T core network projects	x	✓ M	✓ M	✓ M

6 WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

This section presents the economic, social and environmental impacts for the different policy options. Impacts are assessed for infrastructure projects in the road, rail, maritime and inland waterways projects and then compared to the baseline scenario. Each policy option has a different level of effectiveness in terms of reducing the delays in the implementation of investment projects (i.e. soft measures in PO1 versus limited binding action in PO2 and EU framework for authorisation of TEN-T core network projects in PO3); this has been taken into account in evaluating the impacts. The options have been tested for three different scopes of application (TEN-T core network, core network corridors and CEF Annex 1 projects). More details on the methodology used are presented in *Annex 4 on analytical methods*.⁷⁶

The assessment of economic as well as social and environmental impacts can be considered as a conservative one: it takes into account only the currently planned TEN-T core network projects and not the future projects, in particular after 2030, which are not in the TEN-T plans yet. The benefits would be larger when also considering the TEN-T comprehensive network projects beyond 2030.

6.1 Economic impact

All three policy options generate benefits in terms of reduced delays in project implementation relative to the baseline. They have direct impacts on investments profile over time, users' transport costs and macro-economic impacts in terms of generated growth. The impacts on the administrative costs for the project promoters and the permitting authorities are also discussed in this section, followed by the impacts on the transport as a business and a qualitative analysis of impacts on SMEs.

6.1.1 Impacts on investments

The reduced delays in project implementation have a direct impact on the cumulative investment profile in each policy option (see Table 6). PO1 results in higher investments already in 2020 (39% of total investments over the lifetime of the projects) as it implies minimal change to the existing instruments and development of soft law that take less time to implement. However, PO1 is less effective by 2025 compared to PO2 and PO3. PO2, reflecting limited binding action to be decentralised and implemented, results in 84.2% of total investments taking place by 2025, compared to 81.4% in the Baseline. PO3 that reflects an EU framework for authorisation of core TEN-T projects to be applied at national level

⁷⁶ A discount rate of 4% has been used for presenting the costs/benefits as present values.

results in higher impact, with 85.1% of total investments taking place by 2025. The ranking of the options in terms of impacts is similar for rail and waterborne transport (see Table 6).

Table 6: Share of total core TEN-T investments in the policy options for 2020-2025 over the lifetime of the projects

Cumulative investments (share of total core TEN-T network investments over the lifetime of the projects)	2020	2021	2022	2023	2024	2025
Total investments						
Baseline	38.7%	50.1%	60.0%	68.5%	75.5%	81.4%
Option 1	39.0%	50.6%	60.7%	69.3%	76.4%	82.1%
Option 2	38.7%	50.1%	61.6%	71.2%	78.9%	84.2%
Option 3	38.7%	50.1%	60.0%	73.9%	80.0%	85.1%
Rail transport						
Baseline	36.1%	46.9%	56.1%	64.3%	71.2%	77.2%
Option 1	36.4%	47.4%	56.8%	65.1%	72.0%	77.9%
Option 2	36.1%	46.9%	57.6%	66.9%	74.5%	80.1%
Option 3	36.1%	46.9%	56.1%	69.5%	75.6%	81.0%
Waterborne transport						
Baseline	40.6%	53.8%	65.8%	75.2%	82.9%	89.0%
Option 1	41.0%	54.5%	66.7%	76.1%	83.8%	89.7%
Option 2	40.6%	53.8%	67.7%	78.2%	86.5%	91.8%
Option 3	40.6%	53.8%	65.8%	81.1%	87.7%	92.7%

Source: Impact Assessment support study; waterborne transport covers inland waterways and maritime.

6.1.2 Impacts on transport users' costs

All policy options for all scopes of applications show benefits in terms of reduced user costs compared to the baseline scenario. They bring benefits to the users in terms of time savings, increased reliability of transport and lower transport costs, and thus contribute to the increased productivity of the sector. The TEN-T core network scope of application shows the highest benefits, as the scope is also the largest. PO1 would generate €1.8 bn of benefits (0.1% decrease in total user costs compared to the baseline over 2018-2030, expressed as present value), while PO2 would result in €5.1 bn reduced user costs (0.2% decrease relative to the baseline). PO3 shows the largest benefit (€6.6 bn) due to the higher effectiveness of a specific EU framework for the authorisation of TEN-T core network projects in reducing the delays.

The application of the three options to the core network corridors and CEF Annex 1 projects would bring smaller benefits as the scope of the projects is narrower than the TEN-T core network (i.e. the core network corridors cover about 75% of the core network investments). Even when considering the narrower scope of application (CEF Annex 1 projects), the policy options would still result in more than €1 bn reduction of user costs relative to the baseline (expressed as present value over 2018-2030). The ranking of policy options in terms of reduced user costs would be similar for all scopes of application.

Table 7: Impacts on user costs relative to the baseline over the lifetime of the projects (2018-2030)

	Baseline*	PO1	PO2	PO3a/PO3b
Total user costs (present value in million € and % change to the baseline)				
Core TEN-T network, of which:		-1,838	-5,069	-6,648
		-0.1%	-0.2%	-0.3%
Core network corridors	2,460,763	-1,379	-3,802	-4,986
		-0.1%	-0.2%	-0.2%
CEF Annex 1 projects		-1,020	-2,813	-3,690
		0.0%	-0.1%	-0.1%

Source: Panteia, Impact Assessment support study (2018); Notes: * The baseline figures relate to the traffic on the core TEN-T network

6.1.3 Impact on economic growth

All policy options are expected to have a positive impact in terms of economic growth. Compared to the baseline, PO3 shows the highest economic benefits generated at EU level, in the range of €1.2 bn to €2.1 bn (1.2-2.1%) over 2018-2030, followed by PO2 (€0.9 bn to €1.6 bn benefits, 0.9-1.6% increase relative to the baseline) and PO1 (€0.3 bn to €0.6 bn benefits). The impacts are assessed through multiplier effects; they account for wider effects than only the construction of projects, namely the indirect effects on other economic sectors and the effects induced by increased productivity, improved conditions for international trade and technological spill-overs. More explanations regarding the quantification of these impacts are provided in Annex 4.

Table 8: Annual average economic benefits relative to the baseline for 2018-2030

	Baseline	PO1	PO2	PO3a/PO3b
Economic benefits (in billion € and % change to the baseline)				
Core TEN-T network projects, of which:	95	0.6	1.6	2.1
		0.6%	1.6%	2.2%
Core network corridors projects		0.4	1.2	1.6
		0.4%	1.2%	1.6%
CEF Annex 1 projects		0.3	0.9	1.2
		0.3%	0.9%	1.2%

Source: M-FIVE and Panteia, Impact Assessment support study (2018)

6.1.4 Impact on administrative burden

The initiative is expected to have a direct impact on the administrative costs for the permitting authorities and for the project promoters. The administrative burden for authorities considers both costs for the EU institutions and the Member States authorities. The inputs used for calculating the impacts on administrative burden are provided in Annex 4. They draw on results of the stakeholders' consultation, literature review, TEN-E impact assessment⁷⁷, etc.⁷⁸

In PO1, the introduction of guidelines for permit granting and effective technical assistance for project promoters is estimated to lead to savings in administrative burden for the TEN-T project promoters in the order of €27 million over 2018-2030 relative to the baseline (expressed as present value). However the authorities' administrative burden is expected to slightly increase (€9 million, 5% increase relative to the baseline) because guidelines would need to be defined and implemented (albeit on a voluntary basis).

In PO2, the establishment of a one-stop-shop at national level⁷⁹ is estimated to lead to slightly higher costs for the permitting authorities (€13 million over 2018-2030 horizon) but also for larger benefits in terms of reduced costs for project promoters (€166 million) over 2018-2030 horizon relative to the baseline. PO2 is in fact the option which achieves the highest reduction in the total administrative burden (€153 million).

PO3, which includes elements of PO2 like the mandatory one-stop-shop and the integration of administrative procedures at the national level but also a specific EU framework for the authorisation of TEN-T core network projects, results in higher additional costs for permitting authorities than PO1 and PO2 (€20 million over 2018-2030 horizon) but also lower benefits

⁷⁷ SEC (2011) 1233

⁷⁸ Panteia et al.

⁷⁹ This option was previously considered for the TEN-E impact assessment (SEC (2011) 1233). During that study, a large majority of stakeholders (over 75%) stated that the one-stop-shop could bring substantial decreases in administrative burden. The one-stop-shop solution proposed in the TEN-E was expected to generate a 25% reduction of cost for the project promoters.

for project promoters than PO2 (€120 million over 2018-2030 horizon relative to the baseline).

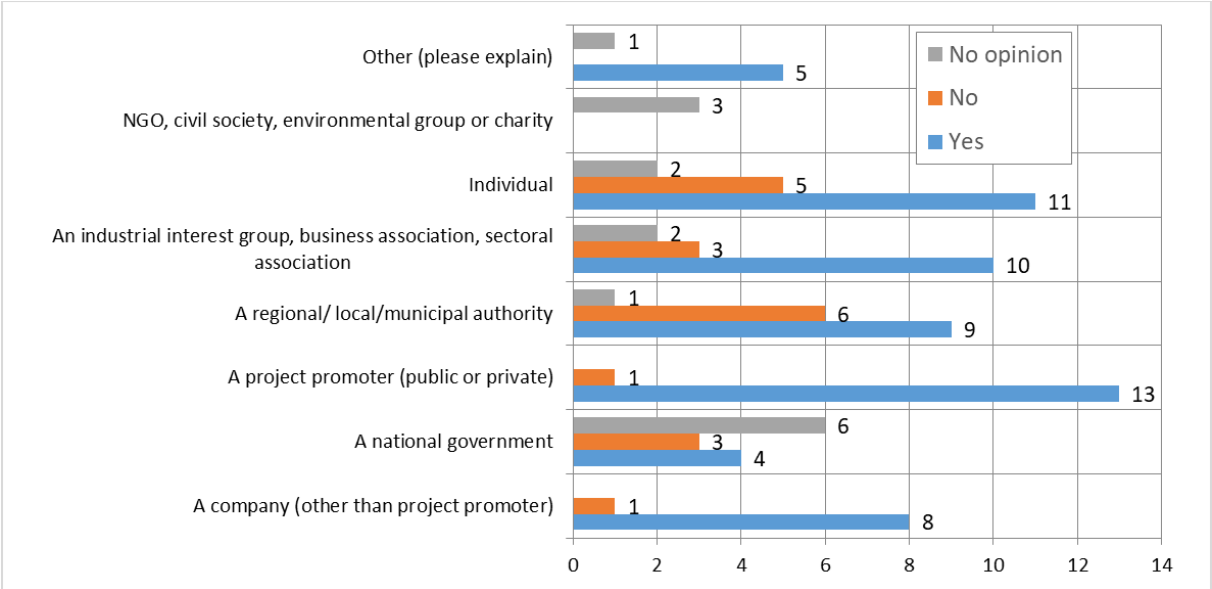
Table 9: Impacts on administrative burden relative to the baseline scenario, over the period 2018 – 2030, expressed as present value

	Baseline (€ million)	Policy options	Difference in costs relative to the baseline (€ million)	% change in costs relative to the baseline
Promoter	937	PO1	-27	-3%
		PO2	-166	-18%
		PO3	-120	-13%
Authority	185	PO1	9	5%
		PO2	13	7%
		PO3	20	11%
Total	1,122	PO1	-18	-2%
		PO2	-153	-14%
		PO3	-100	-9%

Source: Panteia, Impact Assessment support study (2018)

These calculations have also been confirmed by the results of the opinion of the stakeholders on the planned measures. Regarding the integration of procedures under a national single entity (OSS), the measure was supported in particular by project promoters, individuals and industrial interest groups, i.e. those who would largely benefit from the planned measures. However, more reserved opinions were expressed by national but mainly regional governments, i.e. those stakeholders where administrative costs would be generated, at least in the induction period.

Figure 4: Should a single permitting authority (a ‘one-stop-shop’) be entrusted to apply standardised procedures to TEN-T projects?



Source: results of the Open Public Consultation.

6.1.5 Impacts on transport as a business

The overall aim of TEN-T policy is the promotion of sustainable modes of transport and modal shift to railways, inland waterways and short sea shipping. For passenger rail, the reduction in delays in the implementation of the core TEN-T investment projects is estimated to lead to 551 to 2,940 additional million passenger-kilometres (1.3% to 6.7%) in 2025 and 320 to 1,704 million passenger-kilometres (0.6% to 3.4%) in 2030 relative to the baseline.

Similarly, rail freight activity would go up by 273 to 1,458 tonne-kilometres (0.3% to 1.4%) in 2025 and 160 to 856 tonne-kilometres (0.1% to 0.7%) in 2030 relative to the baseline. Waterborne transport activity would also increase, by 359 to 1,916 tonne-kilometres in 2025 and 68 to 360 tonne-kilometres in 2030 relative to the baseline. PO3 shows the highest impacts in terms of traffic shifted from road towards rail and waterborne transport.

Table 10: Traffic shifted to rail and waterborne transport in 2030 relative to the baseline (in million pkm/tkm)

Traffic shifted to rail and waterborne transport in 2025 and 2030 (in millions pkm/tkm and % change to the baseline)	Baseline*	PO1		PO2		PO3a/P3b	
Core TEN-T network projects - results for 2025							
Passenger transport	259,998	-14	0.0%	-56	0.0%	-75	0.0%
Road	216,310	-565	-0.3%	-2,261	-1.0%	-3,015	-1.4%
Rail	43,688	551	1.3%	2,205	5.0%	2,940	6.7%
Freight transport	626,552	-15	0.0%	-62	0.0%	-83	0.0%
Road freight	171,596	-648	-0.4%	-2,593	-1.5%	-3,457	-2.0%
Rail	105,579	273	0.3%	1,093	1.0%	1,458	1.4%
Waterborne transport**	349,377	359	0.1%	1,437	0.4%	1,916	0.5%
Core TEN-T network projects - results for 2030							
Passenger transport	273,775	204	0.1%	815	0.3%	1,087	0.4%
Road	224,195	-116	-0.1%	-463	-0.2%	-617	-0.3%
Rail	49,580	320	0.6%	1,278	2.6%	1,704	3.4%
Freight transport	680,578	92	0.0%	366	0.1%	489	0.1%
Road freight	182,889	-136	-0.1%	-545	-0.3%	-727	-0.4%
Rail	118,483	160	0.1%	642	0.5%	856	0.7%
Waterborne transport**	379,206	68	0.0%	270	0.1%	360	0.1%

Source: Panteia, Impact Assessment support study (2018); Notes: * The baseline figures relate to the traffic on the core TEN-T network; ** Waterborne transport covers inland waterways and national maritime.

6.1.6 Impact on small and medium size enterprises

The TEN-T core network projects are usually implemented by large civil contractors, specialised in delivering pieces of large infrastructure and associated engineering structures. This requires specific experience and competence and not many SMEs have the necessary capacity. Cross-border procurement based on merged tendering procedures across the border may also strengthen the position of larger companies which have more experience in working in different Member States. The participation of SMEs is in any case very often limited by contracting authorities, given the requirement of substantial experience and capacity. Therefore, no direct impacts on the SME sector are expected.

However, at large construction sites SMEs are usually sub-contractors implementing simpler works and parts of the infrastructure which do not require specific equipment or experience. The overall impact on the civil engineering market is expected to have positive spill-over effects on SMEs in the construction market. This impact is believed to be captured in the analysis of the wider economic impacts on jobs and growth.

6.2 Environmental impacts

Environmental impacts are assessed in terms of impacts on CO₂ emissions and air quality as well as impacts on noise emissions.

6.1.7 CO₂ emissions and air quality

The faster shift of traffic from road to more sustainable transport modes in the policy options relative to the baseline is projected to result in lower emissions of CO₂. The reductions are presented in cumulative terms over the lifetime of the projects (2018-2030).

Table 11: Impacts on CO₂ emissions and costs relative to the baseline over the lifetime of the projects (2018-2030)

	Baseline*	PO1	PO2	PO3a/PO3b
CO₂ emissions (thousand tonnes CO₂ difference and % change relative to the baseline)				
Core TEN-T network, of which:	1,602,292	-917	-2,686	-3,543
		-0.1%	-0.2%	-0.2%
Core network corridors		-688	-2,015	-2,657
		0.0%	-0.1%	-0.2%
CEF Annex 1 projects		-509	-1,491	-1,966
		0.0%	-0.1%	-0.1%
Costs (present value in million € and % change relative to the baseline)				
Core TEN-T network, of which:	85,939	-68	-193	-253
		-0.1%	-0.2%	-0.3%
Core network corridors		-51	-144	-189
		-0.1%	-0.2%	-0.2%
CEF Annex 1 projects		-38	-107	-140
		0.0%	-0.1%	-0.2%

Source: Panteia, Impact Assessment support study (2018); Note: * The baseline figures relate to the traffic on the core TEN-T network.

The most effective option from this perspective is PO3, where the CO₂ emissions reductions for the largest scope of application (core TEN-T network) amount to 3.5 million tonnes relative to the baseline scenario, representing around €253 million external costs savings over 2018-2030 relative to the baseline (expressed as present value). PO2 shows somewhat lower impacts, with 2.7 million tonnes of CO₂ saved relative to the baseline (equivalent to €193 million external costs savings), followed by PO1 with significantly lower impacts (0.9 million tonnes of CO₂ saved, equivalent to €68 million external costs savings).

The environmental impacts of the initiative are also foreseen to result in the reduction of emissions of air pollutants from road transport such as NO_x and particulate matter (PM_{2.5}). The overall impacts of the policy options on the air pollution, despite being positive, are however limited in size (€2.9 to 7.6 million external costs savings for the core TEN-T network scope of application).

Table 12: Impacts on external costs of air pollution relative to the baseline over the lifetime of the projects (2018-2030)

	Baseline*	PO1	PO2	PO3a/P3b
External costs of air pollution (present value in million € and % change relative to the baseline)				
Core TEN-T network, of which:	49,344	-2.9	-5.6	-7.6
		0.0%	0.0%	0.0%
Core network corridors		-2.2	-4.2	-5.7
		0.0%	0.0%	0.0%
CEF Annex 1 projects		-1.6	-3.1	-4.2
		0.0%	0.0%	0.0%

Source: Panteia, Impact Assessment support study (2018); Note: * The baseline figures relate to the traffic on the core TEN-T network.

6.1.8 Impact on noise emissions

All policy options are projected to lead to benefits in terms of savings in external costs of noise relative to the baseline linked to the reduction in road traffic. PO1, in its largest scope (core TEN-T network), would result in about €10 million external costs savings over 2018-2030, expressed as present value. PO2 and PO3 show somewhat higher impacts (€27 to 35 million) relative to the baseline, equivalent to around 0.1-0.2% decrease. This outcome is linked to the higher amount of traffic shifted away from road in PO2 and PO3 relative to PO1.

Table 13: Impacts on external costs of noise relative to the baseline over the lifetime of the projects (2018-2030)

	Baseline*	PO1	PO2	PO3a/PO3b
External costs of noise (present value in million € and % change relative to the baseline)				
Core TEN-T network, of which:	19,319	-10.2	-26.9	-35.1
		-0.1%	-0.1%	-0.2%
Core network corridors		-7.6	-20.1	-26.3
		0.0%	-0.1%	-0.1%
CEF Annex 1 projects		-5.6	-14.9	-19.5
		0.0%	-0.1%	-0.1%

Source: Panteia, *Impact Assessment support study (2018)*; Note: * The baseline figures relate to the traffic on the core TEN-T network.

6.3 Social impacts

Apart from the economic and environmental impacts, the initiative is expected to generate a number of social impacts and to affect civil society players such as local communities and their authorities, conservation NGOs and the individual citizens' rights vis-à-vis the processes of TEN-T infrastructure planning, which are usually managed at national level.

This section presents the impacts on public participation in strategic planning, on public participation in the planning and approval of individual projects and on public acceptance but also on employment, health and EU cohesion, local benefits, life quality and social inclusion.

6.1.9 Impacts on public participation in strategic planning

The long term planning of transport infrastructure is usually done at highest national (or federal) level and usually also linked to the allocation of public funds to individual projects.

This process is usually subject to public consultation based on national rules related to the long-term strategies. Transport infrastructure development strategies are "*plans and programmes*" in the sense of the Strategic Environmental Assessment Directive (SEA Directive)⁸⁰. The SEA Directive requires the consultation of the public with sufficient time foreseen to allow the expression of opinions. None of the policy options would derogate the rules set by SEA Directive.

PO1 has no impact on the involvement of the civil society. If a set of guidelines are prepared to address the inefficiencies of the implementation and preparation of the projects, these will be targeting the procedures at project level, not affecting the involvement of civil society at strategic level.

PO2 would also have no impact on the implication of civil society in strategic planning as this policy option integrates permitting procedures at the level of a single project (and not at the level of plans and programmes).

The application of **PO3** would result in granting certain permits or authorisation according to EU rules or even at EU level in the case of sub-option PO3b with reference to the TEN-T core network. In such circumstances, the TEN-T framework would become the main strategic

⁸⁰ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

infrastructure "*plan or programme*" in the sense of the SEA directive. A strategic environmental assessment would then need to be conducted at EU level with the appropriate consultation at EU level. This may lead to a greater distance with EU citizens and could entail a negative impact on civil society and public participation. It can be assumed that consultations run at EU level may be less accessible and less comprehensible for local communities, despite all the efforts made by the European Commission to publicise them. Thus the civil society could have less impact on strategic planning of transport infrastructure that is directly affecting their everyday life.

Different approaches to communication on strategic decisions lead to blockages at project stage – case of the Lyon – Torino link

A key challenge in many TEN-T projects is that the main project benefits are often realised at EU level, rather than at national, regional or local levels. This needs to be communicated early in the process of preparing a project. In case of the Lyon – Torino Railway, on the French side public participation took place early in the project planning phase, leading to greater transparency and acceptance of the project by the local municipalities. On the contrary, Italian efforts to involve the local citizens in the planning process came only in 2006, after significant opposition from the local population in the Italian Susa Valley organised in the "No Tav" movement. Participation is an ongoing process, which should start before the project decision is made for instance in the context of a SEA and continue after the formal approval (permitting phase) of the project.

6.1.10 Impacts on public participation in the planning and approval of individual projects and on public acceptance

The development of infrastructure projects requires detailed project designs to identify notably the actual alignment and technical solutions. This process is usually subject to public consultation based on national rules transposing the requirements of the Environmental Impact Assessment Directive. On top of these requirements come consultations based on various national rules (spatial planning, other administrative and material rules on affected parties e.g. owners of the neighbouring pieces of land). These consultations are most important for civil society to be heard in the process leading to the development of transport infrastructure. All the considered policy options would have implications on these rights of the civil society.

EU directives requiring public consultations have been transposed in a differing manner across Member States. As explained above in section 2, national rules go sometimes beyond what is required by EU law. Clarifying those rules as foreseen under PO1 would be neutral on civil society's participation, as Member States can continue to apply existing rules. A positive effect may even be seen in the cross-border context resulting from a greater alignment of consultation procedures which ultimately increase the involvement of civil society from across the border.

An undersea tunnel blocked at one of the ends

The Fehmarn Belt Fixed Link aims to create a direct fixed 18km long undersea link between Denmark and Germany. In Denmark, the approval process was reasonably smooth. The EIA of the Fehmarn Belt link, after extensive and effective consultation, was approved by the Danish parliament in the form of a Construction Act in April 2015. Approval on the German side has been delayed. Under German law, only a German authority can apply for project approval for motorways on German territory. Moreover, compared to Denmark, the procedure in Germany is longer, with numerous public consultations and hearings. Public participation is equally important in Denmark and Germany and, while both comply with the EIA Directive and the Aarhus Convention, their processes differ. As a result, the project, ready at the Danish side, is blocked at German shore and cannot go forward until all the procedures are completed.

PO2 is not meant to change the rules governing public involvement in the planning of individual projects. However, the integration of procedures as well as the coordination of the overall authorisation procedures would have an impact on public consultations. The existing complex process of project approval involving several bodies at different stages of the procedure would be replaced by one procedure with a single authority leading the process

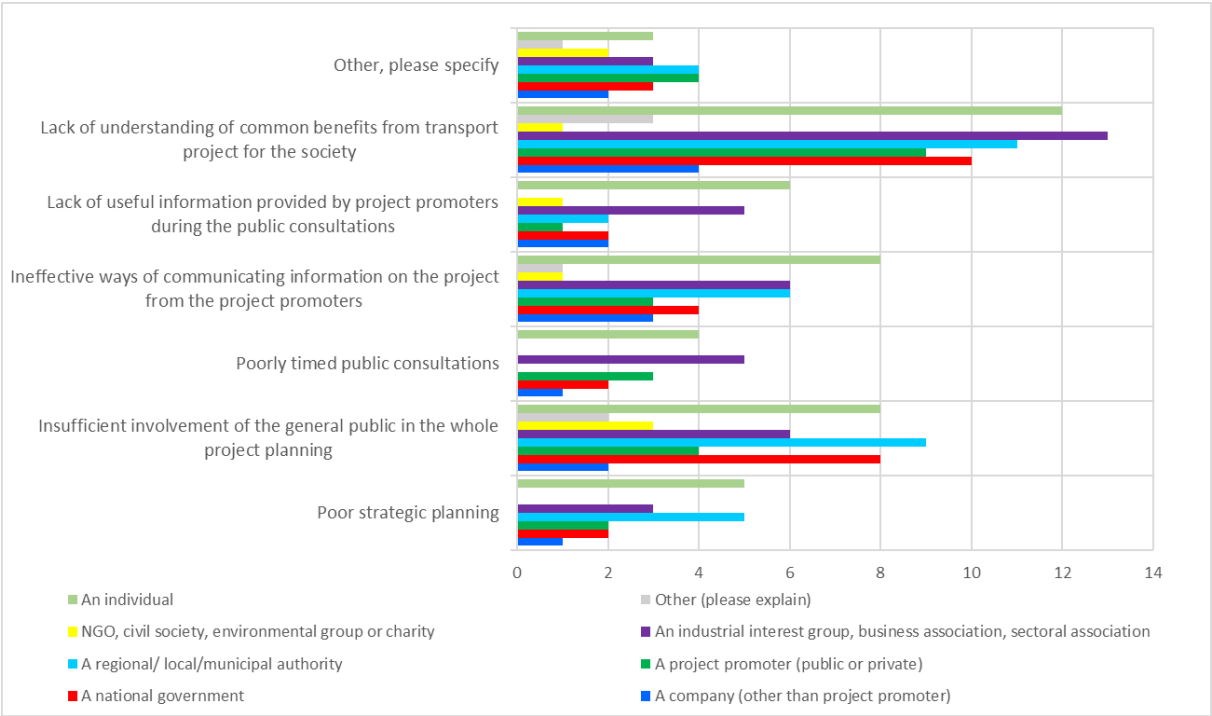
(one stop shop authority). While there is a risk that this could affect their rights due to changed procedures and potentially reduced time for public consultations, civil society as well as local communities could also benefit from a clearer framework allowing their comments to be well channelled and better addressed to the decision maker. As a trade-off for the potentially reduced possibilities of various consultations where they can express their views, the greater synchronisation of process and introduction of time limits could also be an opportunity for local communities and conservation NGOs to have their voice heard due to innovations in the procedures. For instance, the use of new technologies or the digitalisation of public consultation can simplify and increase the outreach to the population concerned and increase civil society impact⁸¹. As in the PO1, positive effects are expected also in the cross-border context with better comprehension of the consultation systems in the neighbouring Member State.

Under PO3, any attempts to simplify existing requirements notably by reducing certain steps or possibilities of public consultation could be well accepted by national authorities and project promoters while they would be negatively perceived by civil society, in particular by NGOs active in the environmental area. The positive effects of a clarification of the procedures as foreseen under PO2 would be offset by the suspicion of lowering environmental or other standards. The risk of negative social impacts appears even greater if authorisations are brought up to the EU level (PO3b). The decision making authority in the latter case would be much more distant from the affected communities. Even if the fundamental rights would be safeguarded by the careful definition of the rules, their effective enforcement would be difficult due to technical and organisational issues.

In the public consultation it was particularly highlighted by local and regional authorities as well as NGOs and civil society that currently the general public is not sufficiently involved in the project planning. According to this group of stakeholders, the general public is insufficiently involved in the whole project planning; it may be due to the scattered procedures which are not perfectly timed or coordinated.

⁸¹ See in this context the Strategy for speeding up the planning process of the German Federal Ministry of Transport and Digital Infrastructure – https://www.bmvi.de/SharedDocs/DE/Publikationen/G/innovationsforum-planungsbeschleunigung-abschlussbericht.pdf?__blob=publicationFile.

Figure 5: According to your knowledge and experience, what may be the reason for a lack of public acceptance of certain transport infrastructure projects?



Source: results of the Open Public Consultation.

6.1.11 Impact on employment

All policy options are expected to have positive impacts on employment. PO3 in its largest scope of application (core TEN-T network projects) would result in around 7,500 additional jobs per year or 2.2% increase relative to the baseline. PO2 also shows significant impacts in terms of additional job creation relative to the baseline (5,600 additional jobs per year or 1.6% increase relative to the baseline). PO1 and the reduced scope of application (core corridor networks and CEF Annex 1 projects only) generate lower but still positive impacts relative to the baseline. The impacts are assessed through multiplier effects. More explanations regarding the quantification of these impacts are provided in Annex 4.

Table 14: Annual average impacts on employment relative to the baseline for 2018-2030

	Baseline	PO1	PO2	PO3a/PO3b
Employment impacts (in thousand job-years and % change to the baseline)				
Core TEN-T network projects, of which:	344	1.7	5.6	7.5
Core network corridors projects		0.5%	1.6%	2.2%
CEF Annex 1 projects		1.3	4.2	5.6
		0.4%	1.2%	1.6%
		1.0	3.1	4.2
		0.3%	0.9%	1.2%

Source: M-FIVE and Panteia, Impact Assessment support study (2018)

6.1.12 Impact on public health – reduction of accidents

The initiative does not specifically target public health. However, it is expected to result in a decrease of road traffic relative to the baseline and modal shift to safer modes (in particular rail). The improvement of safety of the transport operations is also linked to the provision of better quality infrastructure and filling the gaps in the missing infrastructure. Hence, it would result in a reduction of the number of fatalities, serious and slight injuries relative to the

baseline. If infrastructure projects are implemented as planned without delays, those benefits will be generated earlier.

The highest savings in terms of external costs of accidents are achieved in PO3 (€389 million relative to the baseline or 0.4% decrease) when applied to the largest scope of projects, i.e. to all the TEN-T core network projects. However, PO2 also achieves significant savings in the external costs of accidents, in the order of €297 million relative to the baseline over 2018-2030 (expressed as present value). All options and all scopes of application show positive impacts relative to the baseline.

Table 15: Impacts on external costs of accidents relative to the baseline over the lifetime of the projects (2018-2030)

	Baseline*	PO1	PO2	PO3a/PO3b
External costs of accidents (present value in million € and % change to the baseline)				
Core TEN-T network, of which:	91,581	-105.3	-297.0	-389.0
		-0.1%	-0.3%	-0.4%
Core network corridors		-79.0	-222.8	-291.8
		-0.1%	-0.2%	-0.3%
CEF Annex 1 projects		-58.4	-164.9	-215.9
		-0.1%	-0.2%	-0.2%

Source: Panteia, *Impact Assessment support study (2018)*; Note: * The baseline figures relate to the traffic on the core TEN-T network.

6.1.13 Impact on EU cohesion, local benefits, life quality and social inclusion

The implementation of the TEN-T network aims at strengthening EU cohesion, in particular by enhancing accessibility and connectivity of all regions and by reducing infrastructure quality gaps between Member States. These objectives enshrined in the TEN-T Regulation are not questioned by stakeholders and were recently confirmed in Council conclusions⁸². As explained in the baseline scenario, the timely completion of the TEN-T network is at risk given the significant delays currently encountered by individual TEN-T projects, in particular because of lengthy permitting procedures.

In addition, the changing patterns of mobility – mobility as a service, transport as public service – need to be taken into consideration to assess social impacts. The effective involvement of the local communities influences this aspect of the implementation of the TEN-T network which is not only about long-distance flows. The network is also vital to ensure access of the local communities to economic centres and to shape mobility in urban areas.

Finally, transport infrastructure is an increasingly key factor of life quality for EU citizens and for social inclusion. The timely completion of the TEN-T core network is expected to enhance the transition to low emission mobility to reduce negative externalities of transport (as explained in section 6.2 on environmental impacts). Good transport infrastructure is fundamental to ensure good connections, to reduce congestion and enhance new solutions such as digital ones to improve mobility. Mobility has a great impact on access to public goods like health, employment, culture or social inclusion.

The social impact on EU cohesion of PO1 is rather modest in light of its limited efficiency. No substantial changes to the currently applicable rules are expected, but best practices and positive experiences in terms of local benefits, life quality and social inclusion could be promoted with expected benefits in the long run.

⁸² In the conclusions adopted on 5 December 2017, the Council reiterated its strong commitment to the implementation of the TEN-T and the necessity to continue this policy to boost investment in transport and contribute to global objectives in particular in terms of climate action. 15425/17 TRANS 541, available at: <http://data.consilium.europa.eu/doc/document/ST-15425-2017-INIT/en/pdf>

On the other hand, the impact on EU cohesion under PO2 is assessed positively, as the measures would contribute to improving the implementation rate of the TEN-T core network. The impact on local benefits depends on the detailed designs of individual projects and is specifically linked of the quality of consultation procedures. A clear ownership of the authorisation by a single entity at national level is considered a better approach to integrate the interests of various stakeholders.

Local influence to a EUR 10billion project

In Italy, the Brenner Base Tunnel project was subject to two parallel and coordinated authorisation procedures: a central procedure coordinated with the local one, due to the fact that Bolzano is an Autonomous Province with its own EIA Committee. This allowed for a careful insertion of the project in the region, both from the point of view of the required authorisations and the necessary agreements, e.g. an in-depth preventive analysis, especially as concerns logistics, sharing of the project with the local population, consideration of local requests and agreement on the location of construction and disposal sites⁸³

PO2 is also likely to provide greater synchronisation of procedures and cross-fertilisation of measures at the scale of the entire infrastructure project. In the case of cross-border projects, social benefits could be brought more coherently across the border through green or social procurement. If a project is developed separately at every step of the permitting procedure or separately on two sides of the border, the social aspects have less opportunity to be taken into account in a coherent manner.

Social inclusion in a project of pan-European importance

Based on the new public procurement directives, the project promoter of the inland waterway canal linking the Seine with the Scheldt is using social clauses in every contract for works. These clauses require a certain number of local citizens to be employed during the execution of contracts. Procurement is an opportunity for territorial economic development as well as to increase the public acceptance of a project. However, based on the experience of the project promoter, it necessitates strong project management structure and strong partnership with local stakeholders⁸⁴

PO3 is also expected to generate positive impact on EU cohesion by fostering TEN-T implementation. However, the impact on local benefits appears more negative than PO2 as the one-size-fits-all approach inherent to the definition of a single and uniformed set of rules could be detrimental to the delivery of local benefits.

Finally, the respondents in the open public consultation in particular emphasised the fact that focus on local benefits is one of the factors contributing to the raising public acceptance for individual projects. This element was second only to the greater involvement of the general public in the project preparation⁸⁵.

6.4 Legal implications

The initiative and the possible solutions are expected to have important legal implications. One of the elements contributing to this is the fact that the initiative relates to various existing legal provisions stemming from different legal frameworks (local/regional, national and EU).

The three policy options will have different legal implications at different levels and in some cases would require the introduction of new procedural rules in the national administrative law. Therefore, careful analysis of the effectiveness, the implications for stakeholders and civil society as well as the cost of enforcement has been carried out as part of the present impact assessment. The reduction of legal uncertainty and the increase in private investment is taken into account in the assumptions on reduction in delays.

⁸³ Conclusions of the Workshop: Efficient permitting for TEN-T projects – Brussels, 17 October 2017.

⁸⁴ Conclusions of the Workshop: Smart and effective public procurement for TEN-T cross-border projects, Brussels 15 June 2017

⁸⁵ According to the views of stakeholders in the open public consultation, tout of 91 respondents 66 mentioned involvement of general public at different level of project planning as a best practice. Focus on local benefits was chosen by 61 out of 91. Extensive use of ICT was named by 43 respondents while promotion of local employment and SME's by 35.

6.1.14 Legal feasibility and effectiveness of the options

The legal implications of PO1 would be limited as it would be voluntarily applicable to the Member States and would not require changing the existing rules. However it is important to distinguish soft law's lack of legally binding effect from its potential impact in practice. Soft law may affect policy development and practice precisely because it exercises an informal 'soft' influence, and can therefore sometimes be presented as a more flexible instrument in achieving policy objectives. A possible choice of soft law measure under this option could be recommendations, which while have no binding force might have certain legal effects and would allow the Commission to have a coordinating role.

The requirement to establish a one-stop-shop at national level for the purpose of coordinating and issuing development consent for TEN-T projects, foreseen under PO2, would need to be set forth in an EU legislative instrument. This option would apply to all projects on the TEN-T core network. This option also includes the adoption of certain limited provisions of public procurement legislation as well as targeted technical assistance and streamlined procedures at the EU level when applicable. A similar solution is already in force within the TEN-E Regulation for energy infrastructure projects. As PO2 would to a large extent follow the TEN-E precedent with the application of additional measures in the public procurement field, it is considered feasible from the legal point of view.

From a legal perspective, the effectiveness of such a system would depend on degree of integration of the one-stop shop (OSS) designated by a Member State. The integrative approach to the OSS is perceived to be more effective than the coordinated approach⁸⁶. This policy option does not entail any changes to the EU legal acts that are currently in force.

As regards time limits, the PO2 would also to a large extent replicate the TEN-E precedent. Their introduction by means of an EU regulation would not require adapting national legislation, but the right of the Member States to set more ambitious deadlines than the ones foreseen by the EU legislative act will be safeguarded.

The European framework envisaged under PO3 would be created for the authorisation of TEN-T core network projects, along with the development of a framework of single rules to be applied in public procurement of cross-border projects and for environmental assessments. For these projects, the new framework would replace all national rules and regulations including those deriving from EU legislation. This would entail making the requirements currently stemming from EU directives directly applicable. This would require an EU legislative instrument adopted to streamline regulatory and administrative procedures for TEN-T core network projects but would also raise the issue of the appropriate legal basis if it affects the requirements under other EU legislation.

In the case of PO 3a, the national rules on administrative proceedings would remain in place and would not be affected. However, under PO 3b the EU would be directly in charge of issuing permits. In such a case, this would imply the usual decision-making procedures of the Commission to adopt individual -decisions or more likely to establish an ad hoc decision-making system for implementing this possibly complex scheme.

In addition, it would require supplementing this piece of EU legislation with implementing measures to govern the permitting procedures which are currently not regulated in a sufficiently detailed manner by directives, e.g. technical standards for buildings and structures, technical standards for environmental assessments at project level, administrative

⁸⁶ According to the views of stakeholders in the open public consultation, the OSS should have extended decision making power (44 in favour of this approach instead of coordination powers only what was selected by 22 respondents, 12 opted for another solution and 11 did not express their opinion). This view was shared in particular by project promoters, industrial groups, regional authorities and individuals. Groups which were most sceptical to this solution were national governments and regional/local authorities.

rules on the neighbouring pieces of land, rules on compensations related to compulsory purchase of land, rules on communication of interested parties.

Finally, PO3 raises significant concerns in particular as regards the competence of the EU to act in the fields of spatial planning and land use which are the sole competence of the Member States.

As a result, from the legal perspective, PO3 in general is likely to raise serious subsidiarity questions and, in the case of PO3b more particularly, setting up an implementing system and an administrative capacity at EU level with the associated administrative burden would have important implications.

6.1.15 Impact on judicial review

As it does not entail immediate legal effects, PO1 would not have any impact on the judicial review.

PO2 would not have important effects on the judicial review either. The current national rules would continue to apply as far as the definition of the competent court and procedural rules are concerned. Member States would only be able to introduce time limits for challenging administrative decisions such as a statute of repose, in accordance with their own procedural rules. Any intrusive rules cannot be proposed due to the lack of competence of the EU to regulate the judiciary systems of Member States.

In the case of PO3a, the same considerations as for PO2 apply. However, as for the PO3b there are several options to ensure access to justice. Transport projects involve very large numbers of stakeholders, and decisions issued by competent authorities granting development consent for projects face legal challenges by stakeholders. Such legal appeals are likely to cause delays in the preparation and implementation of some TEN-T projects. Under the current system, these legal challenges are most likely to be heard at national level. As a new EU framework regulation would fall under EU law, the competent court would be the EU general court.

7 HOW DO THE OPTIONS COMPARE?

7.1 Overall assessment of direct impacts

The combined measures under the three policy options have economic, social and environmental impacts related to users' costs and external costs. The net benefits stemming from the user costs savings and external costs savings for all three options are positive, with the highest net benefits presented by PO3, amounting to €7.7 bn for the core TEN-T network projects (see Table 16). Again, the application of the three options to the narrower scope, such as core network corridors and CEF Annex 1 projects only is expected to bring smaller benefits, €5.8 bn in case of corridors projects for PO3 and €4.3 bn in case of CEF Annex 1 projects for PO3.

Table 16: Costs and benefits of the policy options relative to the baseline over the lifetime of the projects (2018-2030)

Net benefits (in million €, constant prices 2015)	PO1	PO2	PO3a/PO3b
<i>Core TEN-T network projects</i>			
Social benefits			
User costs savings	1,838	5,069	6,648
External costs savings	273	724	947
Air pollution	3	6	8
Noise	10	27	35
Congestion	86	202	263

Net benefits (in million €, constant prices 2015)	PO1	PO2	PO3a/PO3b
Accidents	105	297	389
Climate change	68	193	253
Total social benefits	2,111	5,793	7,595
Administrative costs reduction	18	153	100
Net benefits (present value)	2,129	5,946	7,696
Core network corridors projects			
Social benefits			
User costs savings	1,379	3,802	4,986
External costs savings	205	543	710
Air pollution	2	4	6
Noise	8	20	26
Congestion	65	151	197
Accidents	79	223	292
Climate change	51	144	189
Total social benefits	1,583	4,345	5,696
Administrative costs reduction	14	115	75
Net benefits (present value)	1,597	4,460	5,771
CEF projects			
Social benefits			
User costs savings	1,020	2,813	3,690
External costs savings	151	402	526
Air pollution	2	3	4
Noise	6	15	19
Congestion	48	112	146
Accidents	58	165	216
Climate change	38	107	140
Total social benefits	1,171	3,215	4,215
Administrative costs reduction	10	86	56
Net benefits (present value)	1,182	3,301	4,271

Source: Impact Assessment support study

In quantitative terms and considering the direct impacts and wider economic impacts (as shown in previous chapter in Table 7 and Table 8), PO3 clearly generates the highest positive results.

In addition to quantitative analysis of the impacts it is particularly important for this initiative also to assess the impacts of the proposed measures which go beyond the quantified social benefits and include social impacts on civil society, fundamental rights of citizens affected by the options as well as on the legal certainty. Therefore, the assessment also requires a thorough examination of the distributive effects on various categories of affected stakeholders and the qualitative review of the different impacts. This analysis needs to take into account the advantages and negative effects of the policy options in light of the criteria of their efficiency, effectiveness and coherence. This is also important as the overall aggregated positive figures may include also negative effects on citizens and local communities directly affected by the investments.

Eastern motorway bypass of Łódź

This greenfield construction of a new motorway along the Baltic-Adriatic Core Network Corridor links the existing A1 heading north towards Gdańsk on the Baltic Sea and A1 leading to the industrial region of Upper Silesia. The construction of the new road did not use EU funding. It replaced the existing national road crossing the TEN-T urban node of Łódź and directly affecting hundreds of thousands of inhabitants of the agglomeration with increased noise, pollution, low road safety and congestion. It affected also the seamless flows on this strategic N-S connections going through the centre of Poland. The new road negatively affected the quality of lives of the residents of the relatively sparsely populated suburbs; however the overall impact on the whole

region is positive. Moreover, a lot of effort was invested into mitigation measures such as protection from increased noise, new trees plantations as well as engineering structures in order to reduce the impacts on the local transport.

7.2 Effectiveness

The effectiveness of the policy options must consider the extent to which these objectives are achieved. Table 17 presents the objectives and the indicators that have been developed to monitor the level of achievement of the objectives. The effectiveness of each policy option in achieving the objectives is presented in Table 18, using the indicators described above.

Table 17: Linking of objectives to key indicators

General objectives	Specific objectives	Indicators
establishment and development of trans-European networks in the area of transport as well as promoting the interconnection and interoperability of national networks	minimising the risk of delays faced by individual TEN-T projects	<ul style="list-style-type: none"> • Value of user benefits linked to quicker implementation of TEN-T • Value of non-user benefits linked to quicker implementation of TEN-T
	increasing legal certainty for project promoters thus attracting more private investors to transport infrastructure	<ul style="list-style-type: none"> • Legal effectiveness for TEN-T projects promoters (qualitative assessment)

All options show positive results in terms of users' costs savings and external costs savings linked to the quicker delivery of the TEN-T core network projects and its narrower scopes (core network corridors, CEF Annex 1 projects). PO1 has a more limited impact relative to PO2 and PO3. PO2 strongly contributes to the achievement of objectives, however not to a lesser extent in comparison with sub-options of the PO3. PO3 reduces the risks for project promoters to the minimum and results in the highest direct benefits, these benefits are however not very much higher than the ones brought by the PO2. In all cases, the benefits are the highest also when the scope of application is the broadest – i.e. when all projects located at TEN-T core network would benefit from the new rules.

Table 18: Effectiveness of policy options

Key: Impacts expected					
XX	X	O	✓	✓✓	
Strongly negative	Weakly negative	No or negligible impact	Weakly positive	Strongly positive	Unclear
	PO1	PO2	PO3		
			PO3a	PO3b	
Specific objective 1: Minimising the risk of delays faced by individual TEN-T projects					
User benefits linked to quicker implementation of TEN-T core network (present value)	€1,838 million ✓	€ 5,069 million ✓✓	€ 6,648 million ✓✓		
External costs savings linked to quicker implementation of TEN-T (present value)	€273 million ✓	€724 million ✓✓	€ 947 million ✓✓		
Specific objective 2: increasing legal certainty for project promoters thus attracting more private investors to transport infrastructure					
Legal effectiveness for TEN-T core network projects promoters (qualitative assessment)	The legal certainty will increase, however due to the nature of the soft law, its effectiveness will be limited. O	The positive impact on legal certainty would be high as the procedures would be integrated with clear ownership in the OSS and the rules applied at national (well-known) level ✓✓	The positive impact on legal certainty would be high as the procedures would be integrated and the rules applied by the OSS at national level. However, the contents of the requirements established directly at EU level would be new to project promoters. ✓	The positive impact on legal certainty would be high as the procedures would be integrated. However, the contents of the requirements established directly at EU level would be new to project promoters and the administrative procedures as well as judicial proceedings handled at EU level would create new level of uncertainty. X	

In terms of effectiveness to ensure legal certainty for TEN-T project promoters, the PO2 and PO3a seem to be most effective as they contribute to the streamlining of procedures at national level while keeping the common administrative procedures at national level which are well-known for project promoters. PO3a will result in project promoters having to learn and adjust to the new framework which could differ from what they are used to. PO1 seems to have negligible effect as the guidelines to existing procedures would not have decisive effect and bear the risk to be differently interpreted at different levels. Finally, PO3b may have weakly negative effects for the certainty of the project promoters. Indeed, the rules will be streamlined and made simpler for TEN-T projects. However the shift of responsibilities for

handling the procedures to the EU level will create a certain level of uncertainty in terms of procedures as well as potential appeals which would need to be lodged to the EU courts.

Finally, experience from the application of the TEN-E rules proves that the scheme proposed under PO2 has proven successful in the other area of TEN.

TEN-E experience

The Agency for the Cooperation of Energy Regulators (ACER) confirms in the report of 2016 its previous year's finding that those TEN-E Projects of Common Interest which applied for permit granting after 16 November 2013 (i.e. according to the new rules of TEN-E Regulation requiring establishment of a OSS at national level) are in general more optimistic about the expected duration of the permit granting than those which applied before. The average duration of the permit granting is 3.5 years and 5.5 years respectively.

Source: Consolidated Report on the progress of electricity and gas projects of Common Interest for the year 2016, ACER 2017⁸⁷

7.3 Efficiency

The efficiency of the options is assessed on the basis of the resources or at least cost involved in light of the objectives of reducing the risk of delays and the increased certainty for project promoters. All options are expected to have positive impact in terms of administrative costs on the project promoters with PO2 having the biggest impact. Even if PO3 in both of its configurations will have also high positive impact on promoter's administrative it is expected to be lower than for PO2 as in the case of PO3, additional training and learning is required. PO1 is expected to have modest positive impact.

For permitting authorities, in all options the impact will be negative due to the need of additional training and learning. It is expected that the impact will be the highest in case of PO3 where a significant amount of training will be needed. The lowest negative impact is expected in case of PO1 and rather medium in case of PO2.

In all cases, the overall net impact is positive for all options, which is the highest in case of PO2.

The objective of the implementation of the TEN-T is the transition towards low emission mobility. The efficiency of the options was also assessed in terms of acceleration of the benefits brought by individual projects. Regarding the external costs savings also here the PO3 is the most efficient option, while PO1 is the least. Expected results for PO2 are relatively high; however somewhat lower than PO3 and considerably higher than PO1.

Increasing the rights of the TEN-T projects promoters cannot be assessed only against their interests and the overall highly aggregated benefits. Social impacts and impacts on civil society have to be duly taken into accounts. Moreover, civil society shows greater interest to have their say and participate in the decision making process on projects that can affect the everyday life and the quality of life. Their participation may be hampered by lack of clarity of rules and procedures. Recent cases show that the effective and early involvement of the civil society as well as greater focus on local benefits is helpful and prevents conflicts and appeals at later stage of the project implementation⁸⁸.

The clarified rules and increased technical assistance leading to more efficient public consultation (PO1) will have weakly positive result. PO2 is expected to contribute in general positively to the involvement of civil society in the permitting processes by clarifying the rules and better structuring the paths. However, the integration of consultation may potentially have adverse effect on the length of consultations which so far may be sequenced and

⁸⁷ http://www.acer.europa.eu/official_documents/acts_of_the_agency/publication/consolidated%20report%20on%20the%20progress%20of%20electricity%20and%20gas%20projects%20of%20common%20interest%20for%20the%20year%202016.pdf

⁸⁸ The Brenner Corridor Platform (BCP) gathering infrastructure ministries of Austria, Germany and Italy, the five regions Bavaria, Tirol, Alto Adige, Trento, Verona, railway and highway companies and the European Commission is an example of involvement of regions and focus on local benefits in infrastructure projects.

concentrate subsequently on different topics. This could particularly be the case if the present initiative would derogate to the consultation requirements stemming from the applicable directive by replacing them with a simplified consultation. On the other hand, the introduction of a certain parallelism or greater synchronisation of the consultations will not have such negative effect. It will safeguard all the existing assessments and consultations while cutting the overall needed time and ensuring greater transparency for the benefit of the citizens and NGOs that can better understand when to have their say in the project planning.

Finally, both sub-options of the PO3 are expected to have negative results. In the case of PO3a bringing unfamiliar new requirements will not be offset by the clearer structure and the overall impact will be weakly negative. Whereas in the case of PO3b, the overall impact is expected to be strongly negative due to new unfamiliar rules and the shift of handling of the procedures to the EU level.

Finally, the legal stability is necessary for long-term TEN-T projects. Significant changes to the way the procedures are handled and frequent changes to their contents are believed to be counterproductive. On the other hand, the problem is clearly driven by the organisation of the procedures and the stability in this respect will not offset the results of the suboptimal situation. Evolutionary changes in the PO2 are believed to be best balanced in this area, bringing greater coordination of existing processes which become clearer and more understandable for both project promoters and the civil society.

Table 19: Efficiency of policy options

Key: Impacts expected					
XX	X	O	✓	✓✓	
Strongly negative	Weakly negative	No or negligible impact	Weakly positive	Strongly positive	Unclear
	PO1	PO2	PO3		
			PO3a	PO3b	
Impact on cost borne by project promoters (savings)	€ 27 million ✓	€166 million ✓✓	€120 million ✓✓		
Impact on cost borne by permitting authorities	€9 million X	€13 million X	€20 million XX		
Impact on CO ₂ emissions for the TEN-T core network (cumulative over 2018-2030)	-917 thousand tonnes CO ₂ compared to the baseline ✓	-2,686 thousand tonnes CO ₂ compared to the baseline ✓✓	-3,543 thousand tonnes CO ₂ compared to the baseline ✓✓		

Impact on civil society	Clarification of rules will increase the efficiency of public consultation but is subject to the efficiency of voluntary application of soft law measures. ✓	Structuring and integration of permitting procedures are believed to have positive effects on the civil society to have their voices heard in the public consultations thus leading to cross-fertilisation and greater focus on local benefits. ✓✓	Unfamiliar rules and requirements are not be fully offset by the positive effects of structuring and integration of permitting procedures. The perception by the civil society risks being negative. X	Unfamiliar rules and distant handling of procedures risk having strongly negative impact on the civil society involvement and will reduce the concentration on local benefits in TEN-T project planning. Perception by the civil society will be crealy negative. X X
Impact on legal framework stability	Stability is ensured, however the main problem drivers remain not efficiently addresses. ✓	Evolutionary changes without significant modifications to the rules and their contents provide balance between the necessity for stability and optimisation of applicable frameworks. ✓✓	Changes in the contents will result in necessary adaptation of project promoters and may be suboptimal for long-term planning of TEN-T projects. X	Drastic change in comparison with current situation, discutable competence of the EU to handle procedures having impacts on local communities X X

7.4 Coherence

The objectives of this initiative are in line with the relevant EU policies in the field of transport policy, the Single Market and priorities in other EU policies. All the options contribute to the *stimulating investment and creating jobs* with the streamlining of investment in the real economy.

A deeper and fairer internal market will be achieved by the enhanced implementation of the TEN-T network whose aim is to physically connect the markets of the Member States with the clear EU added value with a focus on cross-border connection. All the Policy Options contribute to these objectives.

In terms of coherence with the other EU policies, PO1 and PO2 align best as they follow the existing requirements and try to best organise the implementation of the priorities of various policies, in particular the environmental protection and the functioning of the internal market with smart public procurement rules, with the goals of the TEN-T. Through better alignment of these policies' objectives with the TEN-T implementation, synergies are expected to be achieved.

In terms of coherence with the other policies, the sub-options of the PO3 are not perfectly coherent with the objectives of public participation and access to justice stemming from the application of the EU *acquis* in the field of environment, public procurement etc. This policy option would entail the risk of creating derogatory rules which would then provoke a suspicion to be more lenient on certain requirements or contribute to fragmenting the legal framework. This could put at stake the coherence of these policy fields. In addition, the PO3b by bringing the permitting procedures, affecting to the large extent local communities and individual citizens, would not be fully in line with the objective of *Enhancing cooperation between different EU justice systems and preserving the rule of law*

7.5 Proportionality and subsidiarity

None of the options go beyond what is necessary to achieve the objectives. However, one needs to note that PO3 in its both sub-options could cause proportionality and subsidiarity concerns as it replaces the national permitting systems and, in case of PO3b, shifts the responsibility of handling the permitting procedures entirely to the EU level.

PO2 leaves Member States the responsibility to determine their administrative set-ups while safeguarding the necessity of the priority, timelines and efficient treatment of the projects of EU importance, i.e. those implementing the transport networks whose impacts go beyond the national context (similarly to networks managed at local, regional and national levels where decisions are made at different levels). Here, while preserving the national competence and the principle of territorial sovereignty, the EU importance of the projects is incorporated to the permitting systems by given the most rapid treatment legally possible under the national permitting systems to TEN-T projects.

7.6 Opinion of the stakeholders on the key policy measures discussed

Regarding the integration of procedures under a national single entity, a “one-stop-shop” (OSS), this solution is supported in particular by project promoters, individuals and industrial interest groups, while more reserved opinions are expressed by national and in particular regional authorities.

In response to the possibility of introducing time limits to the permit granting process, project promoters, individuals, industrial interest groups and one responding NGO agree that this process should not last longer than 2 years, and that the establishment of such time limit can help reduce excessive delays. Local and regional authorities as well as some national governments are however more reserved. They are also of a critical view on time limits for the total duration of approval procedures for TEN-T projects, stating that since procedures for large-scale and complex projects are usually very time-consuming, such limits may have the risk of creating relative delays for small uncomplicated projects.

In terms of public procurement issues, a common set of rules at EU level applied to cross-border projects is considered in particular by project promoters and industrial groups, as the most effective solution to improve public procurement issues. National authorities argue that such a set of rules would be more effective when applied to cross-border projects benefiting from EU funding. As identified above, cross-border procurement based on a single legal framework may also strengthen the position of larger companies which have more experience in working in different Member States. The potentially decreased participation of SMEs in such large procedures is believed to be offset by greater possibilities of working as subcontractors in the increased overall construction market. This measure is not expected to have any negative impacts on citizens directly.

As regards definition and handling of procedures at EU level, there is reluctance expressed by some national governments, who in big numbers take strong positions against this approach. They argue that it would not speed up the permitting process and might result in the duplication of efforts, since only national authorities are able to verify the individual approval requirements of each country, and therefore, some procedure would be duplicated. However, the workshops devoted to public procurement and permit granting procedures showed some support from project promoters to rules and procedures that would be developed at EU level specifically for TEN-T infrastructure projects. On the other hand, the representatives of civil

society expressed concerns that such rules and procedures would result in reducing their possibility to be consulted on the projects.⁸⁹

7.7 Sensitivity analysis

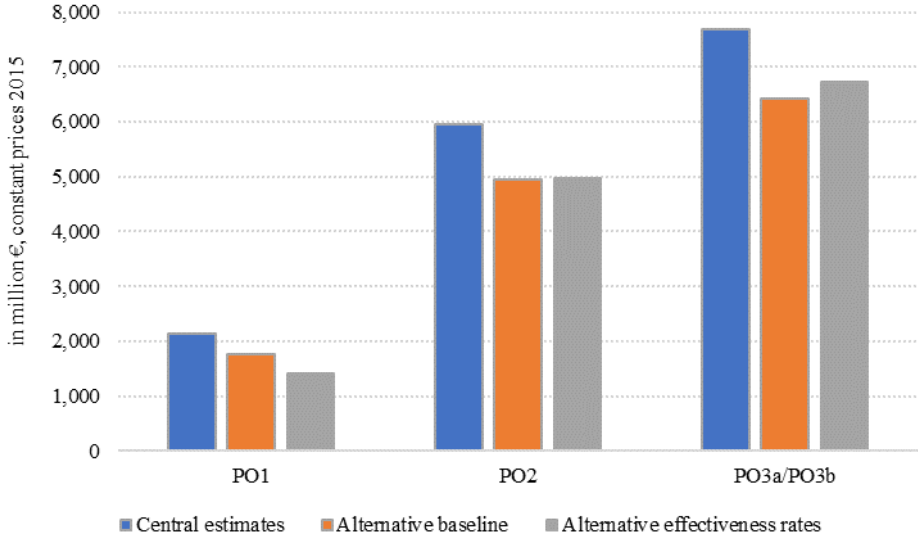
A sensitivity analysis has been performed for the baseline scenario and for the effectiveness rates used in quantifying the policy options.

An alternative baseline scenario has been considered where 60% of investments would occur on schedule while 20% of the investments would be delayed due to permitting procedures by one year, 10% by two years, and 10% by three years. Consequently, the impacts of the policy options have been assessed drawing on the alternative baseline scenario while at the same time keeping the effectiveness rates unchanged.

In addition, a sensitivity analysis has been performed on the effectiveness rates. More conservative levels for the effectiveness of the policy options have been assumed: 10% for PO1, 50% for PO2 and 70% for PO3. In this case, the policy options have been quantified drawing on the central baseline scenario.

The results of the sensitivity analysis with respect to the baseline and the effectiveness rates are presented in terms of net benefits Figure 6. The detailed results are presented in Annex 4 on Analytical methods.

Figure 6: Net benefits (in million €, constant prices 2015)



Source: Impact Assessment support study

Overall, the sensitivity analysis shows that the alternative baseline scenario and lower effectiveness rates result in somewhat lower net benefits. However, the ranking of the options in terms of net benefits does not change.

7.8 Preferred Policy Option

Based on the assessment above PO3 is the most effective in terms of wider economic impacts and also direct user and non-user benefits. However, PO3 shows clearly negative impacts in terms of legal stability and social impacts in terms of the involvement of civil society in the infrastructure planning. Moreover, this options does not seem to be fully coherent with the objectives of the other policy areas, overall objectives and general principles of the Union as well as it does not seem proportional for the objectives it is meant to achieve.

⁸⁹ More details on the outcomes of the open public consultations can be found in the Annex 2 as well as in to the Panteia et al. 2018 (Report on the results of the public consultation).

The impacts of PO1 are much more balanced and it is proportional to the objectives it is meant to achieve. However the overall the effectiveness and efficiency of this option is not high.

Taking into consideration the experience of the projects in the field of the TEN-E, the evolutionary model of PO2 which is respecting the national permitting processes but at the same time a requires to better coordinating them, seems to be effective and the most efficient option⁹⁰.

PO2 therefore qualifies as the preferred option, it performs much better in terms of effectiveness and efficiency in comparison with PO1 and it does not have the drawbacks present in the case of application of PO3, in particular of the sub-option PO3b. It is also proportional to the objectives it is to achieve and coherent with the other policies of the EU and its fundamental principles. PO2 seems to achieve a balanced and efficient framework based on an increased effectiveness of administrative procedures to foster the implementation of TEN-T projects and, at the same time, on clearer and more inclusive processes to strengthen public acceptance of infrastructure projects.

8 HOW WOULD ACTUAL IMPACTS BE MONITORED AND EVALUATED?

Monitoring and evaluating the legal act which will streamline the implementation of the TEN-T should build on existing measures to monitor the implementation of the TEN-T as such. It should therefore use to the largest possible extent the existing framework and in a simple and transparent way to make it easily accessible for interested stakeholders. It is not the intention to create a complex system of new performance indicators.

The monitoring of specific policy objective 1 will be measured by the general advancement of the implementation of the TEN-T and number of TEN-T core network projects which do not experience delays. This monitoring will be done using the existing method of monitoring the implementation of the TEN-T provided for in article 49 (3) of the TEN-T Regulation.

Projects receiving CEF support are subject to a more detailed and regular reporting carried out by the executive agency INEA.

In addition, the European Coordinators will be able to highlight any achievements or difficulties occurring for infrastructure projects in their core network corridor work plans provided for in article 47 of the TEN-T regulation and which are regularly updated.

The monitoring of specific policy objective 2 will be measured by the number of TEN-T projects using innovative EU financial instruments as well as private capital.

Given that there are several drivers of the problems and that all cannot necessarily be addressed by the present initiative (as explained in section 2.1 – e.g. political and funding issues), any positive results will not be easily attributable to the exclusive implementation of the measures adopted. Therefore, the overall evaluation should take into consideration the general pace of the implementation of TEN-T.

8.1 Indicators

For the main specific policy objectives, the following monitoring indicators have been identified:

⁹⁰ There is evidence that the promoters of PCIs expect acceleration of the procedures in their individual cases. According to the analysis of ACER, the average duration of permitting expected by PCI promoters in the pool of 96 electricity PCIs is 3.5 years. For gas, the average permit granting duration for the pool of assessed 54 PCIs was 3.2 years. Commission Staff Working Document Accompanying the document Commission Delegated Regulation amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest, SWD(2017) 425 final https://ec.europa.eu/energy/sites/ener/files/documents/swd_accompanying_pci_list_final_2017_en.pdf

- Minimising the risk of delays faced by individual TEN-T projects:
 - The advancement of the TEN-T implementation in terms of compliance with the standards and requirements.
 - Progress in investment supported by EU in the TEN-T transport infrastructure measured by the number of CEF projects (or the projects supported by its successor) implemented on time and/or not delayed due to permitting/procurement issues.
- Increasing legal certainty for project promoters thus attracting more private investors to transport infrastructure
 - The increase of number of the TEN-T infrastructure projects financed with the use of the EU-supported financial instruments (e.g. EFSI and its successors).

8.2 Operational objectives

Based on the preferred options, the following operational objectives have been identified.

Table 20: Operational objectives

Operational objectives	Indicators
Accelerate the pace of the implementation of the TEN-T	% of the TEN-T compliant infrastructure in railways and inland navigation
Increase the effectiveness of EU funding for the delivery of the TEN-T core network	Number of EU-funded projects encountering delays related to permitting or procurement procedures.
Increased use of private and alternative financing in the TEN-T infrastructure projects	Number of TEN-T infrastructure projects using EFSI and its successor or related schemes