

Deliverable 2: Procedural guidelines as a recommendation to the national competent authorities

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Introduction

Working Group 3 is one among three Working Groups and part of the North Sea Countries' Offshore Grid Initiative engaged in dealing with the topic of planning and authorisation procedures, and specifically mandated to develop procedural guidelines as a recommendation to the competent national planning and permitting authorities (deliverable 2 of MoU).

The aim of providing procedural guidelines for the national competent authorities is to support them with recommendations for dealing with planning and permitting procedures of offshore electricity infrastructure projects in the North Sea in a national and international context.

Target groups of the following guidelines are the competent planning and permitting authorities of the signatory countries, namely Belgium, Denmark, France Germany, Ireland, Luxembourg, the Netherlands, Norway, Sweden, and United Kingdom (signatory countries). It is the intent to eventually strengthen the national authorities' ability to deal with administratively and technically complex national and international projects of developing, laying, building, and operating offshore electricity infrastructure projects in the North Sea, in a co-ordinated manner.

The European Commission published a proposal for a "Regulation of the European Parliament and of the Council on Guidelines for Trans-European Energy Infrastructure and Repealing Decision No 1364/2006/EC" on October 19th 2011¹ ("EC Proposal"). If the regulation enters into force, it will have direct application in the Member States and will be binding in its entirety, for projects identified as projects of common interest (PCIs).

However, it should be taken into account that, to date, the provisions of the EC Proposal are not fully reflected in the applying systems, especially in terms of the national legal and administrative basis and administrative practices currently existing in all signatory countries, and that the proposal is currently under negotiation with Member States and the European Parliament. Therefore, the following recommended guidelines are without prejudice to the provisions to be adopted as part of the legislative act, which will be applicable to PCIs, i.e. a subset of the offshore electricity infrastructure projects as defined in Chapter 1 of these guidelines.

Procedural Guidelines

It is proposed that the national competent planning and permitting authorities implement the following recommendations and use them as procedural guidelines when dealing with offshore electricity infrastructure projects in the North Sea.

As a first step, the scope of procedural guidelines is defined in Section 1. Secondly, general recommendations to the competent national authorities are formulated, aiming at supporting the national competent authorities with tools which may be generally helpful, independent from a specific project, in Section 2. Finally, key actions are proposed as further explained in Section 3. These actions are recommended when dealing with one or several specific projects.

¹ COM (2011) 658 final.

1. Scope of recommended procedural guidelines

The recommended procedural guidelines shall apply to all “Offshore Electricity Infrastructure Projects” in the North Sea, Irish Sea and the English Channel.

Offshore Electricity Infrastructure Projects are defined as:

Submarine HVAC-cables and HVDC-cables for transmission of electricity and converter platforms (substations) in the Exclusive Economic Zones and the territorial waters of the North Sea.

Such projects may be defined as either one or several inter-connector(s) involving at least two signatory countries leading from one country's national terrestrial grid entry point through another country's sea area to another country's national terrestrial grid entry point and one or several inter-connector(s) connecting the above named inter-connector(s) among one another.

The subject of Offshore Electricity Infrastructure Projects may also be HVAC-cables and HVDC-cables which serve the purpose of transmission of electricity produced in e.g. offshore wind farms. This should also include the connection between offshore generators and moreover the connection of wind farms' grid cables to one or several inter-connector(s).

The following procedural guidelines should apply to cross-border projects, meaning that at least two signatory countries are involved. They may also, in part, be applicable and helpful for exclusively national projects. The latter point is particularly important in light of the fact that subsequent integration into existing infrastructure or planned infrastructure which is likely to be realised in the future should be possible. Taking a longer-term perspective, this will contribute to the aim of building an intelligent and fully meshed grid.

It is important to underline that not every single recommendation may be appropriate for each national planning and permitting authority and may therefore not be applicable in each signatory country. This is due to the fact that there are different ways of dealing with planning and permitting procedures for offshore grid connections in terms of approaches in some signatory countries. Planning and permitting procedures may be differently structured in legislation and carried out in different ways. Nevertheless, it is recommended that each planning and permitting authority gives consideration to the guidelines during their planning and permitting procedures.

2. General recommendations

2.1 Manual of planning and permitting procedures; publication

Each nationally authorized planning and permitting authority – in close consultation with the applicant/TSO – is recommended to publish a manual with a comprehensive description of the planning and permitting procedures required for granting permits for building and operation of Offshore Electricity Infrastructure Projects.

The manual should include:

- a summary of all decisions and permits which are required (possibly under different legislative codes) with reference to the legal basis.

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- Information about the competent authority/authorities including their contact details such as telephone numbers, postal and web addresses and a description of the fields of their responsibilities. This should include detail of the framework for co-ordination between decision-makers under different codes.
- a description of the formal requirements for applications in order to receive the required decisions/permits.
- steps which need to be undertaken to receive the required decision(s)/permit(s), such as submission of the application, public participation, consultation of stakeholders/third parties/the public, and environmental impact assessment.
- a description of minimum substantive requirements (a 'validation checklist') and conditions which need to be fulfilled in order to receive the needed decisions/permits, such as a technical description, a topological map indicating the proposed routes of the project, a description of possible impacts on the environment, or other uses of the affected sea area, outline of hearings or public consultations.
Further details are set out in point 2.4 (Standardisation) and point 2.5 (Glossary).

Depending on the legal and administrative planning and permitting system of each signatory country additional information may be provided.

It is recommended to publish the manual electronically accessible to applicants (TSOs), stakeholders, and the public.

Ideally, the manual should be published in several languages. At a minimum, an English version should be made available.

2.2 Various and competing uses of the North Sea

If the signatory country does not provide legal instruments and tools such as maritime spatial planning or a masterplan setting out key targets and principles for different and conflicting uses, including electricity infrastructure, it is recommended that the planning or permitting authorities in consultation with the applicant/TSO provide an overview setting out all planned and existing areas of the country's areas of the North Sea which are identified as protected or dedicated to specific uses. The overview will help each competent authority to recognise potential conflicts which may typically or possibly arise, especially between human activities and the marine environment.

Different areas and uses which are typically involved are, for example:

- marine environment (i.e. Natura 2000 and nationally protected areas, Particularly Sensitive Sea Areas)
- shipping
- fishery
- exploitation of resources
- power production (e.g. wind farms, hydropower plants, marine current power stations)
- existing submarine cables and pipelines
- military use

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- platforms (e.g. petroleum)
- raw material extraction areas
- aquaculture
- marine scientific research
- harbour infrastructure
- leisure and tourism

If several authorities have jurisdiction, a close consultation process is recommended. All competent authorities should jointly agree upon the process in both overview and details. In this case, it may be helpful if the competent authorities also set out rules and principles focusing on uses which already exist or are regarded as likely to be realised in the future.

These rules and principles may include for example:

- definition of corridors and gates for cable laying
- appropriate distances between different and competing uses, including areas which are ecologically valuable and legally protected
- appropriate required separation between converter platforms and other platforms and offshore wind farm turbines
- appropriate distances between cables and pipelines to ensure provision for future repair requirements and security of supply
- requirements for cable route including turning points, crossing angles, and crossing agreements
- appropriate burial depth
- areas which may not or should not be crossed
- identification of appropriate landfall points or areas
- identification of appropriate grid entry supply points

The outline should be made available to applicants/TSOs, stakeholders, and the public.

2.3 Sufficient information

It is recommended that each competent national authority provides information to support efficient and effective information distribution for the applicant, other authorities, stakeholders, and the public.

Sufficient information contains of, e.g.:

- geological and geotechnical investigations
- investigation of marine environment such as benthic species and communities

It is recommended that each competent planning and permitting authority increases the effort to collect information in a format which allows the authority to easily save and share the information (e.g. GIS).

2.4 Standardisation in each signatory country

Experience in the past has shown that standardisation is essential to all parties involved in order to deal efficiently with electricity infrastructure projects.

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The competent planning and permitting authority should consider standardisation with regard to:

- technical implementation of laying and operating submarine cables and building and operating converter platforms
- geophysical and geotechnical implementation
- environmental assessment and related formal and substantive requirements for applications

Such standardisation should occur in reference to, and co-ordination between the competent authority and its European partners, and with the various National responsible agencies and other authorities.

Depending on the legal and administrative background of each signatory country the development of standards should either be triggered by the competent authorities or the TSOs/applicants in close consultation with the competent authorities.

It is important to underline that transparency and thorough involvement of all experts is essential in this process.

2.5 Glossary

It is recommended that each competent national authority publishes all relevant documents with a glossary defining the key expressions to assure common understanding of all documents, which should be annexed to the Manual of Procedures under 2.1.

3. Recommended key actions for specific projects

When dealing with specific offshore electricity infrastructure projects, it is recommended that each planning and permitting authority undertakes the following key actions as explained below.

3.1 Recommendations for national projects

3.1.1 Development of project manual

When a specific offshore electricity infrastructure project is launched, each national competent authority should prepare a manual for the project (project manual). The project manual should specify the content of the detailed manual (detail the validation criteria) set out in point 2.1, and contain a project plan tailored to the specific project.

Depending on statutory requirements and the rules of administrative practice in each signatory country, the competent authority should, in close consultation with the applicant/TSO, address the subjects below by describing in detail the associated work programme.

Answering the following questions should act as a checklist for the authority in achieving its work programme:

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- Is there a pre-application phase? Who is in charge organising procedures of pre-application (noting that there may be more than one authority)? Which procedures and requirements does the pre-application phase cover?
- Does the applicant/application fulfil all formal requirements?
- Which areas and competing uses of the North Sea set out in point 2.2 are affected?
- What alternatives have been considered which allows multiple routes to be subject to strategic optioneering? Does an alternative route exist? To what extent do alternative routes have to be assessed?
- Are there possible obstructions and constraints with regard to the different and competing uses which can already be foreseen and therefore be addressed at an early stage?
- Screening: does the specific project require an EIA?
- Scoping: what are the objects of protection and natural resources to be covered by the EIA and the associated statement? Which other subjects does the application have to cover?
- Is public participation required? Who organises public participation?
- Which other authorities have to be or should be consulted?
- Who are the stakeholders likely to be concerned? Should they be consulted at an early stage (e.g. during pre-application or scoping)? At which stage(s) should they be consulted?
- Is mitigation for stakeholders such as fishermen or land owners required? If yes, who ensures that mitigation which includes the option of compensation takes place and how is mitigation ensured?
- Does the project have transboundary impacts or is it likely to have transboundary impacts? Do agreements with trans-boundary countries exist (for example as per the provisions of the Espoo Convention)?
- Which are the requirements to issue the needed permits or decisions (e.g. technical description including a topological map indicating the routes of the project and planned locations of converter platforms, description of possible adverse impacts for the environment or other uses of the affected sea area, concept for hearings or public hearings)?
- What are the options for appeals? Are there precautionary measures such as settlement conferences or arbitration which can prevent projects from being challenged in lengthy court procedures?

3.1.2 Organisation of planning and permitting procedures

When the competent national authority develops a work programme addressing the subjects listed in point 3.1.1, particular consideration should be given to the following recommendations in order to efficiently deal with the specific project:

3.1.2.1 Competencies

If the country does not implement a one-stop-shop strategy for planning and permitting procedures and instead distributes competencies and responsibilities over several authorities, all concerned competent national authorities shall jointly appoint one national competent authority as the leading national point of contact for project developers and national competent authorities of other countries (appointed national authority). The appointed national authority shall then be responsible for administrative co-ordination of the national procedures in terms of providing and

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exchanging general information and co-ordination of the elaboration of the project manual set out in point 3.1.1.

Reciprocally, all other involved authorities should be required to provide the needed information to the appointed national authority within set milestones and time frames.

3.1.2.2 Identification of constraints

Each competent authority should identify possible constraints and emphasise the need of finding appropriate solutions at an early stage (e.g. during pre-application and scoping or even earlier). This may best be achieved at a strategic level by means of SEA in respect of a Plan for offshore renewable energy development. For that reason each authority should consider whether bilateral or multilateral consultations and discussions between the concerned parties will contribute to solving the identified or potential issues.

3.1.2.3 Milestones and time frames

It is recommended that the national competent authority or the appointed national authority outline in detail the different phases of the planning and permitting procedures, and set milestones and reasonable time frames according to each phase of the process in consultation with the developer/TSO and with particular regard to the specific project and possible associated constraints.

3.2 Recommendations for cross-border projects

3.2.1 Competencies and responsibilities

When a specific cross-border offshore electricity infrastructure project is launched, all competent national planning and permitting authorities of all concerned countries shall be identified. This also includes all authorities of countries which have the potential to be affected.

If more than two signatory countries are involved, one of the national competent authorities shall jointly be appointed as the internationally leading contact (appointed coordination authority) within an agreed structure, including funding. The appointed coordination authority shall provide administrative support and shall co-ordinate and organise the processes internationally, especially in terms of providing and exchanging general information and schedule international meetings with all concerned and involved parties. All other involved authorities should be required to provide the needed information to the appointed international authority within the defined time frames. To ensure cross-border alignment for all offshore electricity infrastructure projects, a continuous cooperation of these authorities in a dedicated working group, possibly in the framework of the NSCOGI, would be recommended.

3.2.2 Information of all involved authorities

Experience in the past has shown that mutual information of all involved parties is essential for achieving common understanding of international planning and permitting procedures which provides the ability to efficiently deal with cross-border projects.

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When a specific cross-border offshore electricity project is launched, it is recommended that the competent planning and permitting authorities of each concerned country provide a comprehensive description of the fields of their responsibilities and submit it to the appointed coordination authority, if not already included in the national manual of procedures to be made available to all parties.

The appointed coordination authority should compile a consolidation of all submitted descriptions including all contact details and distribute the consolidated document to each concerned national competent authority to assure that all concerned authorities are well informed about the neighbouring competencies and responsibilities.

3.2.3 Cross-border project manual of planning and permitting procedures

When a specific cross-border offshore electricity infrastructure project is launched, it is recommended that the national competent authority or the national appointed authority prepare a project manual as set out in point 3.1.1 and follow the organisation processes referred to in point 3.2.4.

3.2.4 Organisation of cross-border planning and permitting procedures

Despite the fact that offshore electricity projects do not expressly fall in the scope of the “Convention on environmental impact assessment in a trans-boundary context done at Espoo (Finland), on 25 February 1991” (Espoo Convention), it is recommended that the national competent authorities consider the transferral of the basic ideas of the convention's provisions and the associated (attached) guidelines “Guidance on the practical application of the Espoo Convention” (Guidance document) when dealing with a specific cross-border project or even agree upon applying to the provisions of the Espoo Convention (Art. 2.5 of the Convention).

Experience in the past has shown that the Espoo Convention and the Guidance document provide a good basis for the implementation of co-ordination of transboundary administratively and technically complex processes. The benefit of applying to the provisions of the Espoo Convention may be seen in the flexibility of the provisions which pay respect to the fact that procedures in the signatory countries may be differently structured in legislation or carried out differently in practice, without the intent to necessarily change a country's legal, administrative, and cultural background.

In summary, the main provisions of the Espoo Convention are the following:

- **Target groups of the Espoo Convention**

Target groups which are addressed by the provisions of the Espoo Convention are the “Party of Origin” which is the Contracting Party or Parties to the Convention under whose jurisdiction a proposed activity is envisaged to take place; the “Affected Party” which means the Contracting Party or Parties to the Convention likely to be affected by the transboundary impact of a proposed activity; and “Concerned Parties” which means the Party of origin and the affected Party of an environmental impact assessment pursuant to the Convention.

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- **Notification and timing (Art. 3.1 – 3.6, Appendix I)**

For a proposed activity listed in Appendix I (e.g. large-diameter oil and gas pipelines or offshore hydrocarbon production) that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations (as further set out in Article 5), notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity (Art. 3.1).

Art. 3.2 through 3.6 set provisions on how notification should be carried out.

- **Environmental impact assessment (Article 4, Appendix II)**

Article 4 regulates the preparation of environmental impact assessment documentation which should be submitted to the competent authority of the Party of origin and then be distributed to the authorities and the public of the affected Party in the areas likely to be affected and for the submission of comments to the competent authority of the Party of origin. The Convention requires that the public and authorities of the affected Party are given the opportunity to participate in the environmental impact assessment process.

- **Consultation (Article 5)**

The Party of origin shall, after completion of the environmental impact assessment documentation, enter into consultations with the affected Party concerning, inter alia, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact. Consultations may relate to: Possible alternatives to the proposed activity (including the no-action alternative) and possible measures to mitigate significant adverse transboundary impact and to monitor the effects of such measures at the expense of the Party of origin; also other forms of possible mutual assistance in reducing any significant adverse transboundary impact of or any other appropriate matters relating to the proposed activity.

- **Final decision (Article 6)**

The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received. The Party of origin shall then provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based.

The Guidance document goes beyond the provisions of the Convention and provides support for the practical application in terms of, inter alia:

- **Informal initiating the process**

According to the Guidance document the first task should be to determine whether an activity may have significant impacts across border (screening). Informal contacts and negotiations between all involved Parties may be useful in order to assure smooth organisation at an early stage.

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- **Co-ordination of main procedural steps; time frames**

It is in the interest of everyone involved in a transboundary project that time schedules are specified as clearly as possible. The Guidance document provides options of efficient timing of procedural steps. The timing of the application procedure process should be set at the initiation phase so that the entire process is given a clear structure from start to end. A reasonable time frame for the duration of EIA and consultations should be set by a case-by-case basis. To increase efficiency especially steps of the EIA can be combined and carried out at the same time in order to avoid duplication of procedures.

- **Translation of documents and language**

Multilinguality of all involved Parties is a challenge in transboundary procedures. According to the Guidance document even minor difficulties in understanding the language may retard participation of the public and the authority. For that reason it is important that information is provided in a language understood by those participating. The Parties are recommended to plan and decide upon responsibilities concerning translations in the initiation phase. The same should apply for choosing the language used for communication between the parties.