



Rijksoverheid

**Guide to the permit granting process for
projects of common interest
to the trans-European energy infrastructure**

as defined in Article 9(1) of Regulation 347/2013



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July 2016

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Guide to this publication

In 2013, the European Parliament and Council established a regulation intended to accelerate energy projects vital to the European Union. This guide explains how the regulation will be implemented in Dutch law.

Chapter 1 briefly discusses the objective of the regulation and why it was needed.

Chapter 2 outlines how Dutch law approaches projects of common interest.

Chapter 3 discusses the legislation needed in order to carry out European projects. This discussion focuses primarily on the Dutch Spatial Planning Act [*Wet ruimtelijke ordening*] and Environmental Protection Act [*Wet Milieubeheer*].

Chapter 4 lists the permits that may be needed to carry out projects of common interest. An assessment will have to be made of which permits will be needed for each specific project.

Chapter 5 describes the permit granting process and also contains a diagram of the entire process.

Chapter 6 provides an overview of the information that may be needed to carry out a project, such as that regarding safety, archaeology, the environment, etc.

Chapter 7 discusses how citizens and businesses will be involved, both before and during the permit granting process.

Finally, Chapter 8 provides the contact details for the relevant government agencies in the Netherlands and the initiator(s) of projects of common interest.

1. Introduction

1.1 Regulation no. 347/2013

This guide was prepared in response to Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure (referred to hereinafter as 'the Regulation'). The Regulation entered into effect on 1 June 2013. The Regulation can be downloaded [here](#). The guide will be regularly updated based on practical experiences.

1.2 Objective of the Regulation

One of the priorities of the Europe 2020 strategy is sustainable growth to be achieved by promoting a more resource-efficient, more sustainable and more competitive economy. The energy infrastructure is an important element of the 2020 strategy, which underscores the need to modernise and interconnect energy networks at the European level. This is essential to:

- ensuring a competitive, well-functioning and integrated energy market;
- achieving optimal use of the energy infrastructure;
- increasing energy efficiency;
- integrating distributed renewable energy sources.

This will create jobs and promote growth and sustainable development.

The Regulation intends, as part of Europe's energy strategy and energy requirements, to modernise and expand networks and connect them across borders when this would contribute to achieving the goals of the energy policy. The Regulation includes rules for granting permits for projects that the Regulation classifies as projects of common interest. These projects will take priority and the rules in this respect include a requirement that the most efficient national procedure must be followed for projects of common interest, and that these projects must be completed within a certain period of time after being announced. Member States are also urged to simplify their permit procedures and increase transparency and public participation.

Whether a specific project is of common interest will be determined in consultation between the European Commission and the Member States. The Regulation contains guidelines in this respect, and projects that are designated as projects of common interests will be put on the Union list of projects of common interest.

The projects of common interest in which the Netherlands is involved can be found in Chapter 8, under the heading **Initiators of projects of common interest**.

1.3 Competent authority in the Netherlands

The Regulation intends to simplify the permit granting process for projects of common interest by requiring Member States to designate the competent authority in their country that will be responsible for simplifying and coordinating the permit granting process for projects of common interest. The national competent authority is also responsible for taking the requisite decisions within the established time period. The Minister of Economic Affairs [*Minister van Economische Zaken*] has been designated as the competent authority in the Netherlands.

2. Outline of the permit granting process

This chapter provides an outline of the permit granting process for carrying out projects of common interest. This process uses the same tools used for carrying out projects of national interest.

Several issues are discussed in more detail, as indicated above in the guide to this publication.

2.1 Energy projects of European and national interest

Energy projects may not just be significant in terms of size, they can also be extremely important: these projects are of European and/or national interest. One example of such a project is the laying of gas pipeline or the construction of power lines necessary to ensure that everyone can have a continuous and sufficient supply of gas and electricity.

In order to make these types of projects possible, decisions must be taken and permits granted in the fields of spatial planning and the environment. These are subject to a special procedure, known as the national coordination procedure. This regulation is intended to expedite the decision-making process relating to large European and national energy projects without sacrificing the due care needed for that process and the opportunities for citizens to express their opinions on the proposed projects.

2.2 National coordination procedure

The national coordination procedure consists of two parts, referred to as 'modules': a project module and an implementation module. These modules are explained in detail below.

2.2.1 The national coordination procedure: the project module

Most projects require a spatial planning decision: the project must 'be made possible from a planning perspective'. In other words, the zoning plan [*bestemmingsplan*] will have to be amended. When the national coordination procedure is applied, the planning is effected not by a zoning plan amendment, but – usually – by a zoning integration plan (also referred to as a 'government-imposed zoning integration plan' [*inpassingsplan*]). This is actually a zoning plan that is adopted by the Central Government [*Rijksoverheid*] rather than by a municipal council [*gemeenteraad*]. A zoning integration plan for an energy project is adopted by the Ministers of Economic Affairs and Infrastructure and the Environment [*Infrastructuur en Milieu*]. The zoning integration plan immediately becomes part of the zoning plan.

An environmental impact report ('EIR') describing the impact the project will have on the environment is often drafted in preparation for a zoning integration plan. The public is afforded the same opportunity to participate in this process as it would be when a zoning plan is adopted or amended.

2.2.2 The national coordination procedure: the implementation module

The second part of the national coordination procedure is referred to as the implementation module. Briefly put, this entails that the preparations necessary for all of the other decisions needed for a project are jointly prepared and coordinated by the Minister of Economic Affairs. Energy infrastructure projects often require many decisions (both regarding permits and exemptions) to be taken. These might include, for example, an environmental permit for construction activities and environmental impact, or an exemption under the Flora and Fauna Act [*Flora- en faunawet*]. Those decisions are taken at various governmental levels, including at municipal or provincial level. The implementation module entails that all of those levels of government remain responsible for the substance of their own decisions, but that the Minister of Economic Affairs determines the time periods within which those decisions (or draft decisions) must be taken and ensures that the decisions are properly coordinated. The Central Government also makes sure that all of these decisions are made available for public examination, and it acts as the point of contact for the submission of all opinions on proposed decisions.

2.2.3 Public participation and appeal

Generally, when the national coordination procedure is applied, the drafts of all of the decisions required for the project are made available all at once for public examination. This enables everyone to express an opinion on all of the draft decisions.

The final decisions are prepared once the public participation process has been concluded. Stakeholders can file appeals relating to those decisions with the Administrative Law Division [*Afdeling bestuursrechtspraak*] of the Council of State [*Raad van State*].

3. Legislation relevant to granting permits

This chapter discusses the most significant legislation. These are the legal tools needed to carry out projects of common interest, the related environmental issues, and the designation of gas, electricity, and mining projects as projects of common interest. Other laws may also apply to specific aspects of the projects, such as the Water Act [*Waterwet*] or the Railways Act [*Spoorwegwet*]. These laws are listed in section 4.2.

3.1 Spatial Planning Act

3.1.1 The national coordination procedure

A law adopted on 25 September 2008 and entering into effect on 1 March 2009 provides that the national coordination procedure will apply to certain energy infrastructure projects. That law amended the Electricity Act 1998 [*Elektriciteitswet 1998*], the Mining Act [*Mijnbouwwet*], and the Gas Act [*Gaswet*] (these are discussed in more detail below in sections 3.3. through 3.5).

If an energy project is subject to the national coordination procedure, then the Minister of Economic Affairs, along with the Minister of Infrastructure and the Environment, are designated as the Ministers responsible for that project. Pursuant to Section 3:35(2) Spatial Planning Act ('SPA'), they will jointly adopt the zoning integration plan.

The procedure referred to as the national coordination procedure is laid down in Section 3:35(1) SPA and consists of two elements. The first is a zoning integration plan, a spatial planning decision made by the Central Government pursuant to Section 3:28 SPA, that will become part of the existing applicable zoning plan. The second is the Central Government's coordinated preparations of the other decisions needed for a project.

3.1.2 Spatial integration

The procedure referred to in Section 3:35(1), preamble and subparagraph c, SPA directs that a zoning integration plan will be drafted and that the preparation and notification that the Central Government will have to carry out in regarding that document will have to be coordinated with the preparation and notification relating to the requisite implementation decisions. The zoning integration plan and the other decisions will be prepared simultaneously and must be coordinated with one another.

What does a zoning integration plan comprise?

A zoning integration plan comprises several elements. These include:

- a map that identifies the exact location of the project;
- the rules and requirements (including quality-related requirements) that will apply to the project;
- an explanation of how the plan will be executed, the impact the project will have on, for example, the living environment, water, the environment and nature, economic and social developments, and the retention of archaeological values.

A considerable period of time may pass between the date notification is given that a zoning integration plan will be adopted and the date it is finalised. The ministers can take a provisional decision in order to ensure that no interim developments that would be incompatible with the project are made in the area. In such cases, restrictions would be imposed on the granting of environmental permits for construction and installation activities in the area in question.

A provisional decision can also include a new permit system in order to ensure that the suitability of the area for the project remains unaffected. From that time on, new spatial planning developments will only be permitted once an environmental permit has been granted for them. That permit will only be granted if the proposed spatial planning development would not make the soil less suitable for carrying out the planned energy project.

3.1.3 Coordination of implementation decisions

The national coordination procedure ensures that all of the decisions needed to carry out the project are taken parallel to, and coordinated with, the zoning integration plan (Section 3:35(1)(b) and (c) SPA). These decisions might include construction permits, tree-felling licences [*kapvergunningen*], licences relating to the Water Act [*Waterwet*], and exemptions pursuant to the Flora and Fauna Act. The decisions will be prepared subject to the uniform public preparatory procedure laid down in Part 3.4 of the General Administrative Law Act [*Algemene wet bestuursrecht*] ('GALA') and the special procedural rules laid down in Section 3:31(3) SPA.

These rules provide for joint notification and availability for public examination of the draft decisions (Section 3:31(3)(b) SPA, read in conjunction with Section 3:35(4) SPA) and the simultaneous publication of the decisions (Section 3:32 SPA, read in conjunction with Section 3:35(4) SPA). In principle, the administrative bodies that are authorised by law to take implementation decisions will retain that authority. The minister of the administrative body designated to take such decisions (for energy infrastructure projects subject to the national coordination procedure, this would be the Minister of Economic Affairs) can mandate the cooperation needed for a successful coordination. The administrative bodies are obliged to cooperate (Section 3:35(3) SPA). If an administrative body involved in the process fails to take a decision in accordance with the request (or fails to do so in time) or takes a decision that must be amended, then the Minister of Economic Affairs and the minister within whose policy domain the relevant implementation decision falls can take a decision that supersedes the decision rendered by that administrative body. This is referred to as the 'authority to intervene' [*interventiebevoegdheid*] (Section 3:36(1) SPA).

In principle, the application of the coordination regulation will not affect the substantive assessment frameworks relating to implementation decisions. These decisions must thus meet the same substantive requirements they would have to meet if the coordination regulation did not apply. An exception to this rule is that, if there are compelling reasons for doing so, the provisions in the regulations applied by provinces, municipalities, and water boards can be ignored if those provisions would disproportionately impede the implementation of the relevant portion of the national spatial planning policy (Section 3:35(8) SPA).

No environmental permit is required for an installation activity that is part of carrying out works or work pursuant to a national zoning integration plan

(Section 2.1(1)(b) General Provisions of Environmental Law [*Wet algemene bepalingen omgevingsrecht*]). This follows from the last sentence of Section 3:35(7) SPA.

3.1.4 Offshore projects

The following applies to projects located entirely or partially offshore. The spatial planning fit based on a zoning integration plan applies if and to the extent that the project is located within a municipal zone (one kilometre offshore). The coordination and the implementation decisions apply to the entire project, including if and to the extent that the project is located outside the area designated as a municipal zone. The spatial assessment of projects located entirely or partially offshore (outside the area designated as a municipal zone) is regulated in the water permit.

3.1.5 Appeal procedure

At each stage of the procedure, the national zoning integration plan and all of the other decisions will be made available for public examination at the same time. This applies to both draft decisions and the subsequent final versions. Any appeals filed with the administrative law court will also be joined if the decisions are announced at the same time. The zoning integration plan and coordinated preparatory decisions will be open to direct appeal to the Administrative Law Section of the Council of State (Section 8.6 GALA, read in conjunction with Appendix 2, Chapter 2, Section 2 and Section 8.3(1)(b) SPA). Decisions may not be appealed by an interested party who can reasonably be considered to have failed to avail himself of an opportunity to be heard regarding the draft decision.

Cases involving 'development and implementation of works and areas pursuant to Part 3.5 SPA', will be subject to the provisions of Section 1.1(1)(a) of the Crisis and Recovery Act [*Crisis- en herstelwet*], read in conjunction with Article 2.1 of Appendix I to the Crisis and Recovery Act. This application entails that, among other things, the Administrative Law Section of the Council of State will have a period of six months to issue a decision on an appeal, that a government authority (legal entity or administrative body) that is not part of the central government cannot file an appeal, and that, on penalty of the appeal being dismissed, the notice of appeal must contain the grounds for the appeal (pro forma notices of appeal cannot be submitted).

3.2 Environmental Protection Act

In order for a project of common interest to be carried out, its environmental impact – among other things – will have to be assessed. In most cases, an environmental impact report (EIR) will also have to be prepared for a project of common interest. An EIR studies the impact a project of common interest will have on the environment and investigates how the negative environmental consequences can be limited as much as possible. In this respect, a distinction is made between an EIR for the spatial planning fit (a Plan EIR) and an EIR for the specific decisions that require an EIR (a Decision EIR). The spatial planning fit is formulated by the competent authority and decisions are taken partly based on the EIR. The procedures relating to EIRs are laid down in Chapter 7 of the Environmental Protection Act. The public participation possibilities regarding EIRs are discussed again in section 6.1 of this document.

3.2.1 The environmental impact report

Whether an environmental impact report procedure must be followed depends on the nature of the project and what possible significant consequences it could have for the environment. The criteria for this are laid down in the Environmental Impact Reporting Decree [*Besluit milieueffectrapportage*]. There are several cases in which an EIR will be mandatory if the criteria are met. In other cases, an assessment must be made of whether an EIR is mandatory. The procedure for this assessment is laid down in Sections 7.16 through 7.20 of the Environmental Protection Act. The procedure can be briefly summarised as follows. The first step is that the initiator must notify the competent authority to have a determination made of whether an EIR must be prepared. The competent authority will then decide, based on the criteria laid down in Annex III of the EIR Directive (2011/92/EU) and within six weeks, whether an EIR must be prepared. This decision will be published by means of a notification and made available for public examination. See subsection 3.2.2 for projects for which no EIR need be prepared.

The following steps must be taken in respect of the EIR.

I. Notification and draft memorandum on the scope and detail in respect of the EIR

The competent authority must announce the proposed initiative. The announcement of this proposal must in any case state when and where the documents relating to the proposal will be made available to the public, that there will be an opportunity for all members of the public to express an opinion on the proposal (as well as to whom, how, and within what time period that opinion can be expressed), and whether the Committee on Environmental Impact Reports ('EIR Committee') or another independent authority will be afforded an opportunity to advise on the proposal (Section 7.9 or Section 7.27). The announcement must also be published in another country if the proposal could entail a significant negative environmental impact in that other country. Work agreements have been made with Germany and Flanders on this issue.

The documents made available for public examination will generally include the draft memorandum on the scope and detail for the study of the environmental effects. The scope regards *what* must be studied; the *detail* regards the level of detail into which the study must go. Although this is not mandatory, it is the policy of the Ministry of Economic Affairs to prepare a draft memorandum on the scope and detail for an EIR. The draft memorandum on the scope and detail contains:

- an explanation of the intention to prepare a plan that will be subject to an EIR requirement;
- substantiation of the project's benefits and necessity;
- the alternatives that will be explored in the EIR;
- the environmental effects that will be studied in the EIR.

Information evenings are generally held to facilitate public participation and with regard to the draft memorandum on detail and scope. Opinions can also be submitted using other methods.

II. Consulting advisors and the administrative bodies involved

The involved advisors and administrative bodies will be asked to provide a formal opinion regarding the draft memorandum on the scope and detail in respect of the EIR (Section 7.8 or 7.25).

The draft memorandum on the scope and detail in respect of the EIR will be sent to:

- all government authorities that must take a decision in the context of the project (municipalities, provinces, water boards, other ministries, and any other agencies responsible for granting permits);
- municipal councils and the Provincial Councils;
- the advisors that are mandated by law to participate, such as the Cultural Heritage Agency [*Rijksdienst voor het Cultureel Erfgoed*].

In addition, the EIR Committee can also volunteer advice.

III. Adopting the final memorandum on the scope and detail in respect of the EIR.

Based on the opinions and advice submitted, a 'final' memorandum on the scope and detail in respect of the EIR will be adopted by the Ministers of Economic Affairs and Infrastructure and the Environment.

The following guidelines will be enforced during this process:

- the final memorandum on the scope and detail will be published on the Internet;
- everyone who has expressed an opinion or response will be notified by letter that the final memorandum on the scope and detail has been adopted (the letter may be accompanied by the memorandum or may contain a reference to the website);
- the same method will be followed in respect of all parties (including government authorities) involved who were contacted about the draft memorandum, even if they did not submit a response;
- generally, the final memorandum will not be announced or made available for public examination.

IV Preparing a draft EIR

A draft EIR will then be prepared based on the final memorandum on the scope and detail in respect of the EIR.

The requirements an EIR must meet include the following (Section 7.7 or 7.23):

- the objective of the project;
- a description of the project and the alternatives 'to be reasonably taken into consideration', as well as (for example) its location and the implementation method;
- previous plans that had been adopted for this activity and the alternatives that had been included in those plans;
- a description of the 'current state and autonomous development' of the area to be affected;
- the environmental impact the project and the alternatives will have for the environment and grounds for how that impact has been determined and described, as well as a comparison of that impact with the 'autonomous development';
- impact-limiting or mitigating measures;
- gaps in knowledge;
- a summary for the public.

V. Making an EIR and draft decisions available for public examination and comment

The competent authority must make the draft EIR available for public examination, along with the draft zoning integration plan and other requisite draft decisions.

Any member of the public will be able to submit an opinion regarding the EIR and the draft decisions. The EIR Committee will be asked to render a formal opinion. The opinions received will also be sent to the Committee.

VI. Adopting decisions and the possibility of appeal

The competent authority adopts the zoning integration plan and the other requisite decisions.

The EIR and the decisions will be made available for public examination. Stakeholders who submitted an opinion at earlier stages of the process will be entitled to file an appeal against one or more decisions. In this context, the EIR may also be called into question.

3.2.2 Environmental study if an EIR is not mandatory

If an EIR is not mandatory for a project, the steps outlined below will be taken to provide transparency regarding the project's environmental impact.

I. Announcement of the initiative

The competent authority will make an announcement based on Article 1.3.1 of the Spatial Planning Decree.

That announcement will state whether:

- and, if so, where and when the documents relevant to the proposal will be made available for public examination;
- an opportunity will be afforded to express opinions on the proposal, and a statement identifying to whom, how, and within what time period those opinions may be expressed; and
- an independent authority will be afforded an opportunity to issue a formal opinion on the proposal.

II. Explanation of environmental impact included in the zoning integration plan

If no EIR is prepared in drafting the zoning integration plan, then Article 3.1.6(5) of the Spatial Planning Decree mandates that a study must be made of the proposal's environmental aspects.

The explanation included in the zoning integration plan must in any case indicate:

- how the cultural and historic values of the area and any artefact finds that are, or are expected to be, present on the site have been taken into consideration;
- to the extent necessary, how the other values of the land included in the plan and the adjacent land have been taken into consideration;
- how the environmental quality requirements pursuant to Chapter 5 of the Environmental Protection Act have been included in the plan.

3.3 Gas Act

Section 39b(1)(c) of the Gas Act directs that the national coordination procedure applies to an expansion of the national gas transport grid or if a cross-border gas transport grid, including the connections to such grid, is installed or expanded, to the extent that a project relates to the gas referred to on the Union list of projects of common interests cited in the Regulation.

3.4 Electricity Act 1998

Section 20a(1)(c) of the Electricity Act 1998 directs that the national coordination procedure applies to the installation or expansion of a cross-border grid, including

the connections to such grid, to the extent that a project relates to the electricity referred to on the Union list of projects of common interests cited in the Regulation.

3.5 Mining Act [*Mijnbouwwet*]

Section 141a(1)(d) of the Mining Act directs that the national coordination procedure applies to mining work or pipelines, to the extent that a project relates to oil or carbon dioxide as referred to on the Union list of projects of common interests cited in the Regulation.

4. Permits for projects of common interest

Carrying out a project of common interest usually requires a large number of permits that must be issued by a variety of competent authorities. Applications for those permits must be submitted to the Minister of Economic Affairs, who will handle the coordination and notifications relating to the permits.

4.1 Detailed timetable of the permit granting process

Pursuant to Article 10(4)(b) of the Regulation, the Minister of Economic Affairs must, in collaboration with the initiator and the other competent authorities, prepare a detailed timetable for the permit granting process. The memorandum on the scope and detail in respect of the EIR provides the basis for the detailed timetable as it sets out which studies for environment and decisions are to be executed. By extending the memorandum on the scope and detail with all other studies which have to be executed to collect the necessary information for the project, the final memorandum on the scope and detail can be adopted and subsequently function as the detailed timetable for the permit granting process. This timetable must satisfy the guidelines contained in the Regulation and must thus in any case provide an understanding of:

- a. the decisions to be taken and the advice to be obtained;
- b. the authorities, stakeholders, and population that will probably be involved in the case;
- c. the various phases of the procedure and how long they will take;
- d. the important milestones and the relevant time periods, keeping in mind the comprehensive decision to be taken;
- e. the funding to be provided by the authorities and any extra funding that might be needed.

Early on in each specific project, a detailed timetable must be prepared as directed in the Regulation, and that timetable must satisfy the guidelines listed above.

Schedules may differ from project to project, depending on the type of activity involved and the environment in which the activity will have to be carried out. During the permit granting process, it may be that one or more decisions will not yet have been taken, or it may turn out that some permits are no longer required. For this reason, the timetable can be considered a 'living document'.

4.2 List of permits for projects of common interest

In addition to the laws stated in Chapter 3, the list below shows the laws and the decisions based on these laws relating to specific aspects of the project. However, not all decisions are required for a specific project; this depends on the nature, size, location and other characteristics of the project.

1. Decision relating to the Flora and Fauna Act [*Besluit inzake Flora- en faunawet*] (Article 75(3));
2. Decision relating to the Nature Conservation Act [*Natuurbeschermingswet 1998*] (Articles 16(1) and 19d(1));

3. Decision relating to General Provisions of Environmental Law (Articles 2.1(1) and 2.2), to the extent the relevant environmental permit regards the activities referred to in Article 2.1(1)(a), (b), (c), (e), (f), and (g));
4. The same to the extent the relevant environmental permit regards the acts referred to in Section 46 or 47 of the Nature Conservation Act 1998 or Section 75b of the Flora and Fauna Act;
5. Decision relating to the Monuments and Historic Buildings Act 1998 [*Monumentenwet 1998*] (Section 11(2));
6. Decision relating to the Water Act (Sections 6.2, 6.4, and 6.5);
7. Decision relating to the Monuments and Historic Buildings Act 1998 (Section 16.5(1));
8. Decision relating to the Railway Act [*Spoorwegwet*] (Section 19(1));
9. Decision relating to the Public Works (Management of Engineering Structures) Act [*Wet beheer rijkswaterstaatswerken*] (Section 2, activities on, above, or near national highways or objects belonging to the Directorate-General of Public Works);
10. Decisions on a provision in a regulation promulgated by a water board regarding carrying out acts on or near a waterway or water-retaining structure (or causing such acts to be carried out);
11. Decision relating to the General Provisions of Environmental Law, demolition section;
12. Decision relating to the General Provisions of Environmental Law, tree-felling section;
13. Decision relating to the General Provisions of Environmental Law, Work and activities implementation section;
14. Decision relating to the General Provisions of Environmental Law, constructing or changing an exit ramp section;
15. Notification regarding the Forestry Act [*Boswet*];
16. Decision relating to the Earth Removal Act [*Ontgrondingenwet*] (regarding removing earth in national water bodies);
17. Decision relating to the Earth Removal Act (not being removing earth in water bodies);
18. Decision relating to the Water Act (notification for groundwater removal section);
19. Notification regarding the Water Act: adding or removing water to national water bodies;
20. Notification regarding the Discharge of Waste Water outside Establishments Decree [*Besluit lozen buiten inrichtingen*];
21. Decision relating to the Provincial Waterway Regulation [*provinciale vaarwegenverordening*];
22. Decision relating to the Road Traffic (Administrative Provisions) Decree [*Besluit inzake Besluit administratieve bepalingen inzake het wegverkeer*], or *BABW*;
23. Decision relating to the Provincial Roads Regulation;
24. Decisions based on other provincial by-laws.
25. Notification regarding the Soil Quality Decree [*Besluit bodemkwaliteit*];
26. Storage permit pursuant to the Mining Act.
27. Decisions based on municipal by-laws.

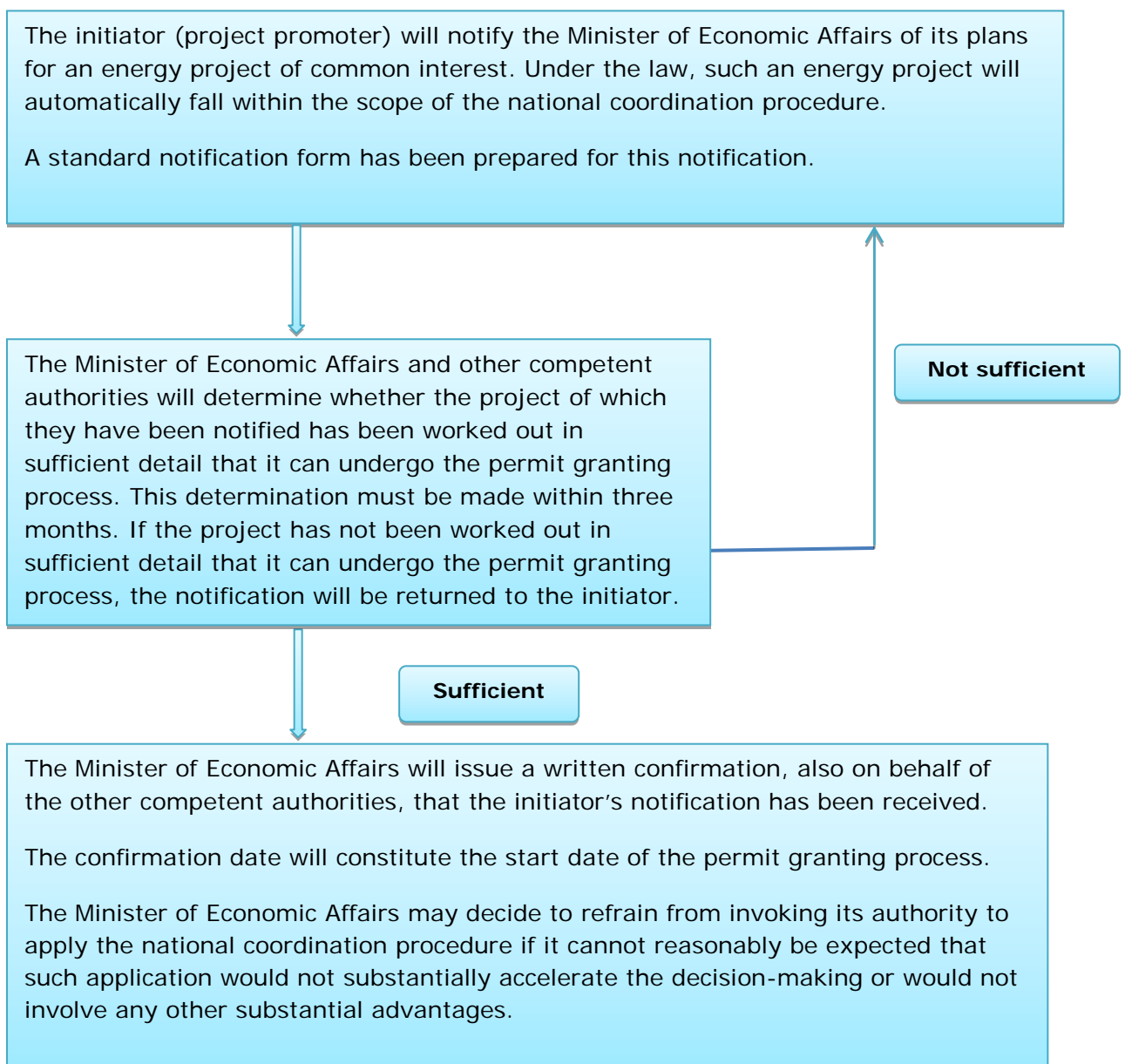
These Dutch laws can be found (in Dutch) at <http://wetten.overheid.nl/zoeken/>.

5. The permit granting process

This chapter explains the permit granting process for projects of common interest.

5.1 Notification of a project of common interest

Procedurally speaking, the national coordination procedure (RCR) begins with notification of the competent authority: the Minister of Economic Affairs. In practice, preliminary consultations will already have been held. These preliminary consultations will generally take two to three months. Similarly, the procedure of acceptance of the notification will cover two to three months.



5.2 Pre-application process for a project of common interest

In this phase, it must be established which permits and other decisions will be needed to carry out the project of common interest, what will have to be studied in order for those permits to be granted and other decisions to be taken, and how those studies will be carried out.

The procedure will generally take between one and a half and two years. The steps up to and including adoption of the final version of the memorandum on the scope and detail will take around six months. The designated studies will subsequently take around one to one and a half years. Another six months (approximately) will be needed for the steps up to the submission of the draft application dossier, and may possibly be extended due to missing information. These phases are indicative and may partially run in parallel. The steps to be taken are explained below.

The initiator will, in consultation with the Minister of Economic Affairs (The Energy Projects Section of RVO.nl (BEP)) and the other government authorities involved, investigate which permits and exemptions the project will require, including a zoning integration plan if the project is inconsistent with the applicable zoning plan. Indicative duration: two to three months.

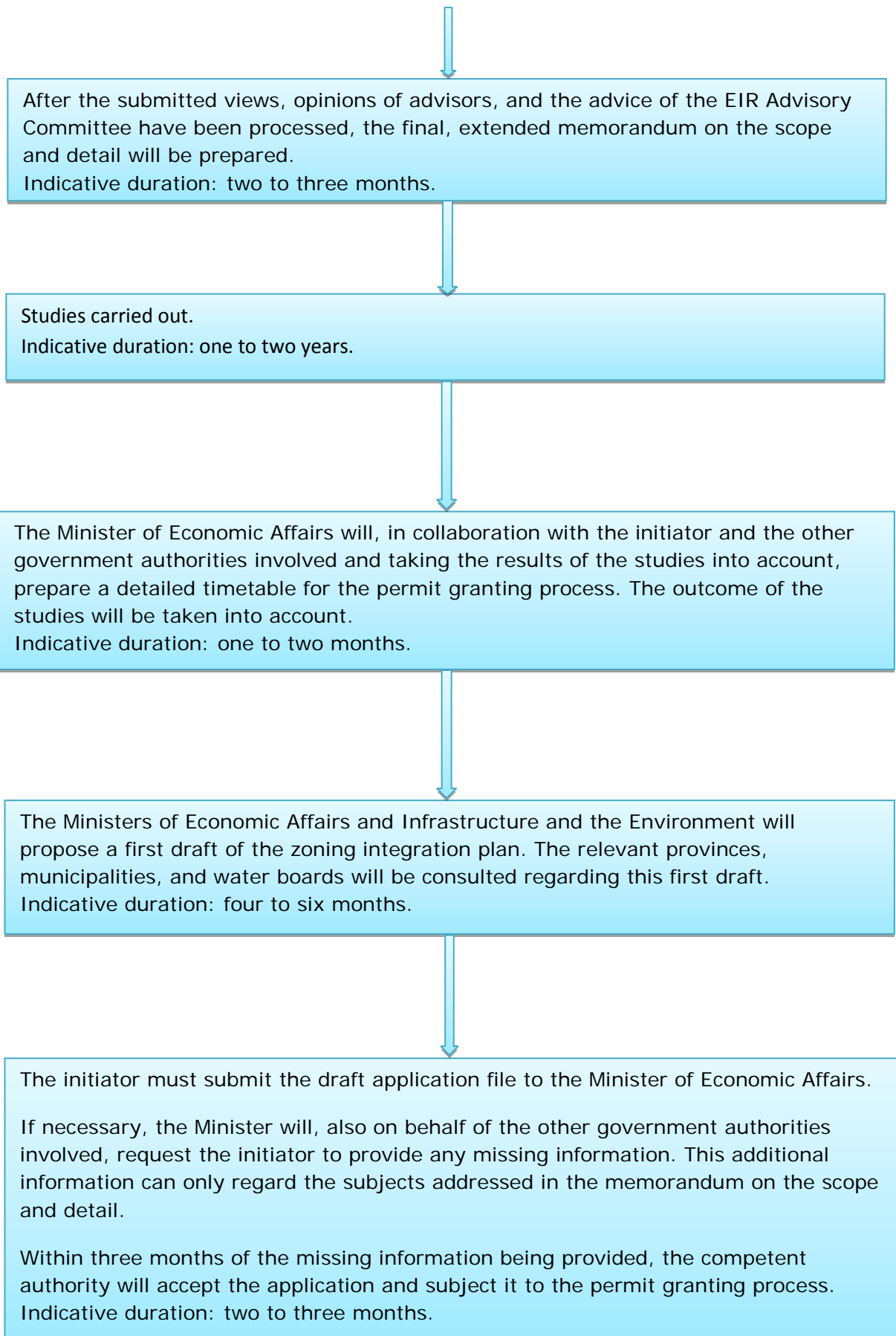
The initiator will prepare a draft for the public consultation and submit it to the Minister of Economic Affairs. The Minister of Economic Affairs will approve the draft or request that it be modified. Indicative duration: two to three months.

The Minister of Economic Affairs will announce the intention to carry out a project of common interest. All members of the public will be entitled to submit their opinions regarding such project. If an environmental impact report will have to be prepared for one or more decisions:

- a draft memorandum on the scope and detail will be made available for public examination;
- the requisite advisors will be consulted on these issues;
- the EIR Advisory Committee will be requested to issue formal advice.
- the draft memorandum on the scope and detail can be extended with other information.

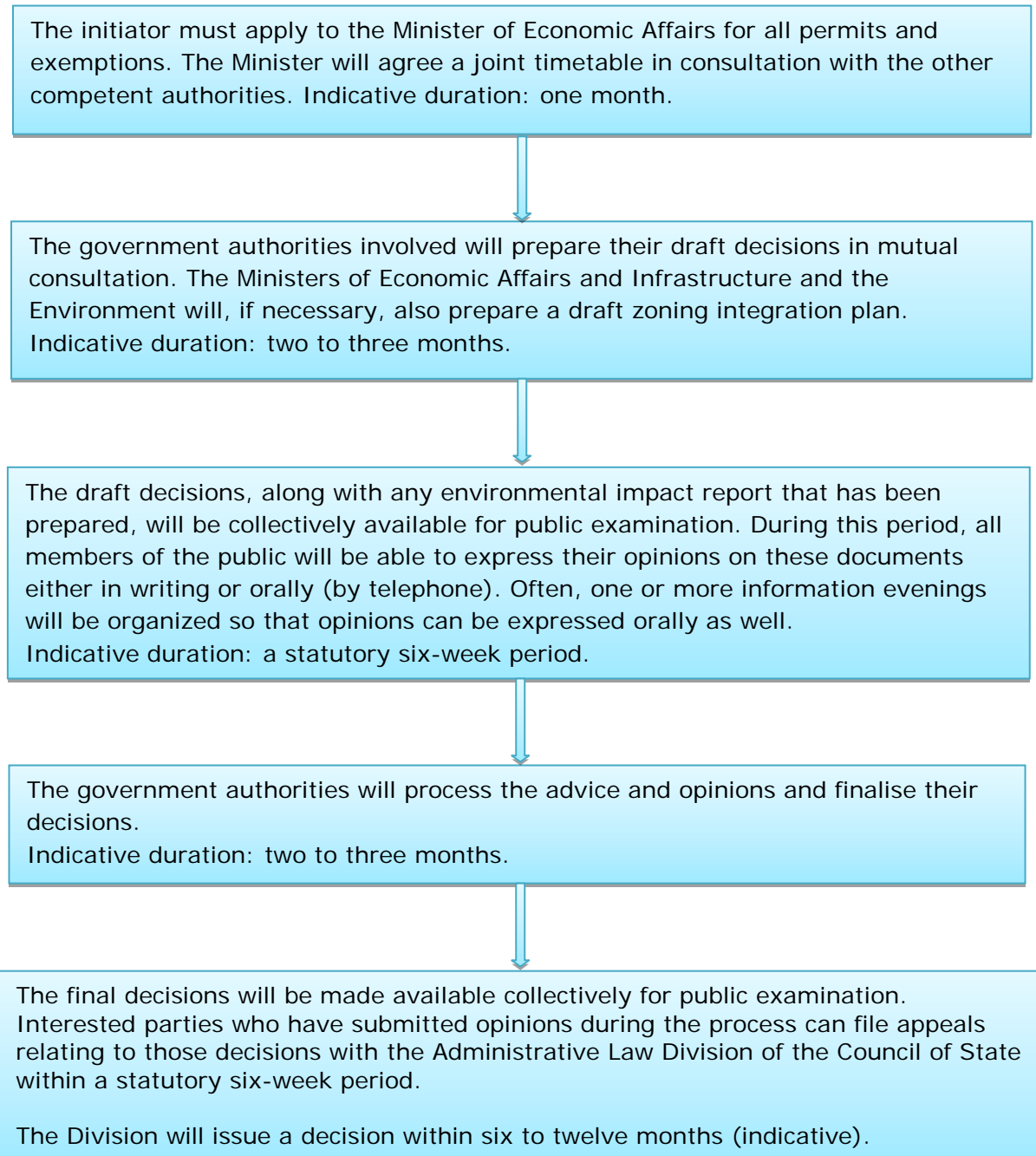
Indicative duration: two to three months.

A public consultation will be organised shortly after, or linked to, the announcement of the project or the draft memorandum on the scope and detail.

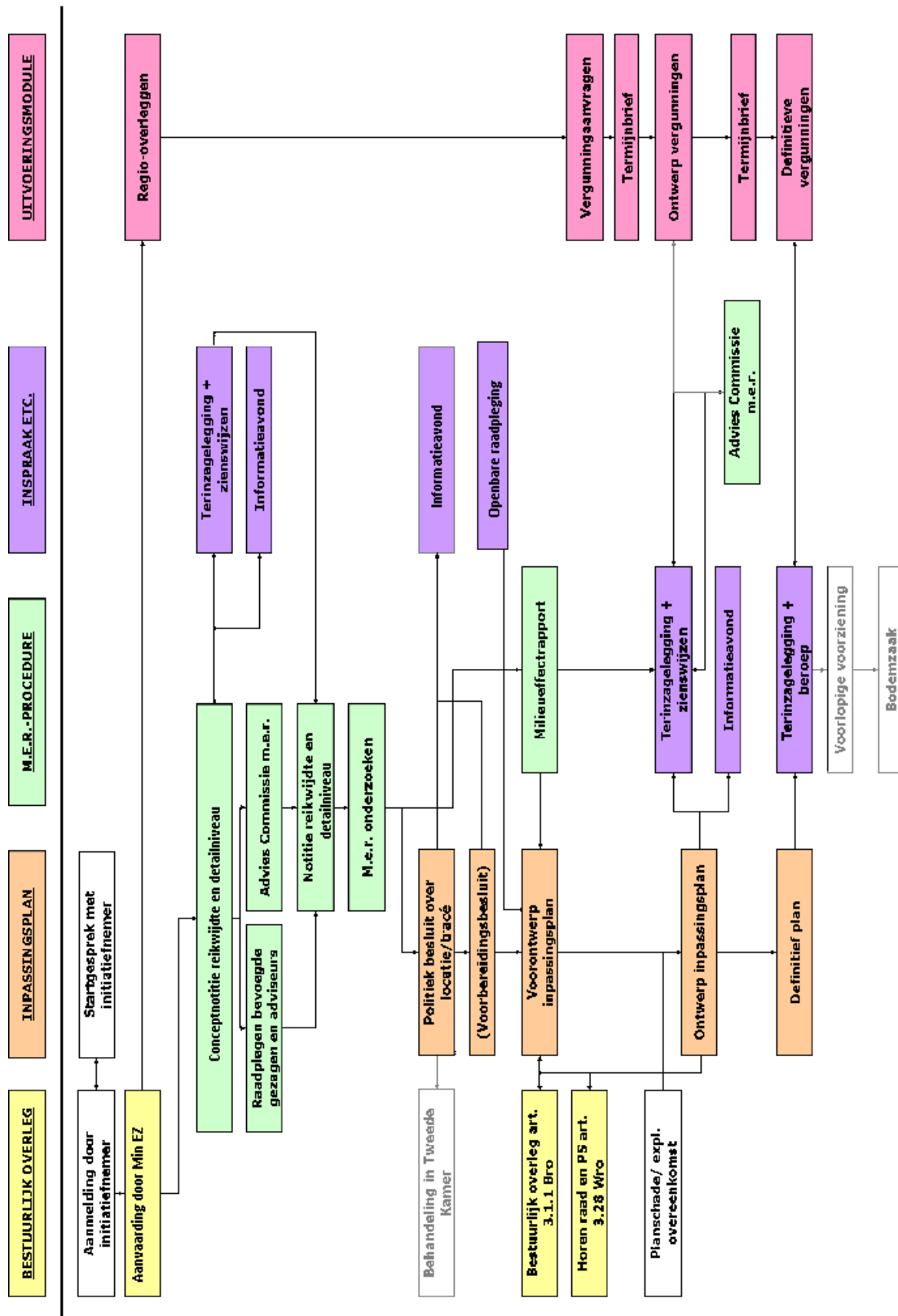


5.3 The permit granting procedure

In this phase, the permits are prepared, finalised, and announced. This process will generally take between one and one and a half years. The steps up to and including making the draft decisions available for public examination will take around six months. A six to eight-month period will subsequently be needed for processing the opinions and advice, adopting decisions and making available the decisions for public examination.



5.4 Diagram of the permit granting process for projects of common interest



The abbreviation 'EIR' stands for environmental impact report.

6. Information on the scope, format, and level of detail of the documents

The memorandum on the scope and detail regarding a project of common interest sets out which the information necessary in respect of the required scope and detail of the project, this in accordance with the obligations set out in Article 10(4)(a) and Annex VI, paragraph 1, section e, to the Regulation. This chapter provides an overview of the scope, format, and level of detail of the documents that must be submitted with applications for decisions, including a checklist. The information regarding the environment is the most frequently addressed in the projects of common interest. Other information necessary for projects of common interest can differ greatly per project. This description of this other information is therefore limited in this chapter. Naturally, this other, non-environmental information has to be part of the final memorandum on the scope and detail. The information required will be set out in this final memorandum on scope and detail, including the level of detail. See also section 3.2 and section 4.1.

6.1. Environmental impact report and memorandum on the scope and detail

In many cases, an EIR will also have to be prepared for a project of common interest. An EIR describes the impact the proposed infrastructure and any alternatives would have on the environment. The alternatives for, and variants of, the relevant infrastructure can cause different types of impact during the construction and/or usage phase. Such impacts might include noise pollution and groundwater removal during the construction of infrastructure, as well as negatively affecting natural values. The Environmental Impact Reporting Decree determines which activities and decisions require an EIR to be prepared. Please also refer to sections 3.2.1 and 5.4 of this Guide.

Most energy infrastructure projects undergo a 'combined procedure' in relation to an EIR, since the obligation to prepare a Plan EIR always corresponds to a permit for which an EIR is required, with the permit and the plan generally being brought into the procedure at the same time. Section 14.4b of the Environmental Protection Act or Section 3:35(5) SPA also require the two EIRs to be combined.

Before the EIR is prepared, a *memorandum on the scope and detail* will be issued describing how the EIR will have to be carried out.

For projects of common interest, the memorandum on the scope and detail will contain additional information regarding the scope, format, and level of detail of the documents that must be submitted along with applications for decisions.

6.2. Information on the documents that must be submitted along with applications for decisions

The effects of the proposed projects of common interest will generally be studied in the EIR in terms of the themes discussed below. In this respect, it must be noted that the size of the area under study varies by theme. The size of the area under study is determined by the maximum scope of the expected impact relating to a particular theme. The themes to be studied will generally be carried out in subparts that will be combined to form the EIR.

Naturally, the question of what must be studied depends on the specific circumstances of the particular project of common interest.

6.2.1. External safety

For external safety – with regard to pipelines, for example – the EIR will test the proposal against the standards laid down in the External Safety (Pipelines) Decree [*Besluit externe veiligheid buisleidingen*]. The External Safety (Pipelines) Decree harmonises the assessment framework for pipelines with the other general administrative measures relating to external safety, which are laid down in the Public Safety (Establishments) Decree [*Besluit Externe veiligheid Inrichtingen, or BEVI*] and the Major Accidents (Risks) Decree 1999 [*Besluit risico's zware ongevallen 1999, or BRZO*]. These regulations provide tests for assessing location- and group-specific risks. A quantitative risk analysis will be prepared for these tests.

6.2.2. Geohydrology, soil, soil contamination, and water

A specific project may involve drainage activities that will impact the groundwater system and possibly cause soil subsidence. There might also be consequences for the groundwater system and harm to such areas as groundwater reserves and nature preserves.

The presence of soil contamination can be relevant when constructing the infrastructure in question. The excavation of highly contaminated soil or the removal of highly contaminated groundwater may constitute decontamination as defined in the Soil Protection Act [*Wet bodembescherming*].

6.2.3. Landscape, geomorphology, and cultural history

From a landscape perspective, studies are made of the various types of areas through which the projected route infrastructure will be constructed. Assessing the geomorphological aspects involves, for example, studying the geologically, geomorphologically, and pedologically valuable areas and geological monuments through which the projected route infrastructure will be constructed. In the field of cultural history, the most important cultural and historic structures and elements are assessed. The construction of new infrastructure may have temporary or permanent effects on the landscape and on cultural history.

Landscape

The construction of infrastructure can temporarily and/or permanently damage visual spatial planning elements. Based on the existing visual spatial planning elements of the various types of landscapes and their vulnerability relating to the measure, a

determination will be made in the EIR regarding whether the primary visual spatial planning elements will be damaged by the construction of the new infrastructure.

Geomorphology

Building infrastructure can affect the geological values in the soil, including, for example, natural levees, former river beds, etc. The EIR provides an overview of the geologically valuable areas, including valuable geological and pedological objects, as well as the characteristic landscape topology (based on a geomorphological map).

Cultural history

The topics addressed by the EIR include any permanent effects the construction of the new infrastructure will have on areas, structures, patterns, and elements that have a significant cultural and historical value. Any damage will be listed in terms of hectares with reference to areas with a high cultural and historical value, and in terms of quantitative and qualitative damage with reference to patterns and elements.

6.2.4. Nature

The balance of nature is particularly susceptible to disruption when infrastructure is being constructed. There are three different legislative frameworks that must be taken into account. First, there are areas protected by law under the Nature Conservation Act 1998 (Natura 2000 and protected natural monuments). In addition, there are spatial planning regulations that protect certain areas, such as those that are part of the main ecological structure ('MES'), robust ecological connections, and ecological corridors. Finally, populations and habitats of protected species are taken into account under the Flora and Fauna Act.

The EIR will take stock of the areas protected under the Nature Conservation Act 1998, as well as those that are part of the MES.

The EIR phase also involves conducting a full field study of which protected and endangered species can be found in and immediately near the location of the proposed infrastructure. Because of their extremely specific habitat requirements, protected plant species in the Netherlands are primarily found in protected nature preserves. The presence of protected and endangered plant species is inventoried during the field study.

With regard to the expected effects:

The process of building infrastructure requires a certain amount of space. This can temporarily or permanently affect the habitats and biotopes of protected species. Spatial relationships in ecological systems can be disrupted for varying lengths of time. Individual animals can be killed, wounded, or chased off by the work being performed. Growth habitats for protected plant species can be lost or damaged by groundwater depletion resulting from drainage by well points. Drainage by well points can lead to, e.g. groundwater depletion effects. The construction of infrastructure can also disturb protected areas and species.

If applicable, the direct damage that the project will entail for protected areas and the habitats of less generally protected species (both endangered species and those listed in tables 2 and 3 in the Flora and Fauna Act) will also be described in the EIR. The effects, whether they are temporary or not, of the construction of the infrastructure will be weighed against the areas that have been assigned protected status or that are habitats for protected species or groups of species.

The description of these effects will illustrate the most significant consequences a project will have in terms of nature conservation legislation. The consequences of other types of disturbances, temporary or otherwise, to the habitats of important protected species will be weighed against legal or policy-related conservation frameworks. An assessment will be made to determine whether the quality and/or the functioning of MES areas (including ecological corridors) will be negatively impacted. An assessment will be made of how to prevent as much damage as possible, as well as to determine whether an obligation to pay compensation will arise.

6.2.5. Archaeology

The assessment of a project's archaeological aspects will often begin with desk research. In this respect, a distinction will often be made between known archaeological values and archaeological expectations. Known archaeological values consist of known archaeological finds (archaeological sites) and observations.

If the desk research gives reason for doing so, a field study will be performed. If a comprehensive field study shows that valuable archaeological sites are present along the projected route, the initiator of the project will, in accordance with the national and provincial archaeology policy, investigate the possibilities for sparing those sites (keeping them *in situ*). Potential solutions might be – if possible – drilling under the archaeological site or, if that proves impossible, altering the route.

6.2.6. Noise, vibrations, and air [quality]

Infrastructure and its construction can, in connection with transport and the use of machines, for example, involve noise, vibrations, and a negative effect on air quality. Nuisance during the construction phase may be caused by, for instance, vibrations caused by the construction work itself or by construction vehicles moving in the area.

If applicable, the EIR will describe how the construction will be done and how long during a particular part of the day the area will be affected by vibration-related nuisance.

Noise pollution may also be involved in the construction work relating to the infrastructure. 'Construction work' refers not only to the work of building the infrastructure itself, but the preparatory and finishing work as well. The EIR will explain the work in the construction phase, how long the work is expected to take, during which part of the day, and the type of noise (construction vehicles, machinery, etc.) that will be produced.

6.2.7. Health

The possible health effects that constructing the proposed infrastructure will have must be inventoried and – if deemed necessary – investigated in more detail.

6.2.8 Spatial environment (such as residential, commercial, recreational, agricultural, and fishing areas)

Building infrastructure requires a good deal of space. The EIR outlines the most significant functions of the immediate project environment. It discusses residential and commercial areas, agricultural functions, recreational facilities, and intersecting infrastructure.

Where necessary, the effects of using this space will be quantified by, for example, stating the change in areas in hectares. In preparing this description of the effects, it will be verified whether the size of residential, commercial, agricultural, and recreational areas will be permanently reduced as a result of the project and, if so, by how many hectares. Temporary effects will be qualitatively described, and expressed in hectares for agricultural areas.

6.2.9. Living environment: electromagnetic fields

Magnetic fields form around certain elements of energy infrastructure, particularly power lines. Extensive research has been done regarding this topic. There are no statutory limitations regarding exposure to these magnetic fields, but there are European and national policies in place. In an international context, the research has prompted the formulation of recommended limitations regarding magnetic field strength. These advise against exposures exceeding 100 microteslas. These values are also enforced in the Netherlands and they are not exceeded in existing situations.

In 2005, the then-State Secretary of Housing, Spatial Planning and the Environment [*Volkshuisvesting, Ruimtelijke Ordening en Milieu*] recommended that new situations, including new power lines, should be based on the precautionary principle. The recommendation was to avoid as much as reasonably possible creating new situations in which children (aged 0 to 15) would be subjected to long-term exposure to above-ground electrical lines that generate an average annual magnetic field stronger than 0.4 microteslas.

Vulnerable areas are avoided as much as possible when laying out projected routes.

The effects are determined based on a magnetic field zone that is calculated based on a number of assumptions, in accordance with the Guide published by the National Institute for Public Health and the Environment [*RIVM*] at <http://www.rivm.nl/Onderwerpen/H/Hoogspanningslijnen/Handreiking> (in Dutch only) to determine the specific 0.4 microtesla zone in the area near above-ground power lines.

7. Transparency and public participation

This chapter explains how and when third parties will be involved in a project of common interest and how they will participate. The assumption is that parties such as the relevant national, regional, and local authorities, landowners and citizens residing in the area of the project, the general public, and associations, organisations, or groups thereof will become involved at an early stage of a project of common interest. More about this can be found in sections 3.2 and 5.4 of this Guide.

7.1 Transparency and public participation in the notification phase

In this period, the initiator develops a plan for public participation. This plan must contain information about:

- the stakeholders to be involved in the case;
- the planned measures, including the proposed general locations and dates for scheduled meetings;
- the timetable;
- the staffing capacity that will be made available for the project.

This plan will be submitted to the Minister of Economic Affairs, who will have a period of three months to request adjustments to the plan.

7.2 Transparency and public participation in the application phase

After the Minister of Economic Affairs accepts a notification of a project of common interest, perhaps in tandem with the Minister of Infrastructure and the Environment, an announcement must be made of the intention to undertake a project of common interest and information about how third parties can express their opinion on this project.

In cases involving an EIR

In most cases, an EIR will have to be prepared for a project.

The announcement of this intention must in any case state where and when the documents regarding the proposal will be made public and when there will be an opportunity to submit opinions on the proposal (to whom, how, and within what time period). The announcement must also be published in another country if the proposal could entail a significant negative environmental impact in that other country.

The documents must be made available for public examination for a period of six weeks. Every member of the public will have an opportunity to submit an opinion on the project to the Minister of Economic Affairs.

Information evenings are generally to facilitate public participation and with regard to the draft memorandum on detail and scope.

Cases involving a spatial planning development for which no EIR is prepared

If no EIR will be prepared, an announcement will be made of the intention to undertake a project of common interest. This announcement will state whether documents regarding the proposal will be made available for public examination and where and when that will occur, and a statement of whether there will be an opportunity to submit opinions regarding the proposal, and to whom, how, and within what timeframe.

Public consultation

Before applications for permits are submitted, a public consultation must be held as defined in Article 9(4) of the Regulation. This public consultation will be organised by the Minister of Economic Affairs, along with the initiator and the other competent authorities. A brochure containing information about the project will be prepared for the public consultation.

The public consultation will be announced through the regular national and regional media and via the project website. The announcement will indicate where and when information evenings will be organised. The stakeholders involved will be invited to these evenings in writing. All members of the public will be able to give their opinion on the project at these information evenings.

The initiator will prepare a report that includes an overview of the measures that have been taken to ensure transparency and public participation, as well as the results of those measures. This report will be enclosed with the permit applications.

7.3 Transparency and public participation in the permit granting phase

After the permit applications have been submitted, the permits will be drafted by the competent authorities. The Minister of Economic Affairs will coordinate the granting of the permits and set a deadline for preparing the draft permits.

The draft permits will be made available for public examination at the same time, for a period of six weeks. Every member of the public will have an opportunity to submit an opinion on the draft permits to the Minister of Economic Affairs.

An announcement of the draft permits' availability for public examination will be made through various national and regional media outlets. The landowners and other commercial stakeholders will be personally notified if the draft permits indicate that the zoning for the land in question will change.

After considering the opinions submitted, the permits will be finalised. The finalised permits will be accompanied by a statement of the changes that were made in comparison to the draft permits. After they are finalised, the permits will be made

available for public examination for a period of six weeks. An announcement of the permits' availability for public examination will be made through various national and regional media outlets. During that period, stakeholders who submitted an opinion at earlier stages of the process will be entitled to file an appeal regarding these documents.

7.4 Website

The initiator will open a website for every project of common interest. This website will be linked to the European Commission's website. The Ministry of Economic Affairs also has a website for projects of common interest: <http://www.rvo.nl/subsidies-regelingen/bureau-energieprojecten> (in Dutch only), where you can click through to a specific project.

A project website will in any case contain:

- a non-technical and up-to-date summary of the current status of the project and an overview of the changes made in comparison to previous versions;
- the scheduling for the project and for the public consultation, as well as the proposed topics likely to be relevant during those hearings;
- the information brochure for the public consultation;
- contact details for obtaining the application documents;
- contact details for submitting opinions during the public consultations.

8. Contact details

Central Government

Ministry of Economic Affairs (Dutch: Ministerie van Economische Zaken)
Bezuidenhoutseweg 73
NL-2594 AC The Hague
Correspondence address: PO Box 20401
NL-2500 EK The Hague
Telephone: +31(0)70 379 89 11 en +31(0)070 378 68 68
Internet: <http://www.rijksoverheid.nl/ministeries/ez>

Ministry of Infrastructure and the Environment (Dutch: Ministerie van Infrastructuur en Milieu)
Plesmanweg 1-6
NL-2597 JG The Hague
Correspondence address: PO Box 20901
NL-2500 EX The Hague
Telephone: +31(0)70 - 456 00 00
Fax: +31(0)70 - 456 11 11
Internet <http://www.rijksoverheid.nl/ministeries/ienm>

Provinces

Interprovinciaal Overleg website (a partnership of the twelve provinces)
Herengracht 23
NL-2511 EG The Hague
Correspondence address: PO Box 16107
NL-2500 BC The Hague
Telephone: +31(0)70 888 12 12
Fax +31(0)70 888 12 80
E-mail: communicatie@ipo.nl
Internet <http://www.ipo.nl/>

Municipalities

Association of Netherlands Municipalities (Dutch: Vereniging van Nederlandse Gemeenten) (the partnership of municipalities).
Nassaulaan 12
NL-2514 JS The Hague
Correspondence address: PO Box 30435
NL-2500 GK The Hague
Telephone: +31(0)70 373 83 93
E-mail: informatiecentrum@vng.nl
Internet: <http://www.vng.nl>

Water boards

Dutch Water Authorities (Dutch: Board Unie van Waterschappen) (the partnership of water boards)

Koningskade 40

NL-2596 AA The Hague

Correspondence address: PO Box 93218

NL-2509 AE The Hague

Telephone: +31(0)70 351 97 51

Fax: +31(0)70 354 46 42

E-mail: info@uvw.nl

Internet: <http://www.uvw.nl/>

Other

Committee on Environmental Impact Reports (Dutch: Commissie voor de milieueffectrapportage)

Arthur van Schendelstraat 800

NL-3511 ML UTRECHT

Correspondence address: PO Box 2345

NL-3500 GH UTRECHT

Telephone: +31(0)30 234 76 66

Fax +31(0)30 233 12 95

E-mail: kennisplatform@eia.nl

Internet: <http://www.commissiemer.nl/>

Cultural Heritage Agency (Dutch: Rijksdienst voor het Cultureel Erfgoed)

Smallepad 5

NL-3811 MG Amersfoort

Correspondence address: PO Box 1600

NL-3800 BP Amersfoort

Telephone: +31(0)33 421 74 56

Fax: +31(0)33 421 77 99

E-mail: info@cultureelerfgoed.nl

Internet: www.cultureelerfgoed.nl

Initiators of projects of common interest

TenneT Holding B.V. and TenneT TSO B.V.

Utrechtseweg 310, Arnhem

Correspondence address: PO Box 718

NL-6800 AS Arnhem

Telephone: +31(0)26 37 31 1 11

E-mail: <http://www.tennet.eu/nl/nl/contact/e-mail.html>

Internet <http://www.tennet.eu/nl/nl/home.html>

- Endrup (Denmark) – Eemshaven (Netherlands) power lines project
- Doetinchem (Netherlands) – Niederrhein (Germany) power lines project

National Grid Viking Link Ltd

Telephone: +44(0)800 731 0561

Open between 09:00-17:00 (local time)

Monday to Friday

E-mail: www.Vikinglink@communityrelations.co.uk

E-mail: www.Viking-link@.nl (Dutch)

and

Energinet.dk

Telephone: +45 70 10 22 44

Open between 09:00-16:00 (CET)

Monday to Friday

E-mail : www.Vikinglink@energinet.dk

- Viking Link project