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Questionnaire on Switzerland

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1. Forms and scope of permits

A. Generalities

Generally speaking, industrial construction projects require a **series of permits** in the field of urban planning and environmental protection. Their specific content, the nature of the required permits and the competent territorial entity (municipal, cantonal or federal level) depend on the *sector* (installations in the rail, electricity, air-transport etc. are decided upon by the federal authorities), the *character of the installation* (special regulatory framework for installations in the field of sewage disposal, implicating noise emissions, causing problems with regard to air pollution or energy etc.) and their *geographical situation* (close to national or cantonal highways, outside construction areas, close to forests, close to objects protected under nature and cultural heritage protection, having an impact on groundwater or surface waters, being part of contaminated sites etc.).

Normally, an industrial installation would need a construction permit or a special planning procedure which are usually delivered/undertaken by the **municipal authorities**. Under some conditions, however, (sometimes defined by federal law and thus applying throughout the Swiss territory, sometimes defined by cantonal legislation and thus not uniformed) it is the cantonal authorities which are in charge. In some cases, the power to deliver the required permission may also lay with the federal administration (so called *planning authorization procedure*). In addition to this, a whole range of further permits may be required, e.g. for withdrawing water (permit delivered by a cantonal authority under federal law), for deforestation (delivery of the permit by the federal or cantonal authorities) or for construction projects involving objects of cultural heritage (usually in the competence of the cantonal authorities) etc.

Depending on the specific circumstances a plurality of permits may thus be required for industrial installations. With regard to the **coordination between these permits**, the regulatory framework depends on the applicable cantonal or municipal law and thus on the federal entity in charge of the planning procedure.

B. Emergence of the Coordination Principle

The **problems** due to complex and uncoordinated permitting procedures were identified early on by the judiciary in Switzerland. In a decision in 1981 the Federal Tribunal accepted a uniform permit for procedures regarding the domains of fishing and the protection of nature and cultural heritage (Decisions of the Federal Tribunal [DFT] 107 Ib 154). With regard to construction permits outside the construction zone the relevant case law required a full ponderation of interests in one single procedure by one single authority (DFT 115 Ib 514). According to the Federal Tribunal the procedure of choice in these cases should be a procedure which takes place at an early stage during the elaboration of the project and which at the same time allows for a comprehensive assessment of the different questions at stake.

These conditions regarding the coordination requirement where further specified by a **landmark decision of the Federal Tribunal**, the so called "Chrüzlen" case (DFT 116 Ib 50). In this case, the Federal Tribunal posed two fundamental requirements with regard to the coordination of procedures:

- ***Substantive coordination***: If, for the realization of a single project, two or more substantive provisions are applicable, which are closely linked and therefore cannot be separated or applied independently, a substantive coordination of the provisions has to take place.
- ***Formal coordination***: The substantive coordination can most easily take place, when the responsibilities with regard to a certain project at first instance are carried out by one single authority. If the questions requiring substantive coordination however are assessed by a plurality of authorities, the latter are under the obligation to coordinate the application of the law. This, according to the Federal Tribunal, requires the substantive result of a coordinated decision to meet the quality standards of a decision rendered by one single authority.

These federal requirements were formulated with regard to cantonal (and municipal) procedures, but also apply with regard to federal procedures. The Federal Tribunal thus set federal standards which constitute a big step forward in the implementation of the coordination principle. The standards were derived from the very openly formulated constitutional provision, according to which the "Confederation and the Cantons shall take account of the requirements of spatial planning in fulfilling their duties" (art. 75(3) Federal Constitution [Const.]). This federal judicial standard leaves leeway for the cantons to opt for either the so called "*concentration model*" or the "*coordination model*":

- In the case of the "***concentration model***" either all of the required permissions are replaced by one single decision or a single body is in charge of delivering all of the decisions. It constitutes the model of choice for the Federal Tribunal.
- The "***coordination model***" on the other hand leaves the responsibility to assess different aspects of the project in the hands of different authorities, but requires at the same time coordination between those bodies. This means firstly that conflicts between different spatial activities and requirements are to be neutralized and secondly that tasks having an implication on spatial planning complement each other in a meaningful way and are thus oriented towards an appropriate spatial order.

Subsequent to the Chrüzlen decision, the cantons began to change their respective legal frameworks in order to implement the requirements set by to the coordination principle as formulated by the Federal Tribunal. At the same time, the decision also triggered action by the **federal legislator** in two respects:

- First it prompted the federal legislator to implement regulation with regard to the coordination of planning procedures on a municipal and cantonal level. The federal standards (discussed below under point 1.C.) took the form of a modification of the Federal Act on Spatial Planning, which is based on a constitutional provision granting the Confederation the power to enact framework legislation in the field of spacial planning (art. 75 Const.)
- The second avenue taken by the federal legislator in this respect consisted in the enactment of the so called "Federal Coordination Act" targeting the planning process for buildings and installations under the responsibility of the Confederation. This collective piece of legislation resulted in the modification of 18 Federal Acts such as the Federal Railway Act, the Federal Air Transport Act, the Federal Act on National Highways etc. The Act applies to infrastructure installations which are regulated by

federal law and it implements a “concentration model including a right to be heard” on the federal level (to be discussed under point 3.).

C. Federal Standards regarding Municipal and Cantonal Procedures

The legislative package containing the federal standards for municipal and cantonal planning procedures had the objectives to simplify, to speed-up and to coordinate the approval procedures of constructions and installations (Federal Gazette [FG] 1994 III 1076). The underlying motive for the proposed provisions was amongst others that overly long, complicated and uncoordinated procedures might result in difficulties for the State to perform its tasks efficiently in the future as well as in a loss of competitiveness of the Swiss economy (FG 1994 III 1080). The standards proposed – and finally adopted by parliament and put into force on 1.1.1997 – pertain to three aspects: 1. The duration of the planning permission processes, 2. the standards concerning coordination at the level of first instance and 3. the requirements with regard to legal appeals.

1. As for the **duration of the permitting procedures** the Federal Spatial Planning Act (FSPA) provides that the cantons are under the obligation to set deadlines and provisions regulating the binding force or effect of those deadlines for all procedures regarding the construction, modification or change in purpose of constructions or installations (art. 25(1bis) FSPA). The cantons thus have to set deadlines not only for the single steps within the planning procedure, but also for the procedure as a whole.

2. Concerning **substantive and formal coordination**, federal law implements certain minimal standards with regard to coordination (art. 25a FSPA):

- **General obligation to coordinate planning decisions**: The relevant decisions range from construction permits inside the construction zone over exemption permits for construction outside the construction zones and permits for the removal of riverside vegetation to licensing decisions (construction of hydropower plants, use of the public domain, operation of cable cars etc.) and may under some circumstances even involve procedures for public subsidies.
- Designation of a **body in charge of coordination**:
  a. Most of the cantons opted for the designation of a **special coordination authority** – usually at the cantonal level, in exceptional cases at the municipal level –, which is responsible for managing and coordinating all the permission procedures, but does not have to be an approval authority itself (*coordination unit*).[1] In some cantons this role is fulfilled by the Construction Department (ministry), in others by the Cantonal Construction Commission, by the Construction Coordination Service or by a municipal authority. In the Canton of St. Gallen a designated unit at the cantonal level ensures the coordination between the Canton and the Confederation, while the municipality is in charge of the notification of the final decision to the parties.[2]
  b. In other cantons one of the authorities involved in the process assumes control of the entire procedure (**system of the leading authority**; “Leitverfahren”). This role is usually fulfilled by an authority which is involved in the procedure at an early stage, in order to allow for an early and comprehensive assessment of all of the questions pertaining to coordination. In most cases this is either the construction permission authority or the body in charge of the environment impact assessment. In the Canton

1 Art. 7c Construction Act Canton of Uri; § 64 and 66 Construction Act Canton of Argovia; § 19 Construction Ordinance Canton of Thurgovia;

2 Art. 4 (f.) and 5 Act on Procedural Coordination in Construction Matters Canton of St. Gallen.

of Bern for instance, the leading authority pools the decisions and orders which would otherwise be independent of an overall decision.[3] It is usually the construction permit procedure which is designated as the leading procedure.[4]
The body in charge of coordination may either be a cantonal or a municipal body. It seems, however, appropriate to designate a cantonal entity due to the fact that federal law reserves a range of responsibilities in this field to cantonal authorities (permits for constructions outside the building zone; permits for deforestation in some cases etc.).

- **Coordination procedure**: Federal law does not provide concrete requirements with regard to the coordination process. According to the case law of the Federal Tribunal however, coordination has to generate a result which qualitatively is equivalent to the case where a single authority is responsible for the procedure. If a project requires an environmental impact assessment (EIA), it may often be advisable to designate the procedure in which the EIA is undertaken also as the "leading procedure", if there is no EIA it is often the construction permit or zone planning procedure, which is designated as the leading procedure.
- Federal law also specifies the **tasks** to be performed by the body ensuring coordination: It may issue the **necessary procedural rulings**, including for instance orders setting binding dates or deadlines for statements and negotiations. Such arrangements by cantonal bodies also have binding force for federal authorities, even though the cantonal authorities are not allowed to back up their orders with the threat of sanctions in this respect. Further, the body is in charge of the **public disclosure process**, the objective of which being to ensure, that after the expiration of the display period, all objections to the project are known. The exact timing of public notice however is not defined by federal law and thus dependent on the concrete cantonal or municipal legislation. One of the key responsibilities of the body in charge of coordination is the **management of the consultation process** concerning the project involving other cantonal and federal authorities. Their statements do not constitute formal decisions or orders, but need to be comprehensive and even though they remain open to subsequent modifications under some circumstances, they can be considered to be generally binding for the authorities. As the statements are not considered to be formal decisions or orders, the cantons do not have to grant the right to be heard to the parties during the process of their elaboration.[5] However, the parties have to be involved at later stages of the procedure, namely during the public disclosure process. With respect to substance of the decisions, the authorities have to **ensure the congruence when it comes to the content** (*substantive coordination*). This includes making sure that the exchange of information between the different authorities works properly, checking the statements made by the different specialized bodies and eliminating potential contradictions with regard to the facts, the justification and the conclusions in a dialogue with the different authorities involved. Finally they have to make sure that the **notification of the ruling** occurs in a coordinated manner. The notification may concern the applicants and possibly third parties or environmental organizations. A common notification is not required in two cases: (i) where a special permit is denied, because this might result in contradictory decisions, or (ii) if the law foresees different publication media due to the involvement of both cantonal and federal entities.

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3 Art. 1 Coordination Act Canton of Berne.
4 Art. 5 Coordination Act Canton of Berne.
5 DFT 116 Ib 261.

- **Prohibition of contradicting decisions**: In addition to the specification of the coordination process the federal law also foresees a general prohibition of contradicting decisions in the field of spatial planning (art. 25a (3) FSPA). There is no contradiction when a project could be accepted from the perspective of one of the required permits, but violates the requirements of another necessary permit. In this case (labelled "killer-decision" in doctrine), the negative decision can be rendered even though it "contradicts" approvals with regard to different aspects of the procedure. The question of how differences shall be settled is to be decided by the cantons.
- Finally the principle of coordination is also applicable to the **utilization planning procedures**. Utilization plans are project-based plans and have the character of a decision, but at the same time also constitute instruments of coordination, taking into account the various aspects linked to spatial planning.

3. Concerning the **procedure of appeal** against decisions in this field, the federal law foresees that the cantons need to provide for a single instance of appeal. By this means a standard of procedural coordination according to the concentration model is implemented. It is therefore insufficient to foresee only a substantive coordination of the interests at stake at the level of the procedure of appeal. This requirement of procedural unification pertains only to municipal and cantonal procedures, while federal special permits are exempted.

D. Concrete Legal Setting on the Municipal and Cantonal Level

In order to assess the implementation of these federal standards into cantonal law, the regulation in the **Canton of Zurich may serve as an example**:

In the Canton of Zurich the relevant cantonal legal act (Ordinance on Construction Procedure [OCP] /Bauverfahrensverordnung [BVV]) designates the municipal authority in charge of the construction permit process as the responsible authority, except if (i) there is an EIA to be conducted, in which case it is the body responsible for the EIA which is in charge or if (ii) no permit is to be granted by a municipal authority, in which case it is the cantonal leading authority which ensures coordination.[6] If a single project is to be assessed by a plurality of authorities, the cantonal leading authority is under the obligation of ensuring the coordination of the cantonal procedures and decisions.[7] Building applications requiring a municipal permit have to be submitted to the municipal authority, other applications are to be submitted to the cantonal leading authority.[8] The municipal building authority then carries out a summary assessment and has to require further documents or changes to the application within three weeks.[9] In addition to this, the municipal building authority also assesses whether evaluations by cantonal authorities are necessary and is obliged to submit the application and the documentation immediately to the cantonal leading authority if this is the case.[10] The municipal authority and/or the cantonal bodies examine within three weeks whether the file is complete and then have to render a decision within two months or four months (new constructions or complex reconstruction projects) or a longer time frame

6 § 9(1) Ordinance on Construction Procedure Canton of Zurich.
7 § 9(2) Ordinance on Construction Procedure Canton of Zurich.
8 § 10 Ordinance on Construction Procedure Canton of Zurich.
9 § 11(1) Ordinance on Construction Procedure in combination with § 313(1) Planning and Construction Act Canton of Zurich.
10 § 11(2) Ordinance on Construction Procedure Canton of Zurich.

(projects requiring either an EIA or the collaboration of federal bodies).[11] With regard to the final decision, the leading authority is under the obligation to join together the different decisions of all cantonal authorities involved to one single act ("Verfügung").[12] The cantonal decisions are then submitted to the municipal building authority, which is in charge of communicating them together with its own decision. If no decision by a municipal authority is required, the cantonal leading authority gives notice of the decision to the interested parties.[13] In case either the municipal building authority or one of the cantonal authorities involved detect clear obstacles for the project, which cannot be remedied by means of conditions and requirements, it informs the applicant as well as the involved authorities and may finally render the negative decision, while the other authorities involved suspend the procedure until either the application is withdrawn or a resumption of the procedure is demanded.[14]

E. Summary Assessment

As the regulatory framework with regard to the planning procedure in Switzerland diverges from canton to canton and from municipality to municipality, it is fairly difficult to come up with a general assessment of the current legal situation and its efficiency. Nevertheless it can be said that both on the federal level (general standards) and on the cantonal level (coordination procedures) far-reaching steps have been taken in order to ensure better coordination between the different legal instruments involved particularly in the planning of large-scale installations. Taken together with the requirements to conduct an environmental impact assessment, it seems that the procedures allow for a fairly broad evaluation of the different interests at stake, including environmental interests. Additional modes of correction are the public consultation process with regard to single projects, instruments of democratic participation (changes of planning instruments usually require a public vote on the municipal or cantonal level; in case of public spending, there may be a financial referendum etc.) and the possibility to challenge the respective decisions before administrative courts. It can thus be said that despite the fact that the regulatory situation in Switzerland with regard to construction projects has become increasingly complex and cumbersome, the efforts to better coordinate between different aspects of the procedures have proven to be fairly fruitful. Finally, it can also be seen that the competition between the different cantons and municipalities may be seen as giving the impulse to render the respective application processes more efficient. At the same time there seem not to be any clear signs that this competition generally results in a race to the bottom kind of situation with regard to environmental standards. If this assessment is accurate, the underlying reasons may be found in the fact (i.) that the general environmental regulation mostly stems from the Confederation, (ii.) that – in a very general vein – compliance with the environmental provisions is fairly high in Switzerland, (iii.) judicial control usually works relatively well and (iv.) that environmental quality is also seen by the municipalities and cantons as a location factor and thus also as parameter of competition between the different regional authorities.

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11 § 319(2) and (3) Planning and Construction Act Canton of Zurich.
12 § 12(1) Ordinance on Construction Procedure Canton of Zurich.
13 § 12(2) Ordinance on Construction Procedure Canton of Zurich.
14 § 12(3) Ordinance on Construction Procedure Canton of Zurich.

2. Procedures
2.1 Short Case Study

Prolegomena: As the specific permitting procedures in Switzerland will largely depend on the territorial entities involved as the applicable law is mainly of cantonal and municipal origin and the permitting procedures are largely in the hands of cantonal and municipal entities, it is hardly possible to give a clear picture of "the" legal situation in Switzerland. I would therefore base the following **case study** on a real life case in the Canton of Berne: The waste disposal installation "Forsthaus West", which was to be constructed in a forest area only a few kilometres from the centre of town.

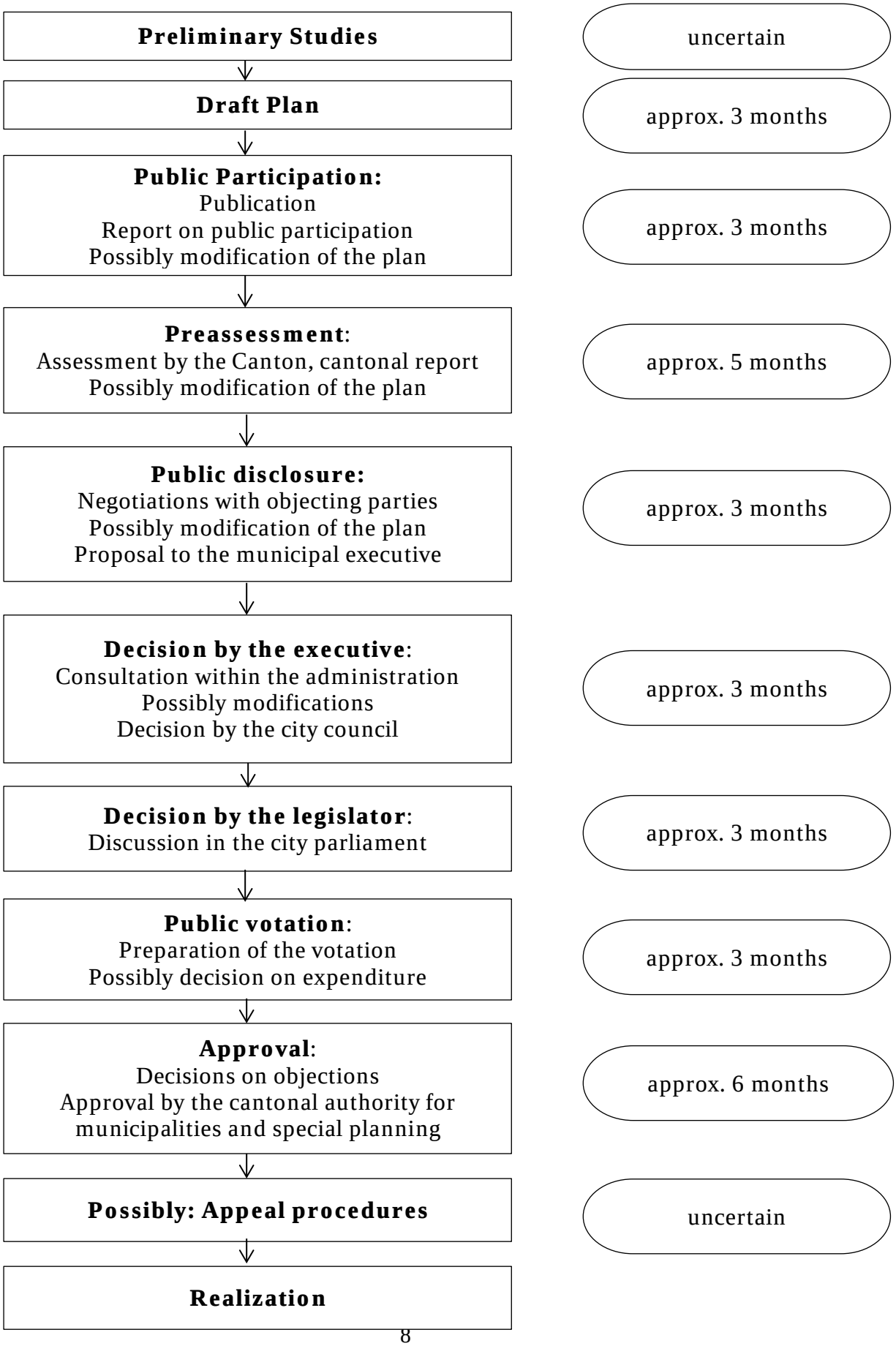
The construction of the installation required a **modification of the zoning plan** (so called utilization planning procedure; "Nutzungsplanverfahren") which was combined with the construction permission procedure. This combination has the consequence of slowing down the utilization planning procedure, but at the same time bears the advantage that no subsequent construction permission procedure is required.

For the planning and construction of a waste disposal installation the cantonal law designates the procedure which includes the EIA as the leading procedure (art. 5(2) Act on Coordination) and names the construction permission procedure as the relevant EIA procedure (Nr. 40.7 Annex Ordinance on Environmental Impact Assessment of the Canton of Bern in combination with Nr. 40.7 Annex of the Federal Ordinance on Environmental Impact Assessment). As the modification of the utilization plan requires an approval by the cantonal authorities it is therefore the cantonal office for municipalities and regional planning which is in charge of coordination and pools the otherwise independent orders and decisions (art. 61 Construction Act and art. 4 Act on Coordination of the Canton of Berne).

In the case of the **waste disposal installation "Forsthaus"** the permission procedure lasted several years and included the EIA procedure, public participation, public disclosure, decisions by the municipal executive and legislator, a popular vote on the modification of plans and finally resulted in an **overall decision** rendered by the cantonal office for municipalities and regional planning and including the modification of the relevant utilization plans, the construction permit as well as **12 further decisions** (water connection decision; gas connection decision; electricity connection decision; water protection permission; permission for the connection to the communal antenna; planning permission regarding labour in industry; commerce and trade; permit under the Law on Fisheries; permit regarding the connection to the road network; permission regarding the intervention into the hiking trail network; telephone connection permission; exemption permit for interventions into the stock of protected plants, into habitats of protected species and into cantonal nature conservation areas as well as a deforestation permission).

In addition to this, the overall decision contained over a hundred **conditions and requirements** regarding air pollution prevention, noise emissions, vibrations, water protection, fisheries, incident management, wildlife biology and nature protection, forest prevention, soil protection, hiking paths, hydraulic constructions, road access, safety at work, food safety, building control, fire protection, energy technology, landscaping design and civil engineering. Finally, some of the conditions were related to further permissions and approvals at later stages of the process (about fifty further permissions required).

Flow chart utilization planning procedure in the Municipality of Berne



2.2 Additional Information

- The **competent authorities** may be situated at the municipal, cantonal or federal level depending on the installation and the relevant questions at stake.
- The coordinated procedure usually includes the **EIA**.
- The construction and conversion of such installations generally requires a **construction permit** and/or a modification of the **planning zones**.
- There are elaborate (and complex) **consultation mechanisms** foreseen in the framework of the municipal/cantonal planning processes. As the deadlines for the overall decisions are often fairly strict, the authorities also have to respond in a reasonable time frame in order not to delay the process, but the details depend on the specific local regulations. "Opinions" are fully binding where authorities are responsible of granting separate permits, in which case they may oppose the entire project, if the specific permission under their responsibility cannot be granted. In other constellations the coordination authority will have to find a common denominator between the different authorities involved.
- Generally speaking, **public participation** is fairly elaborate and widely used. Its articulation depends largely on local regulations, but there are also federal standards in that respect. Public participation normally takes place in the shadow of possible popular votes and thus also constitutes a means for the authorities to "test the waters" before a possible votation and provides the citizens with an opportunity to utter their opposition before a project is finalized and submitted to a popular vote.
- Cf. 1D above for an example of the applicable **time frame**.
- There usually is the possibility of **appealing** to a municipal or cantonal administrative authority, then to the cantonal administrative court and finally to the Federal Tribunal. Depending on the interests at stake, not only the applicant, but also concerned third parties, such as neighbours, NGOs or the municipality/canton may have a right to appeal decisions on permits.

II. Infrastructural Projects

1. The planning process for the construction of a national highway, which is in the hands of the Confederation, is designed follows:[15] Planning by the Swiss Federal Roads Authority (ASTRA); proposal on the location and setting of the highway by the Federal Council (executive) and decision by the legislator; decision on the construction programme by the Federal Council; elaboration of a **general project** setting the location, interchanges and intersections by ASTRA in cooperation with the cantons and interested federal authorities; possibility to create project zones to reserve space for the highway by preventing the construction of new buildings in the respective zones; possibility to appeal against decisions creating project zones; submission of the general projects to the cantons, municipalities and land owners for consultation; adaptation of the project taking account the comments received in the consultation process by ASTRA; approval of the general project by the Federal Council; elaboration of the **execution planning** by ASTRA according to the requirements set by the Federal Council; submission of a planning approval application to the Department for the Environment, Transport, Energy and Communications (ministry; UVEK); public disclosure of the project; possibility to submit objections concerning the disclosure to the Department; notification of the application to the cantons concerned by the project; consultation within a

[15] Art. 9 seq. Federal Act on National Highways.

general time frame of three months; publication in the publication media of the concerned cantons and municipalities for 30 days; personal communication to persons, who might benefit from a compensation due to expropriation; possibility to make objections to the project at the planning approval stage (including claims regarding expropriation); **planning approval** ("Plangenehmigung") by the Department including all of the required permissions under federal law as well as any decisions on objections due to expropriation. Cantonal permissions or plans are not required and cantonal law is only applicable insofar as it does not overly compromise the construct0ion and operation of national highways.

2. Building a national highway therefore requires to go through the **planning process** described above, which concentrates all necessary permits and plans. According to federal law, a multilevel **EIA** is required: At the level of the proposal of the Federal Council to the parliament a so called first level environmental impact assessment report is required; at the level of the general project a second level environmental impact assessment report is necessary[16] and at the level of the execution planning finally, a third level environmental impact assessment report must be provided for.[17] The **multilevel approach** allows assessing the environmental impact at each level as far as the consequences on the environment have to be known at the respective stage of the planning process. The EIA procedure is thus integrated into the general planning procedure. On the whole the planning procedure is in the hands ASTRA and the Department, which have to **cooperate** both with interested federal authorities and the cantons, in the elaboration of the general project, the modification of the general project due to the feedback in the consultation process, the elaboration of the execution project as well as generally during the planning process.[18]

B.

(a) Such initiatives were made by means of the so called Federal Act on the Coordination and Simplification of Decision Procedures ("Federal Coordination Act"), which entered into force on 1.1.2000 with regard to procedures under federal law and by the Amendment of the Federal Act on Spatial Planning, which entered into force on 1.1.1997 with respect to cantonal law.[19]

(b) Several **motives** were named it the debate around the enactment of the legal modifications: Efficiency of state activities, increasing time pressure with regard to economic activities, international location competition etc. and the legal measures where therefore foreseen in the so called "programme on the renewal of the market economy" by the Federal Council (FG 1998 2593).

(c) Cf. 1.B and C.

(d) **Deadlines** for the different stages of the administrative planning process; higher speed through better coordination between the authorities involved; implementation of the concentration model with regard to the construction of infrastructure installations by the Confederation etc. It does not seem, however, that public participation processes have been severely curtailed.

(e) I wouldn't know of any **legal challenges**, which are anyhow difficult in the Swiss constitutional setting due to the fact that federal acts cannot be annulled or denied application due to a violation of constitutional provisions.

(f) I wouldn't know of any **evaluations** of the speeding-up measures.

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16 Art. 11(1)(a) and art. 16 Ordinance on National Highways.

17 Art. 12(1)(i) and art. 16 Ordinance on National Highways.

18 Art. 13, 19(2), 21(2)(a) and 10 Federal Act on National Highways respectively.

19 Cf. above 1.B and C.

Again, it is quite difficult to give a general **assessment** of the measures, as they have been implemented in very different manners in the different cantons and municipalities. As far as the changes on the federal level are concerned, I'm under the impression that the streamlining of the procedures has turned out to be beneficial for the planning processes, possibly also due to the fact that the federal legislator refrained from severely curtailing the participation mechanisms. This hesitation to interfere with the participative process of planning may be linked to the correction mechanisms by means of political participation (semi-direct democracy) on the one hand and, on the other hand, to a very strongly anchored culture of cooperative procedures, both with regard to cooperation between authorities and private actors and between different public authorities in the framework of cooperative federalism.

C. Locus standi for a local government within the permitting procedure

Federal Law provides minimal standards regarding the right to appeal for cantonal law, by requiring that the locus standi before cantonal courts has to be granted at least to the same extent as before the federal courts.[20] With regard to standing before the courts at the federal level, the law provides that the cantons and municipalities may file complaints against decisions rendered by the courts of last instance at the cantonal level in the following domains: (i.) compensation as a consequence of restrictions of property, (ii.) conformity with planning zones for installations and constructions outside the construction zones and (iii.) exemption permissions for constructions outside the constructions zones. With respect to these matters, the municipalities and cantons only need to demonstrate a certain public interest, which they are under the obligation to protect. In all other fields, public entities either need to show that a certain decision affects them in the same manner as a private person would be affected or that they are affected in their sovereign powers and have an interest worthy of protection to annul or modify the decision at stake. They e.g. have a right to appeal to a permit to construct an installation associated with emissions, if they are affected by the emissions as the owner of landed property to the same extent as a private person would be affected. Purely financial interests however are not sufficient to open the right to appeal.

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[20] Art. 33(3)(b) FSPA.