



## 4.2

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**Creating legal, regulatory  
and stakeholder  
alignment to enable  
cross-border delivery**

## 4.2 CREATING LEGAL, REGULATORY AND STAKEHOLDER ALIGNMENT TO ENABLE CROSS-BORDER DELIVERY

Even with optimal frameworks in place to identify and plan the right projects, achieving alignment to deliver them is difficult. Different policy and planning systems in the countries engaged in the cross-border project make coordination more complex than on national projects. Similarly, the involvement of more than one jurisdiction multiplies risks. Alignment on legal and regulatory issues is key, as is getting all the right stakeholders on board and aligned.

### Summary of key learnings for creating legal, regulatory and stakeholder alignment

The key learnings suggest that governments should consider the following:

- Where possible, intergovernmental agreements should be used to help align governments on project objectives and ensure the project is not adversely affected by changes in national policies or legal and regulatory frameworks.
- All relevant stakeholders, including relevant affected industries and communities, should be involved to define the win-win perspective and reap durable benefits from the project. Multi-level governance mechanisms can be effective in facilitating involvement of stakeholders.

This section highlights the value of:

- effectively using intergovernmental project agreements to align on objectives (Section 4.2.1)
- involving the right stakeholders at the right time through multi-level and multi-stakeholder frameworks (Section 4.2.2)
- assessing mutual costs and benefits to understand project viability (Section 4.2.3)
- harmonising rules and regulations to ensure equity in implementation (Section 4.2.4).

- It is essential to quantifiably assess costs and benefits for each party – including environmental, social and governance (ESG) considerations. Given the complex nature of cross-border projects and the fact that the parties do not have complete visibility of the project context from the perspective of any other party, scenario analysis is essential to understand risks and draft multi-lateral agreements. To be most useful, scenarios should include extreme scenarios.
- Binational or multinational frameworks can be put in place to harmonise rules and regulations, including tariffs, customs and border crossing procedures, and technical operability and safety standards. This will help enable smooth planning, delivery and operation.

### 4.2.1 Effectively utilising intergovernmental project agreements

For a cross-border project to succeed, the policy and planning systems of the countries involved must be reconciled. This is usually done through appropriate intergovernmental agreements, signed by the parties to the project. The agreements translate the political vision and project idea (refer to Section 4.1 on policy, planning and prioritisation) into a sustainable and durable governance model for the project (refer to Section 4.4 on governance structures).

To provide certainty about the development and management of the project, the agreement should place the countries involved on an equal footing. This helps ensure that the cross-border project is

not significantly affected by changes in the policy environment or legal or regulatory frameworks of the countries involved. Agreements should also be flexible enough to deal with significant changes that arise (refer to Section 4.5 Managing efficiently throughout the project lifecycle).

The binding power of the agreement will vary based on what it includes and specifies. One example is a memorandum of understanding expressing the common will of the parties and setting a common line of action to accomplish the investment. Another is a legal commitment act under both national and international law,<sup>13</sup> such as the Treaty of Canterbury for the Channel Tunnel (refer to Box 11: The Treaty of Canterbury). Such an act binds the parties to

<sup>13</sup> Article 19: In order to resolve any disputes regarding the Concession, the relevant provisions of the Treaty and the Concession shall be applied. The rules of English law or the rules of French law may, as appropriate, be applied when recourse to these rules is necessary for the implementation of particular obligations under English law or French law. In general recourse may also be had to the relevant principles of international law, and if the parties in dispute agree, to principles of equity

cooperation, specifies roles and obligations of each, and sets up an organisational and contractual scheme for the project – including a dedicated binational entity to carry out the investment. Such an agreement can also serve as a foundation for financing the project, as seen with the Gordie Howe International Bridge (refer to Box 12: The Canada–Michigan Crossing Agreement).

#### PROJECT

##### Box 11: The Treaty of Canterbury

The Treaty of Canterbury, signed on 12 February 1986 by British Prime Minister Margaret Thatcher, British Foreign Secretary Sir Geoffrey Howe, French President François Mitterrand and French Minister of Foreign Affairs Roland Dumas, provided for an undersea tunnel between the two countries (the Channel Tunnel).

The Treaty settled the outlines of the Concession for the construction and operation of the Channel Tunnel by privately owned companies and outlined the methods to be used for arbitration in the event of a dispute. It also set up the Intergovernmental Commission (IGC), which is responsible for monitoring all matters associated with the construction and operation of the tunnel on behalf of the British and French Governments, together with a Safety Authority to advise the IGC.

*See the Channel Tunnel case study in Part B for further detail on this project.*

#### 4.2.2 Getting the right stakeholders in the room

All projects need to appropriately and effectively identify project stakeholders and get their input and buy-in. Stakeholders contribute to project success in two key ways:

1. They can become champions of the project across all levels of government and industry, and their buy-in is essential to driving the project forward and establishing project agreements and frameworks.
2. They represent the institutional capacity and ability of the relevant organisations to design, deliver, operate and use the cross-border project effectively.

#### PROJECT

##### Box 12: The Canada–Michigan Crossing Agreement

On 15 June 2012, the Government of Canada and the State of Michigan signed a Crossing Agreement to provide fundamental guidance on the design, build, financing, operation and maintenance of the Gordie Howe International Bridge.

The Agreement set the financing framework, ownership, operation rights, requirements for the procurement of materials, jurisdictional processes and procedural requirements the crossing would need to satisfy. Further, it allowed for the establishment of a crossing authority (to become Windsor-Detroit Bridge Authority), whose role would be to direct and administer all aspects of the crossing's implementation, from financing to procurement and eventually maintenance and operation.

*See the Gordie Howe International Bridge case study in Part B for further detail on this project.*

Stakeholders are critical to creation of a project rationale that is based on a win-win perspective for the countries concerned. This rationale is what will ultimately see a cross-border project prioritised in national, long-term infrastructure development plans and funded in national budgets. Without project champions, who are often senior government representatives or bureaucrats that can influence the politics between countries and stakeholders, a project may easily fail on account of concerns about the preservation of sovereignty and potential backlash from taxpayers.

In project planning and preparation, there is a marriage between politics and projects. Internal, domestic and international engagement and dialogue are essential, and stakeholders are sources of productive dialogue.

The win-win perspective for a project should consider the balance of interests, the project ownership and power sharing arrangement, and the common objectives of the parties. Appropriate time and resources need to be invested during project planning to establish relationships with relevant stakeholder representatives and form a consensus-building dialogue that will result in a vision that addresses these issues.

Potential stakeholders include internal stakeholders from within government agencies and jurisdictions, as well as external stakeholders from affected industries and communities domestically and internationally. The large number of stakeholders interested in and affected

by a cross-border project creates a need for more intense stakeholder identification and coordination, as demonstrated well by the multi-level governance approach described in Box 13: Collaboration benefits through multi-level governance.

## POLICY

### Box 13: Collaboration benefits through multi-level governance

Multi-level governance (MLG) originated as a theory during European integration in the 1990s, when the shift in authority from individual nations to the EU made decisionmaking more complex. What were previously national issues became international issues, necessitating consideration of a wider number of interests. The internationalisation of decisions was also perceived to reduce the voice of local and regional governments and other actors.

An MLG approach adds value to bilateral or multilateral agreements by extending the basis for decisionmaking. It helps engage politicians, officials, experts, media, citizen groups and the private sector. Reaching out to each of these groups deepens understanding of the diverse needs and expectations of users and prospective service operators.

The practical application of MLG incorporates all relevant stakeholders in a coordinated, collaborative way. In practice, the MLG approach creates a structured meeting forum and arena for learning

and exchange of knowledge among various interest groups. This happens, broadly, across three dimensions:

1. vertical exchange across local, regional, national and international levels of government
2. horizontal exchange among regions and municipalities involved
3. interdisciplinary exchange among the private sector and other stakeholders and experts.

Depending on the application, the meeting forum can be informal, agreement-based or a legal body.

Source: Szydarowski W., Tallberg P, 2013, Multi-level governance. European experience and key success factors for transport corridors and transborder integration areas. Task 3.2 report. BSR TransGovernance project, <https://scandria-corridor.eu/index.php/en/component/phocadownload/category/18-bsr-transgovernance>

Source: A Multilevel Governance Model in the Scandinavian-Adriatic Corridor: The Scandria®-Alliance Work Package 6 Final Report, Background paper (<https://scandria-corridor.eu/index.php/en/component/phocadownload/category/18-bsr-transgovernance?download=66:mlg-model-in-the-scandinavian-adriatic-corridor-the-scandria-alliance-2014>)

In essence, MLG is one mechanism for collecting the input of all governments, businesses and communities implicated in a project. As described previously, the collection and collation of these inputs is important to the design, delivery and operation of the project as it helps not only build but also maintain the win-win perspective created during project conceptualisation. For the design stage in particular, MLG helps ensure the designed project meets the expectations of stakeholders. A recent OECD study highlighted how Norway's use of extensive early-stage stakeholder engagement allowed schemes to be modified at a stage when making changes was less costly.<sup>14</sup>

Collecting inputs of all stakeholders also connects complementary policies at the national, regional and local levels, enabling any potential negative effects of the cross-border investment to be mitigated and strengthening opportunities for socioeconomic

development. Policies to be connected include those related to land use, industry and trade promotion, industrial clusters, labour and skills, urban development and municipal services, tourism, and other sectors with high demand for services enabled or influenced by the new cross-border infrastructure. Engagement with these stakeholders is also part of the foundation of the project's social licence (refer to Section 4.5.3 for more on social licence).

The Lyon–Turin line demonstrates the importance of collecting inputs from all relevant stakeholders (refer to Box 14: The Lyon–Turin line). In this case, the involvement of local groups helped optimise the alignment of the railway to increase benefits and reduce threats. In addition, the project featured transparency in decisionmaking, mitigating the risk of corruption.

<sup>14</sup> OECD, 2018, Economic Surveys – Norway ([https://www.oecd-ilibrary.org/economics/oecd-economic-surveys-norway-2018\\_eco\\_surveys-nor-2018-en](https://www.oecd-ilibrary.org/economics/oecd-economic-surveys-norway-2018_eco_surveys-nor-2018-en))

## PROJECT

### Box 14: The Lyon–Turin line

The Lyon–Turin line is one of the most significant rail projects being implemented in Europe. It is a high-capacity railway line for freight and passengers, stretching over 270 km. A 65 km cross-border section (including the 57.5 km Mont Cenis base tunnel) is co-financed by the EU (40%), Italy (35%) and France (25%).

The project's implementation is enshrined in several international treaties signed by Italy and France. TELT (Tunnel Euralpin Lyon–Turin) is the equal-share binational body responsible for the implementation and management of the cross-border section of the Lyon–Turin line.

After the original plan for the route drew protests, the Italian Government set up in 2006 the Observatory on the Lyon–Turin line for the purpose

of consultation on the works. The involvement of local bodies helped agree on the current configuration of the cross-border section in Italy, with this section changing significantly from the original route planned.

In 2016 TELT adopted an ethical code that sets strict rules of conduct and monitoring procedures concerning ethics principles and anti-corruption rules.

In April 2018, the Italian Government redesigned the composition, tasks and functions of the Observatory so it now comprises groups of local bodies divided according to planned interventions and location.

Source : [https://www.telt-sas.com/wp-content/uploads/2018/11/TELT\\_LyonTurin\\_depliant\\_nov\\_2018\\_ENG.pdf](https://www.telt-sas.com/wp-content/uploads/2018/11/TELT_LyonTurin_depliant_nov_2018_ENG.pdf)

### 4.2.3 Assessing mutual costs and benefits

The distribution of costs and benefits between the countries and stakeholders in a cross-border project is commonly theorised and forecast through a quantitative mechanism such as a CBA. As part of the CBA, it is important to consider the wider economic benefits that can flow from a project. For example, on cross-border transport projects, time savings from the infrastructure may significantly boost the cross-border labour market and by extension help build a more functional region. ESG considerations should also be factored into the CBA. Box 15: Rail Baltica CBA provides an example of a recent CBA conducted for the Rail Baltica project between Estonia, Latvia and Lithuania.

Assessment of costs and benefits is a prerequisite to understand the viability of any project, but even more so for cross-border projects, given the commonly low visibility countries have of their neighbor's internal plans, processes and markets. Low viability might be a barrier to project development, implementation and completion, particularly for projects seeking commercial financing (refer to Section 4.3 Optimising the financial structure to properly allocate risks and benefits).

Quantitative mechanisms like a CBA or sensitivity analysis also allow scenario testing of the impact of project assumptions on project risks, costs and benefits. Given the commonly low visibility between countries, extreme scenarios should be included as part of project due diligence.

While the CBA is the quantitative mechanism to identify and resolve uneven distribution of costs and benefits, internal benefits arising from alignment with national priorities and stakeholders may not be quantifiable through a CBA.

Strong policy, planning and prioritisation frameworks (refer to Section 4.1) can then help set and ensure fair and transparent sharing of the costs, risks and benefits. An example of sharing costs and benefits can be seen in the Itaipu Hydroelectric Dam (refer to Box 16: Sharing costs, benefits and mitigation measures in Itaipu).

To incentivise and ensure accurate assessment of mutual costs and benefits, governments can implement complementary systems that assess projects based on how they address risks and broader project development (see Box 17: Impact and Responsible Investing for Infrastructure Sustainability).



## PROJECT

### Box 15: Rail Baltica CBA

The Rail Baltica project seeks to integrate the three Baltic nations of Estonia, Latvia and Lithuania into the TEN-T. Released in 2017, the CBA was conducted by EY on behalf of the project coordinator RB Rail AS (a joint venture of the three nations) to interrogate and support the delivery method and assumptions used for the project. This followed amendments to the route alignment and changes to the project scope since an initial 2011 study conducted by AECOM. Key findings of the CBA included:

- The total cost of the project would be EUR5.8 billion.
- The measurable project socioeconomic benefits totalled EUR16.2 billion.
- The project has an economic rate of return of 6.32% and would create a gross domestic product (GDP) multiplier effect worth an additional EUR2 billion.
- The project is not financially viable without public co-financing. However, once operational, the project will be financially sustainable after 2031 (five years after the forecasted completion of construction).
- The project is not economically viable if the capital expenditure exceeds by 26% or more the estimate used in the analysis.

The project was deemed financially and economically viable.

Source: <https://www.railbaltica.org/cost-benefit-analysis/>

Note: Refer to Box 30 for Rail Baltica's financial structure and Figure 6 for its project structure.

Additional recommendations provided by EY in the CBA included:

- The project should be governed by a single body to eliminate potential for discriminatory practices of the infrastructure manager or railway undertakings.
- The project's proponents should proactively promote the project to potential users and involve them in the process of designing the technical and user-facing solutions of the project to improve the uptake rate.
- The business case should be periodically reviewed, especially at the completion of important stages (e.g. completion of technical design, construction contract signed).
- Due to the complexity of the project as a cross-border project, it will be paramount to ensure adequate project management and governance structures are implemented to facilitate successful delivery.

Importantly, Rail Baltica notes that the CBA "is just one of the decisionmaking instruments ... used during the project implementation process" and should be viewed in combination with the other instruments. Such instruments include the long-term business plan, operational plan and infrastructure management strategy as well as studies on project commercialisation and the supplier market, among others.

## PROJECT

### Box 16: Sharing costs, benefits and mitigation measures in Itaipu

As per the Treaty of Itaipu, all the costs and benefits of the Itaipu Dam, as well as the implementation of social and environmental mitigation measures, are split equally between Brazil and Paraguay. This means the construction debt and maintenance costs of the dam are also evenly distributed.

Furthermore, the total quantity of energy generated must be bought by the two countries and is divided equally. Any surplus electricity not used by one country must be sold to the other at a price corresponding to the cost of generation defined in the Treaty.

Read more about the Itaipu Hydroelectric Dam in the case study in Part B.

## POLICY

### Box 17: Impact and Responsible Investing for Infrastructure Sustainability (IRIS)

Led by the Russian Ministry of Finance and developed by the Russian State Development Corporation VEB.RF, the National Center for PPP and AECOM, IRIS is an infrastructure project assessment and certification system that offers independent assessment of the quality of an infrastructure project. The system is aimed at improving the quality of infrastructure projects initiated and implemented.

Adhering to the G20-endorsed Quality Infrastructure Investment (QII) principles and the UN Social Development Goals (SDGs), IRIS assesses three project aspects: economy and governance, quality of life, and environment and climate. Points are awarded to the project across these aspects. The higher the final score, the better the certification result that the project receives. Certification of the project can help it access funding and financing. Points are awarded for factors like:

- alignment with strategic planning priorities, including consideration of positive cross-border effects
- viability and feasibility, including presence of a CBA
- quality of project structuring
- project stakeholder engagement
- energy efficiency.

While IRIS is still in the pilot phase, it is an example of how governments can incentivise use of processes and analyses like a CBA to help develop more quality infrastructure.

Source: [https://en.rosinfra.ru/IRIS\\_Methodology\\_ENG.pdf](https://en.rosinfra.ru/IRIS_Methodology_ENG.pdf)

## 4.2.4 Harmonising rules and regulations

Harmonised rules and regulations are a unique part of the enabling environment for cross-border projects and need to be addressed as early as possible. The rules and regulations should work in conjunction with any intergovernmental agreements signed, providing the necessary scaffolding for the project to be built up. Harmonisation helps ensure that:

- The project is implemented in a way that is fair and equitable to the parties involved.
- The project is efficient and effective for users and operators.
- The project delivers on the desired vision.

Rules and regulations that can affect cross-border projects vary depending on the project and the countries involved. They may relate to the legal system, technical design or operational standards, and as such can affect just one project (refer to Box 22: Common safety standards for the Channel Tunnel) or an entire function or application of the infrastructure in question (e.g. electricity tariffs).

It is the responsibility of the parties to the project to identify conflicting rules and regulations that will be to the detriment of the project. The relevant governments are responsible for enacting solutions to those conflicts. It is important to note that harmonising rules and regulations does not necessarily mean making them the same.

Depending on the conflicting rules and regulations, there are several ways to harmonise rules and regulations.

Where harmonisation of rules and standards raises concerns about national sovereignty or political gaming, these concerns can often be resolved through establishment of a neutral body to oversee and implement the harmonisation intended. An example of this is the Agency for the Cooperation of Energy Regulators (ACER) created as part of the EU's 'Third Energy Package' market legislation, which entered into force in 2009 (refer to Box 18: Role of the European Agency for the Cooperation of Energy Regulators).

## POLICY

### Box 18: Role of the European Agency for the Cooperation of Energy Regulators (ACER)

The Agency for the Cooperation of Energy Regulators (ACER) was established in March 2011 as an independent body to foster the integration and completion of the European Internal Energy Market (IEM) for electricity and natural gas.

By fostering cooperation among National Energy Regulatory Authorities (NRAs) across the IEM, ACER ensures that market integration and the implementation of national legislation is achieved according to the EU's energy policy objectives and regulatory frameworks. Specifically, ACER's work involves:

- drafting guidelines for the operation of cross-border gas and electricity networks
- reviewing the implementation of EU-wide network development plans
- deciding on cross-border issues if national regulators cannot agree or if they ask ACER to intervene
- monitoring the functioning of the internal market, including retail prices, network access for electricity produced from renewables and consumer rights.

Source: <https://www.acer.europa.eu>

For cross-border transport projects, which rely on efficient border crossing and customs clearance procedures, some joint regulatory instruments can be put in place as mechanisms to reduce the overall clearance time of goods and decrease the compliance cost of import and export (refer to Box 19: The East African Community Customs Union).

One instrument for reducing overall clearance time is a single window for cross-border trade. Box 20: The Association of Southeast Asian Nations (ASEAN) single window provides an example. Single windows are "facilities that allow parties involved in trade and transport to lodge standardised information and documents with a single-entry point to fulfil all import, export and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once."<sup>15</sup>

## POLICY

### Box 19: The East African Community Customs Union

The Customs Union is a critical foundation and the first Regional Integration milestone for the East African Community (EAC), a regional intergovernmental organisation of six partner states: the United Republic of Tanzania and the Republics of Burundi, Kenya, Rwanda, South Sudan and Uganda.

The Customs Union has been in force since 2005, defined in Article 75 of the Treaty for the Establishment of the East African Community. The EAC partner states agreed to establish free trade (or zero duty imposed) on goods and services among themselves and agreed on a common external tariff (CET) whereby imports from countries outside the EAC zone are subject to the same tariff when sold to any EAC partner state.

Goods moving freely within the EAC must comply with the EAC Rules of Origin and with certain provisions of the Protocol for the Establishment of the East African Community Customs Union.

Source: <https://www.eac.int/integration-pillars/customs-union>

## POLICY

### Box 20: The Association of Southeast Asian Nations (ASEAN) single window

The Association of Southeast Asian Nations (ASEAN) single window connects and integrates the national single windows of ASEAN member states (AMS) to exchange electronic trade-related documents.

The system enables a single submission of data, a single synchronous processing of information, and a single decisionmaking point for customs release and clearance among AMS and participating countries. The system aims to expedite the cargo clearance process, reduce cost and time of doing business, and enhance trade efficiency and competitiveness.

Source: <https://asw.asean.org/about-asw>

15 UN/CEFACT Recommendation No 33 – Recommendations and Guidelines on Establishing a Single Window



Another approach for reducing clearance time is a one-stop border post. This establishes a single clearance procedure for exit and entry documentation for goods and passengers, thereby improving border crossing speed and efficiency, reducing barriers to trade and improving business competitiveness (refer to Box 21: Hong Kong–Guangzhou high-speed rail customs point).

#### PROJECT

##### Box 21: Hong Kong–Guangzhou high-speed rail customs point

In China, the one-country, two-systems governance system provides a unique cross-border infrastructure case study. The high-speed rail connection between the Hong Kong Special Administration Region and Guangzhou, Guangdong Province connects the two locations in 48 minutes, compared to a connection time of 120 minutes on the intercity train.

Not only is the trip by high-speed rail faster, but clearing immigration is too. With the existing train and bus routes, passengers need to clear immigration at the border. On the high-speed line, passengers heading to Guangzhou clear Hong Kong and Guangzhou immigration before they board the train, allowing for a seamless journey into Guangdong Province and border-free connections to the wider Chinese public transport network. The reverse is the case for travellers from Guangzhou entering Hong Kong; they clear both Guangzhou and Hong Kong immigration after arriving at Hong Kong West Kowloon Station.

Source: <https://multimedia.scmp.com/native/infographics/article/2172120/high-speed-rail/>

Technical compatibility is also important to harmonise through agreements. For example, for cross-border transport infrastructure projects, bilateral or multilateral cross-border agreements between states or commercial contracts between infrastructure managers and operators are key to ensure an efficient movement of passengers and freight. Apart from immigration requirements and customs procedures, such contracts or agreements should

deal with technical compatibility (interoperability) of infrastructure, rolling-stock/vehicles, signalling systems and other technical specifications, as well as the harmonisation of licensing requirements, safety standards, and other laws and regulations relevant for cross-border traffic. Examples from the case studies include the Channel Tunnel and Øresund Fixed Link (refer to Boxes 22 and 23).

#### PROJECT

##### Box 22: Common safety standards for the Channel Tunnel

Safety aspects of the Channel Tunnel operations are managed under the remit of the Channel Tunnel Safety Authority (CTSA), a bilateral regulatory body that advises the Intergovernmental Commission (IGC) on safety matters and ensures that safety rules in the Channel Tunnel are in line with prevailing safety laws.

*See the Channel Tunnel case study in Part B for further detail on this project.*

#### PROJECT

##### Box 23: Technical standards for rail operations on the Øresund Fixed Link

Technical standards for the railway on the Fixed Link are defined in the Network Statement drawn between its operator (Øresundsbro Konsortiet) and the two national railway administrations of Denmark and Sweden.

The Network Statement follows a common document structure developed by Rail Net Europe (RNE), a collaboration among 40 European infrastructure managers that aims to facilitate cross-border rail traffic. It defines, among other things, access requirements, traffic operational rules, approval processes for vehicles, traffic management and safety systems, capacity allocations and service charges.

*See the Øresund Fixed Link case study in Part B for further detail on this project.*

Another measure to improve the reliability of cargo deliveries, and thereby the efficiency of cross-border projects, is a harmonised ICT support system for ensuring cargo safety on a corridor between the countries involved (refer to Box 24: Corridor safety measures for cargo transport on the N4 Toll Route).

#### PROJECT

##### **Box 24: Corridor safety measures for cargo transport on the N4 Toll Route**

Innovative technologies for the N4 Toll Route, such as the implementation of load control measures, a satellite tracking system, an electronic (automatic) tolling system and the Cross-Border Road Safety Management (TIDS) led to significantly increased road safety.

*See the N4 Toll Route case study in Part B for further detail on this project.*

Harmonisation of rules and regulations can also extend to environmental and social aspects of a project. When assessing the impacts of relevant rules and regulations, it is important to also consider the broader impacts of the project. This is where engaging the right stakeholders is essential to a project's success. A common scenario of this is environmental assessments for a project.

Environmental regulations often focus on ecology but do not offer guidance related specifically to the displacement of affected residents, occupational hazards, public health concerns and other factors directly impacting the residents of the participating countries and the workers constructing the project. These should be, to the maximum extent possible, harmonised between the countries concerned to avoid controversies, such as that seen on the Øresund Fixed Link (refer to Box 25: Approaches to environmental investigation in the Øresund Fixed Link). This ties into the social licence of a project (refer to Section 4.5 Managing efficiently throughout the project lifecycle).

#### PROJECT

##### **Box 25: Approaches to environmental investigation on the Øresund Fixed Link**

In the project design and construction stages, one of the main differences between the two countries' planning regimes concerned the formal procedures for environmental enquiries.

In Denmark, the environmental assessment report was made public only a few weeks before the signature of the governmental agreement. In Sweden, the formal procedure implied that the projects had to be tested against different legal frameworks in several juridical instances before approval, which was a long and complicated process.

This led to a controversial situation, in which construction on the Danish side began before the Swedish environmental inquiry was fully completed. As the environmental inquiry could have influenced the shape and design of the fixed link, the inquiry had the potential to significantly alter the project. However, this did not eventuate.

*See the Øresund Fixed Link case study in Part B for further detail on this project.*

One of the largest harmonisation challenges is when the countries involved do not have the same legal system. The legal system used determines how the project is planned, procured and governed through the contracts devised for its delivery. Section 4.4 on governance structures provides detail on how the legal system affects the governance structure and operation.

All parties must ultimately respect the contracts entered into and be able to enforce their provisions in a court of law if necessary. The arbitration seen on the Channel Tunnel between the UK and France is a good example of this (refer to Section 4.5 Managing efficiently throughout the project lifecycle).