4.5

Managing efficiently throughout the project lifecycle

4.5 MANAGING EFFICIENTLY THROUGHOUT THE PROJECT LIFECYCLE

Strong governance and monitoring mechanisms adopted by a project owner should facilitate the efficient management of a cross-border project across its lifecycle and allow the project to respond to the changing project environment. This section details good practice in the functional management of cross-border projects, including:

- ensuring flexibility in the governance structure to adapt to changing circumstances (Section 4.5.1)
- resolving operational risks and contractual disputes (Section 4.5.2)
- achieving and maintaining social licence of the project and entities involved (Section 4.5.3).

Summary of key learnings related to efficient management throughout the project lifecycle

The key learnings suggest that governments should consider the following:

- The governance structure of a cross-border project should, where possible, be flexible enough to adapt to changes in government mandates or institutional reforms.
- It is important that an effective mechanism, compatible with the legal and regulatory frameworks of the entities and countries involved, be implemented for performance review, compliance and dispute resolution across the life of the project.
- Social licence needs to be achieved and maintained throughout the project lifecycle through effective public consultation and the provision of opportunities for local communities through technical and institutional capacity-building measures.

4.5.1 Ensuring a flexible governance structure

Across the lifetime of a project, changing priorities or new internal and external circumstances can result in changes to how the project is governed and by whom.

Changes in governance structure across phases of the project's lifecycle are expected and often built into the governance structure (refer to Section 4.4 on governance structures). However, events outside the project's control, such as changes in policy, macro-economic events and disasters, can force a project to adjust and adapt its governance operational structures to a new normal. For cross-border projects, having two or more countries involved makes this a unique challenge.

Decisions by each sovereign state may not align. The cross-border project has to bridge any such gap. The most pertinent examples of changing circumstances during the development of this Reference Guide are the COVID-19 pandemic (refer to Box 34: Political coordination during the COVID-19 pandemic) and the United Kingdom's withdrawal from the EU, a.k.a Brexit (refer to Box 35: Channel Tunnel dealing with Brexit). These examples show that building flexibility into a project's governance structure where it is possible to do so will help ensure the project can adapt to a changing environment.

PROJECT

Box 34: Political coordination during the COVID-19 pandemic

The COVID-19 outbreak resulted in many countries closing their borders and implementing movement controls to reduce the spread of the virus. This severely impacted several operational cross-border infrastructure assets, as countries took different approaches to combat the spread of the virus. Two interesting examples are the Øresund Fixed Link between Denmark and Sweden and the Malaysia–Singapore Second Link.

Øresund Fixed Link

The Fixed Link connects two countries that have taken very different approaches to combatting COVID-19. In response to the rapid emergence of the virus, the Danish Government chose to 'lock down' and restrict travel with neighbouring countries such as Sweden. Sweden, took the opposite approach, allowing citizens to continue moving freely in the country.

This presented an interesting challenge for the Øresund Fixed Link, as it remained open for freight traffic and trips from Denmark to Sweden but was restricted in the opposite direction. Travellers could only enter Denmark from Sweden if they had a valid reason, such as living or working in Denmark. The restriction greatly reduced traffic flow. Between 14 March 2020 – when the regulations entered into force – and 12 April 2020, car traffic was about 71% lower than during the same period in 2019. Train traffic was also severely reduced, with only one to two trains crossing the link per hour instead of six in regular times.

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

Malaysia–Singapore Link

The Causeway and the Malaysia–Singapore Second Link are the only two border crossings between Malaysia and Singapore. They are critical assets for hundreds of thousands of people commuting daily between Malaysia and Singapore for work and for Singapore's freight and logistics supply chain. Due to COVID-19, on 18 March 2020, Malaysia implemented a Movement Control Order, effectively closing its borders.

The two governments agreed to continue entry screening and to align health screening protocols at the two cross-border links. They also agreed to work out the operational details to ensure the continued flow of goods, cargo and food supplies between the countries. At the same time, the border closure necessitated the Singapore Government's assistance for many thousands of Malaysian workers looking for temporary accommodation in Singapore.

At the time of writing, the border has partially reopened with the Reciprocal Green Lane (RGL) and Periodic Commuting Arrangement (PCA) schemes introduced to facilitate short-term travel for essential business and official purposes, and to allow work pass holders to attend their workplaces across the border.

Source: https://safetravel.ica.gov.sg/malaysia/overview

PROJECT

Box 35: Channel Tunnel dealing with Brexit

The Channel Tunnel has been able to adapt to the realities of Brexit due to the flexibility enabled by the Treaty of Canterbury, which initiated the development of the Tunnel, and the establishment of the Channel Tunnel Intergovernmental Commission (IGC).

In principle, smooth transit through the tunnel, regardless of Brexit, is ensured by the Treaty of Canterbury, which stipulates that France and the UK will facilitate smooth travel through the Tunnel up until 2086. In practice, the IGC and Getlink Group, the Tunnel's operator, are in charge of ensuring transit is maintained in accordance with evolving rules and regulations devised by the UK and French Governments and the European Union.

The IGC, comprised of equal numbers of French and UK government representatives, oversaw the Tunnel's construction and now oversees the Tunnel's operation. Primarily this involves regulatory function that implements common EU legislation. The IGC is directly involved in the process of coordinating the transition following Brexit.

While the Tunnel is still exposed to administrational changes that sit outside the purview of the Treaty of Canterbury or the IGC, such as border control, employment law, and licencing agreements, the physical operation of the Tunnel is ensured by the Treaty and the work of the IGC.

Source: https://www.eurotunnel.com/uk/brexit/will-the-channel-tunnel-be-open-after-brexit/

PROGRAM

Box 36: European Grouping of Territorial Cooperation (EGTC) on the Rhine–Alpine Corridor

Several cities, regions and ports teamed up in an EU Interreg project called CODE24 to coordinate the development of the TEN-T Rhine–Alpine Corridor between Rotterdam and Genoa from a regional and local perspective. After five years, the CODE24 project partners presented a common strategy for the future development of the Rhine–Alpine Corridor, with a combination of economic development, spatial, transport and ecological planning measures to address urgent issues of capacity, sustainability and quality of life.

In 2015, the project partners decided to establish a permanent cooperation body with the purpose of securing a long-term partnership and cooperation beyond the limited Interreg project period. They chose the format of the European Grouping of Territorial Cooperation (EGTC) to:

- implement the joint development strategy for the multimodal Rhine¬Alpine Corridor
- promote the joint interests of EGTC members to national, European and infrastructure institutions
- provide a central platform for mutual information, exchange of experience and encounter
- direct funds to corridor-related activities and projects.

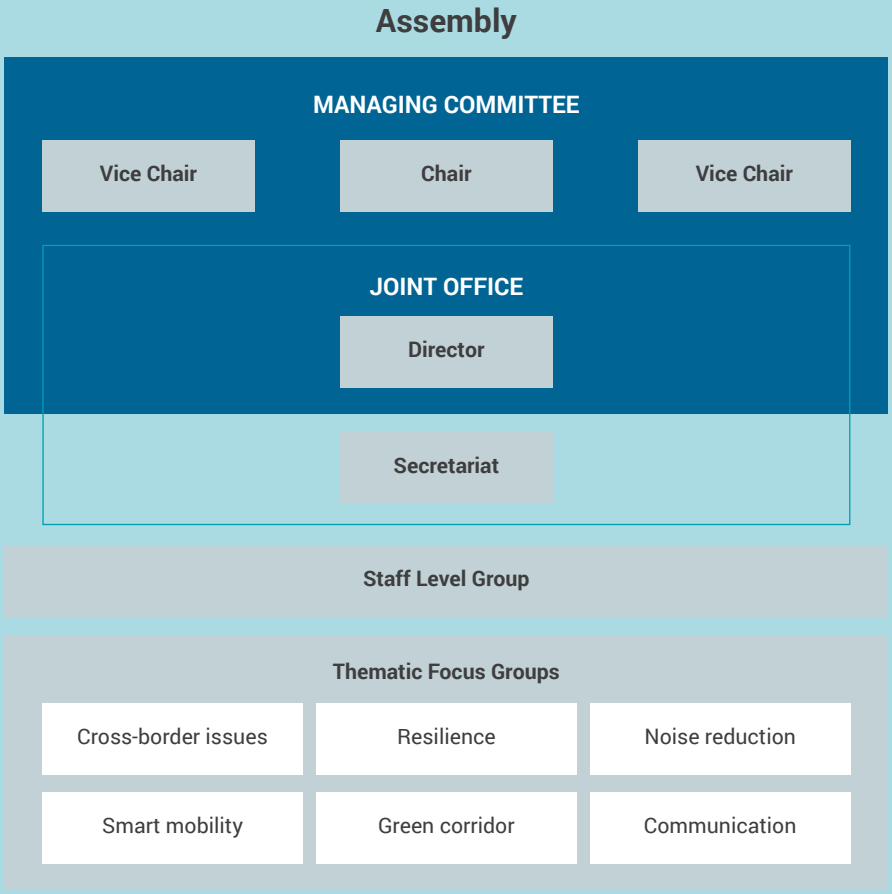

Figure 7: Organisational structure of the Rhine–Alpine Corridor EGTC

Source: https://egtc-rhine-alpine.eu/

It is evident from the literature that governance of cross-border projects is effective when stakeholder consultation and input are maintained throughout the project's life. The knowledge accumulated in the cross-border project through learning and information sharing with both internal and external stakeholders can help determine the future of a project, such as the extension of an operation or delivery mandate. Often, this involves setting up expert groups to exchange best practice and advise on ensuring wider economic benefits of a cross-border project.

In some cases, this even includes adopting a new legal form to manage external funding and take decisions on follow-up investments, such as seen on the Rhine–Alpine Corridor (refer to Box 36: European Grouping of Territorial Cooperation (EGTC) on the Rhine–Alpine Corridor).

4.5.2 Resolving operational risks and contractual disputes

In managing a cross-border project, it is important that the governments involved establish and maintain an effective mechanism to identify and deal with risks and disputes related to the project. Such risks include (among others) geopolitical disputes, insolvency of the project company (e.g. SPV), contractual disputes between equity holders and risk allocation ambiguity in extraordinary events.

Identifying these risks early is the best approach on any project, but even more so on cross-border projects, as finding a resolution can be a lengthier and more difficult process than in the case of national investments. Examples of insolvency and geopolitical disputes are the bankruptcy of the high-speed rail Perpignan–Figueres project (refer to Box 37: SPV bankruptcy in the high-speed rail Perpignan-Figueres project) and the Itaipu Hydroelectric Dam dispute with Argentina (refer to Box 38: Conflict in the Itaipu Hydroelectric Dam project).

A specific challenge arises in projects between countries that have different types of legal systems, as in the case of France and the UK. Any arbitration in contractual disputes in the Channel Tunnel project has to be settled in coordination between the English common law system and the French civil law system (refer to Box 39: Arbitration on cross-border issues in the Channel Tunnel).

PROJECT

Box 37: SPV bankruptcy in the high-speed rail Perpignan–Figueres project

The 44 km Perpignan–Figueres high-speed rail concession between France and Spain benefited from large state subsidies from the two governments and the EU (EUR590 million, 57% of the capital expenditure). The revenue flow depended on tolls levied on train operators like SNCF, RENFE and others.

The line was fully operational in 2010, but traffic levels were much lower than anticipated. This led to financial difficulties for the private concessionaire TP Ferro, with EUR500 million in debts. TP Ferro asked for EUR300 million in compensation payments from the two governments, whom it made responsible for the losses due to delays in providing cross-border network infrastructure (e.g. train stations) and the alleged priority of domestic rail traffic over the high-speed rail link.

TP Ferro obtained compensation before going into liquidation in 2016 after failing to renegotiate its debts of almost EUR400 million with its creditors. As a result, the two governments agreed to form a joint venture to take over the operation of the line.

Source: https://www.railway-technology.com/projects/perpignan/ and subsequent progress updates

PROJECT

Box 38: Conflict in the Itaipu Hydroelectric Dam project

The signature of the Treaty of Itaipu in 1973 led to conflicts with Argentina, as the construction of a dam directly affected water flows received downstream on the Paraná river. This threatened Argentina's various plans for hydropower production, such as the Corpus hydroelectric power plant, planned downstream from the Itaipu Dam.

The conflict was resolved in the 1979 Tripartite Itaipu-Corpus Agreement, signed by Paraguay, Argentina and Brazil, which sets out downstream flow requirements with which Itaipu Binacional must comply.

See the Itaipu Hydroelectric Dam case study in Part B for further detail on this project.

PROJECT

Box 39: Arbitration on cross-border issues in the Channel Tunnel

Between 1999 and 2002, Eurotunnel's business was severely harmed by massive intrusions into its terminal in France by large numbers of migrants seeking to gain access to the UK through the Channel Tunnel.

Eurotunnel complained that the presence of a hostel for the migrants, opened by the French Government close to the mouth of the tunnel, acted as a magnet, and that neither France nor the UK took the necessary steps to resolve this situation for several years. To try and recover its losses, Eurotunnel launched arbitration proceedings in December 2003 against the French and UK Governments. The arbitration was based on a provision in the Treaty and the Concession Agreement under which Eurotunnel operated the tunnel.

In January 2007, Eurotunnel secured a landmark victory – a ruling that marked a major step forward both for international foreign investment law and for Eurotunnel itself. Eurotunnel was represented by an English arbitration team coordinated from London, incorporating both London and Paris civil and common law arbitration specialists. The dispute was resolved through arbitration by a prestigious tribunal of five eminent arbitrators sitting in the Peace Palace in The Hague. The arbitration was ad hoc, governed by the United Nations Commission on International Trade Law (UNCITRAL) rules and was conducted in both English and French.

Source: https://www.eversheds-sutherland.com/documents/lawsocietyenglandandwalesjurisdictionofchoice.pdf

4.5.3 Achieving and maintaining social licence

Social licence is, in broad terms, the implicit licence given by a community to an entity (public or private) or project operating in the community. It is an increasingly essential part of business operations. Its criticality is even more pronounced for infrastructure projects that cause major disruption to communities during construction and have lasting effects – whether positive and negative – once operational. Social licence can be won and lost throughout the project's life, and therefore should be a constant key consideration.

Social licence commonly revolves around consideration and mitigation of social, environmental and cultural impacts to the project's immediate and connected environment. Consideration of these impacts is essential to achieving acceptance for the project among affected residents and beneficiaries. As these impacts are relevant throughout the project lifecycle, it is important to establish a due diligence framework during the planning process, and ensure oversight during project delivery. Due diligence should cover the range of environmental and human aspects as presented in Figure 8.

Environmental factors

- Air quality and climate
- Surface water (where applicable) and groundwater
- Vegetation, vegetation communities and wetlands
- Fish and fish habitat
- Wildlife, wildlife habitat and migratory birds
- Species at risk and endangered species
- Noise and vibration
- Contaminated sites

Human health and socioeconomic factors

- Displacement of people
- Occupational hazards during construction
- Anticipated benefits to local community
- Anticipated disamenity to local community
- Virus and communicable disease concerns (during and as a result of construction)
- Radiation and other public health impacts

Cultural factors

- Heritage site displacement
- Cultural site displacement
- Sites of historical, archaeological, paleontological or architectural significance

Figure 8: Environmental and social impact factors in the due diligence framework for cross-border projects

Oversight is required beyond the planning process to ensure that any relevant mitigation measures are enforced, and to monitor for any change in the anticipated impacts. Oversight should be the purview of the governing body that is responsible for ensuring project implementation in accordance with the relevant rules and regulations. To enable the governing body to manage the social licence of the project, certain actions to achieve and maintain social licence can be written into the performance specifications of project contracts.

Cross-border projects add the additional layer of complexity in crossing two or more jurisdictions, and therefore involving two or more regulatory regimes and communities. Like government and private sector stakeholders, affected communities can hold different views on a project and its environmental and social impacts. It is essential for the project to mitigate and adapt to the concerns and needs of the communities it affects.

Regulatory compliance should be considered the minimum standard. There can be a need to include requirements above and beyond these minimum requirements in the output specifications of a contract, to meet the needs of communities and stakeholders.[24] Further information on harmonisation of rules and regulations can be found in Section 4.2.4.

Stakeholder outreach is a lifecycle issue, as successful projects that maintain stakeholder acceptance are typically those in which the governing body maintains transparency of project activities in tune with public sentiments, pre-empts foreseeable issues, and addresses new issues as they arise. Examples of this are the General Ombudsman's Office created for the Itaipu Hydroelectric Dam (refer to Box 40: Approach to inclusivity and public outreach in Itaipu) and the roles assumed by the Windsor¬Detroit Bridge Authority (WDBA) on the Gordie Howe International Bridge (refer to Box 41: Environmental analysis, inclusivity and public outreach for the Gordie Howe Bridge). Both of these projects also demonstrate the importance of inclusivity and transparency to maintaining community awareness and public support.

PROJECT

Box 40: Approach to inclusivity and public outreach in Itaipu

The Itaipu Dam submerged a natural landmark waterfall and displaced 65,000 people (60% Brazilians, 40% Paraguayans) as a result of the artificial lake it created. At the time of construction in 1983, no environmental protections were afforded by the laws of either participating country. Since 2003, the governing body Itaipu Binacional has been implementing environmental protection measures that are critical to the sustainability of the region – such as for fish and wildlife protection to support local food sources.

In 2009, the General Ombudsman's Office was created as an autonomous body to ensure communication between the dam operators and the public. The office receives suggestions, complaints, compliments and denunciations, and, after screening them, refers them to the relevant organisations. In parallel, the company formed an Ethics Committee that receives and evaluates any complaints of non-ethical conduct that constitutes an infringement of the values, principles and norms of the Itaipu Binacional Code of Ethics. The office is staffed by appointees from both countries, with equal representation.

See the Itaipu Hydroelectric Dam case study in Part B for further detail on this project.

Social licence is not just about managing social, environmental and cultural concerns; it is also about what the project gives back to the community in which it is operating. Implementing technical and institutional capacity-building measures in the affected communities can also help build social licence. Often these are special provisions in the project's contract, but they can also be developed at a later stage or be developed by the project company separately.

24 https://www.gihub.org/infrastructure-output-specifications/

PROJECT

Box 41: Environmental analysis, inclusivity and public outreach for the Gordie Howe International Bridge

Environmental analysis studies were conducted during the investment planning process and were used to inform the analysis of border crossing alternatives. Ultimately, a bridge was selected.

The independent governing body, WDBA – which is responsible for oversight of the construction, financing and operations – is also responsible for public outreach and engagement.

WDBA considers transparency a top priority and runs a robust public outreach program. Public consultations occur on a regular basis, at the time of any key schedule updates and at the onset of major construction activities. The public provides feedback and concerns, which are addressed by WDBA. The proactive engagement of the public has been a key factor in maintaining positive public perception and support for the project.

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

One such approach, seen on the N4 Toll Route (refer to Box 42: Community participation in the N4 Toll Route project) and the Addis Ababa–Djibouti Railway (refer to Box 43: Knowledge transfer measures in the Addis Ababa–Djibouti Railway project), is to provide training, education and jobs to local communities. This contributes to strengthening local communities' capacities and promotes long-term growth opportunities and socioeconomic development.

Given most cross-border projects are economic infrastructure that are looking to promote economic trade and prosperity between countries, local capacity-building can help stimulate this broader goal.

PROJECT

Box 42: Community participation in the N4 Toll Route project

TRAC, the concessionaire of the N4 Toll Route project, was obliged to award a set share of subcontracts to local companies and to set up an integrated community participation program.

As part of this, TRAC developed three training centres along the project route, where more than 20,000 members of the local communities were trained on various issues, including literacy and HIV awareness.

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

PROJECT

Box 43: Knowledge transfer measures in the Addis Ababa–Djibouti Railway project

As part of the investment propositions on this project, the two engaged Chinese companies, CREC and CCECC, committed themselves to hiring local workers in the project construction phase – more than 20,000 local workers in Ethiopia and 5,000 in Djibouti. Upon completion of the project, approximately 2,000 local workers were hired for infrastructure and rolling stock maintenance.

In addition, more than 300 employees of the ERC were sent to technical universities in Beijing, Tianjin and Chengdu to further their professional knowledge of railway engineering, train driving and track maintenance before taking over the infrastructure operations and maintenance responsibility from 2024.

See the Addis Ababa–Djibouti Railway case study in Part B for further detail on this project.