

Appendix 1 – Processing by authorities, including process risks

1. Background

The Fehmarnbelt Fixed Link (coast-to-coast) must be approved by the authorities in Denmark and Germany pursuant to applicable legislation in the respective countries, see article 2 in the State Treaty of 3 September 2008. Furthermore, the State Treaty indicates that if legally possible, the company may be assigned responsibility for filing the application for authority approval.

The following brief has the aim of providing an overview of the process for authority approval in Germany and Denmark of the Fehmarnbelt Fixed Link.

2. Plan approval procedure in Germany

The German plan approval takes the form of a single, consolidated approval of the entire project, including environmental assessment, which means location, alignment and the overall design with a view to clarifying, once and for all, any conflicts of interests which the project may give rise to.

The plan approval procedure is an administrative process governed by ordinary statutes and rules applicable at federation and federal state level. The process is not influenced by political considerations, and solely concerns fulfilment of legal requirements including, in particular, minimising negative implications and thorough consideration of alternatives through a methodical process.

The trunk road and rail sections are included as a combined project, but must be processed pursuant to both trunk road and rail legislation, respectively. The plan approval authority then weighs the various expressions of interest and determines the outcome of this in a combined plan approval decision (construction permit). As a general rule, further approvals or permits will not be required for the project.

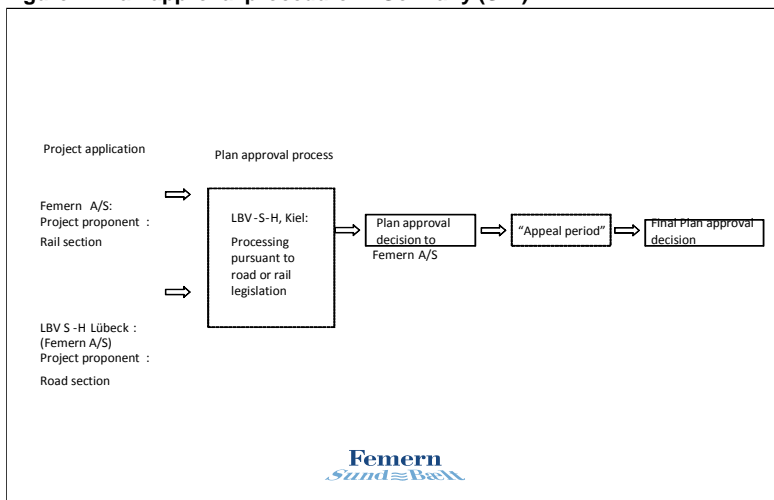
The project proponent for the *German trunk road section*, in formal terms, is Landesbetrieb Straßenbau und Verkehr Schleswig-Holstein, Lübeck, (LBV S-H Lübeck), but the preparation work itself will be attended to by Femern A/S. The reason for this is that the planning and safety responsibility of the federation motorways in Germany cannot, under the German Constitution, be delegated to private contracting (and even less so, foreign) companies. In consequence of this, in autumn 2009 a management agreement was concluded between Femern A/S and LBV S-H Lübeck, which describes the division of responsibilities and roles between the two parties.

In cooperation with Femern A/S, LBV S-H Lübeck will be responsible for preparation of the plan approval documents and will contribute to ensuring that the material content as well as the selected legal approach are in accordance with the applicable requirements.

For the *rail section*, German legislation will permit Femern A/S to file a project application independently.

The plan approval authority in Germany is the National Road Directorate in Schleswig-Holstein's planning authority, Landesbetrieb Straßenbau und Verkehr Schleswig-Holstein, Kiel (LBV S-H Kiel).

Figure 1. Plan approval procedure in Germany (S-H)



The company's overall, revised time schedule allows 18 months for the application processing period, since in accordance with standard practice, it is assumed that prior to the filing of the application, the approving authorities are given the opportunity to examine the plan approval documents for a three-month period. The German authorities normally require relevant documentation material to be made available to the authorities, and that affected parties, including environmental organisations entitled to hearing, have an opportunity to be familiarised with the project.

The plan approval documents are expected to run to several thousands of pages and approx. 350 detailed drawings of the design of the structures. Thus, in terms of time and quality it is a very sizeable challenge to ensure that the documents can be completed on time, especially taking into consideration that the authorities will want the application material submitted in Danish and German, respectively. Moreover, Germany has an agreement with Poland that those parts of the material concerning the environmental impact assessment must be available in Polish.

During the application processing period, it is possible to submit supplementary material if this is assessed as required by the authorities, but the more complete the plan approval documents are from the outset, the faster the processing can be done.

The final plan approval decision is expected to be comprehensive and detailed and will naturally contain a number of special terms, e.g. concerning the conditions under which the contract work is to be executed in order to respect environmental considerations.

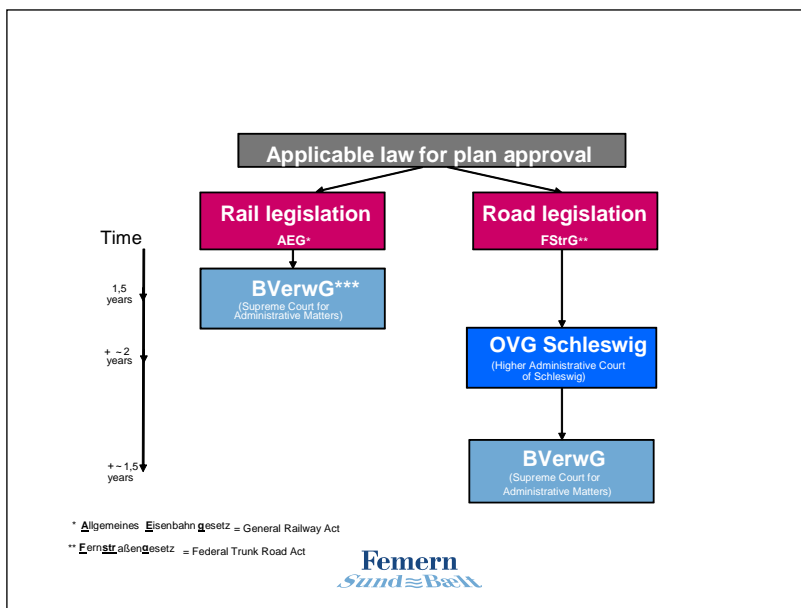
Possibilities for appeal

The plan approval decision may be appealed by persons who are directly affected by the project, as well as by NGOs who are entitled to appeal in accordance with German rules. The appeal may concern issues with greater or lesser bearing on the project. If the appeal is of more fundamental importance the court may decide, upon the request of the petitioner that the execution of the project is to be temporarily suspended until the matter has been resolved.

During the authority's processing, time will be set aside for objections and subsequent dialogue (hearing). Normally, this procedure means that there is the opportunity to assess which issues may be made the object of appeal cases. During both the approval process and any appeal process, there is the option of making concessions in order to avoid lengthy processing.

The duration of the processing of potential appeal cases is being checked. A provisional estimate is in the region of 1½ to 2½ years per appeal board, see figure 2.

Figure 2. Provisional estimate of duration of case processing time for appeal boards for rail legislation (AEG) and road legislation (FStrG), respectively.



The onward process

Femern A/S is in continuous dialogue with the German authorities to clarify the legal as well as the content basis for the plan approval documents and the onward process. The dialogue also includes the identification of authorities who must be consulted in order to clarify technical, environmental and planning matters in relation to the design of the construction. The Treaty between Denmark and Germany only sets out the guidelines for this to a certain extent.

At the same time, an internal process is taking place with the aim of identifying aspects in the approval processes in the two countries, which must be coordinated in order to avoid the processing of one aspect in the one country complicating the processing of the corresponding aspect in the other country. Among other things, this concerns methods in the environmental assessment work, including in relation to the Natura 2000 directives.

It is assumed that over the course of 2010, the terms for the German plan approval procedure will have been mapped so that the basis for the preparation of the comprehensive application material is in place.

3. Authority processing in Denmark

The Danish approval process is assumed to proceed as follows:

- Prior to submission of the Construction Act, Femern A/S will have prepared an EIA report and other necessary environmental assessments of the project. A comprehensive environmental assessment of the project will be conducted on the basis of the overall project and this process will be carried out close to the citizens so that comments in the public hearing may be included in decision-support going forward.
- The EIA report and other environmental assessments, including the hearing of the public, is a prerequisite so that the Minister of Transport, following consultation with the Minister of the Environment, can recommend the final technical solution for the Fehmarnbelt Fixed Link for enactment in Folketinget in the form of a Construction Act.
- The project will be finally adopted with the Construction Act, i.e. the project will be adopted in detail by law and will thus be exempt from the EIA rules in the planning act and the EIA directive.

The Construction Act for the coast-to-coast project will state how the relationship with the standard applicable legislation is regulated and how the Construction Act and the environmental judicial rulings/approvals can be tried by the courts or by an independent appeals board.

4. Summary assessment regarding process risk

As set out in the foregoing, implementation of the authority approval process, including transnational coordination, etc presents a number of temporal and legal challenges. In general, the risk concerns four issues:

- Preparation of the extensive application material to be used for the Danish and, in particular, the German plan approval procedure, represents a huge challenge in terms of timing, not just because of the volume but also because of the need, to a great extent, to prepare the material in three languages. Added to this is that as far as possible the intention is to resolve all “conflicts” in relation to 3rd parties before filing the application, including entering into agreements on environmental compensation for nature loss, agreements with affected landowners, etc.
- Coordination of the application material across national borders, which not only places great demands (including in terms of resources) on the authorities in the two countries, but also on Femern A/S in order to contribute to appropriate organising of the coordination.
- According to German rules, right of appeal to relevant administrative courts is granted to directly affected parties, including interest organisations pursuant to road and/or rail legislation. In the event that road legislation forms the basis for the approval process, two appeal boards exist – otherwise only one.
- It is assumed that Danish approval of the project will be granted through the enactment of the Construction Act in detail and that the relationship with the standard applicable legislation (the planning act, environmental judicial acts, etc.) will be regulated in the Construction Act.

Annex

German plan approval procedure (Planfeststellungsverfahren)

Below is an overview of the German plan approval procedure from the time of filing the application to the plan approval authority in Kiel, Schleswig-Holstein.

Prior to this, in the period up to the end of 2011, Femern A/S and LBV S-H Lübeck must prepare the plan approval submittals which underlines the importance of the fact that the technical solution must be indicated as early as possible. Concurrently with this, an EIA will be prepared which is planned to be released for public hearing concurrently with the plan approval process in Germany.

Furthermore, the assumption is that the design of the technical solution that is selected is not significantly altered in relation to the existing conceptual design (cable-stayed bridge or immersed tunnel) given that this will affect the time schedule for the preparation of the EIA report, etc.

December 2011 – March 2012	The draft application material will be examined by the plan approval authority and any relevant federation authorities.
April 2012	Femern A/S and LBV S-H Lübeck submit the plan approval documents for the rail and road section of the project, respectively, to the approval authority, LBV S-H Kiel.
Mid-May – mid-June 2012	Following publication of the plan approval documents, the public will have the opportunity of becoming familiar with the application material. Objections can be filed..
Mid-April – August 2012	The affected parties (NGO's, land owners and neighbours, etc.) are involved in this period as well as relevant authorities in the plan approval process. Objections, proposals and comments on the application material can be filed with the plan approval authority.
August – November 2012	Supplementary plan approval documents will be prepared on the basis of objections, demands and requirements put forward for supplementary information, etc.
December 2012 to February 2013	Hearings are held in this period during which affected parties are given the opportunity to discuss the plan approval documents with the project proponents.

February – March 2013

The public meetings are reported on by the plan approval authority in Kiel.

March – September 2013

The plan approval authority prepares a plan approval decision for the project.

The plan approval decision will be in place at the end of September 2013. There is then one month's appeal deadline. If no appeals are made, the construction work will be able to get underway.