

Implementation of pipeline projects with practical examples

Public-law procedures, rights of way and internal organisation

by **Marcus Mattis**

The resistance to large-scale projects in pipeline construction by residents, citizens' initiatives and farmers is growing continuously. As a result of this, the requirements for handling the procedures, as well as the organisational requirements in companies, are constantly increasing.

On the basis of anonymised practical examples, experiences and obstacles are presented from various pipeline construction projects (preferably pipeline projects). An organisational further development of the internal structures is also described. The existing new guidelines for approval processes, which partially exist in the states, will be discussed. In addition to the legally prescribed public relations measures, further steps are frequently necessary for this. So far, such measures have also been implemented by pipeline builders, partially without existing guidelines.

1. REQUIREMENTS FOR PIPELINE PROCEDURES

The requirements for the implementation of pipeline projects have been changing and tightening up constantly in the past years. While the procedures were previously relatively easy to complete and required low budgets for public relations (often €50000 – €100000 was sufficient, even for several hundred kilometres of pipeline), the picture has now changed completely.

The cause of this is that the general public have become more critical. The frequent presentation in the media of all types of protests, fast networking via the Internet, WhatsApp, etc., as well as a more critical attitude towards projects, are the cause of this. In addition to this: Older people, who have retired from working life, some of whom are highly qualified, organise the protest, professionally, in some cases.

For various motives, a NIMBY attitude (Not In My Backyard) has frequently turned into a BANANA (Build Absolutely Nothing Anywhere Near Anybody) attitude. These are certainly overstated catchphrases, but such attitudes

of individuals are appearing to an increasing extent. In addition to this, political parties rely heavily on the protest, in some cases, thereby calling out to their clientele for tactical power reasons.

Politics wants more involvement and politicians do not want trouble, so that they can be re-elected. As is frequently observed, this leads to populist, sometimes even post-factual actions, at all levels – municipal, state, federal and European policy – and is frequently the cause of significantly more complex procedures.

Not least, approval authorities do not want trouble, and have the problem of needing to implement increasingly more complex legislations (which are contradictory, in some cases). In doing so, administrations frequently shy away from risk and are concerned about failing in front of administrative courts. Therefore, a higher safeguarding mentality can be observed with approval authorities.

All of this tightens up the requirements for pipeline procedures, with respect to communication, as well as legal precision and implementation precision on building sites.

2. GUIDELINES IN THE COUNTRIES

In several federal states (Baden-Wuerttemberg [1] and North Rhine-Westphalia [2]), there are guidelines for procedures. In other federal states, such guidelines are unknown, in some cases, and in other cases, they relate to different sectors. Another example of guidelines is VDI 7000 [3].

Some of these guidelines regulate the participation of the public in great detail. Prior to starting a procedure, it is advisable to take a very close look at the guidelines in the respective countries and consult on and document their implementation with the approval authorities.

VDI Guideline 7000 can be regarded as a suggestion for procedures. However, it requires supplementation with regard to the practical implementation of procedures.

The European Court of Justice ruling dated 15 October 2015 on preclusion tightens this up further. In this, the judges have established that preclusion apparently has no validity in Germany. This means that even if no objections or suggestions have been made in the approval procedure for the respective specific issue, legal action is still possible afterwards. As this is a very specific legal issue, reference is only made to the consequences here. A more detailed analysis of the topic by the respective lawyers in the procedure is explicitly recommended [4].

3. PETITIONS

In the past years, it has been increasingly observed with project opponents that they submit petitions to the respective state parliaments/federal parliament. This is also a method of blocking and obstructing projects. In doing so, several project opponents have come up with interesting strategies. These are not discussed here, in order to avoid supplying a blueprint. The author will be pleased to forward examples of this to project sponsors upon request.

4. INTERACTION BETWEEN APPROVAL PROCEDURES AND EXPROPRIATION OPPORTUNITIES

The German Energy Act provides the opportunity to execute expropriations after successful approval procedures. In practice, we have established that frequently, the interaction between approval procedures (depending on the pipe diameter) and expropriation opportunities are not investigated precisely enough prior to the procedures. As the state procedural laws play a role in this, it will only be dealt with briefly.

During the ongoing procedure, it often emerges that errors have been made at an early stage, which lead to

difficulties. Intensive cooperation between technical, commercial and legal project management is vital for this.

In any case, it is advisable to work out the relationships between approval procedures and expropriation opportunities in the respective federal state with administrative lawyers, who have process experience. If possible, the responsible expropriation authority should be consulted beforehand. It is also helpful to use the practical experience of other project sponsors.

Even if expropriation should be the "ultima ratio", it is always beneficial to know about one's options in advance.

5. BUILDING A PRODUCT PIPELINE

The author was mandated to support the construction of a product pipeline (which is routed through several federal states) in a federal state. At that time, there were several hundred proceedings against the plan approval by private individuals and legal actions from approx. a quarter of the municipalities affected, as well as several threatened legal actions against the plan approval procedure. There was no expropriation opportunity yet. Therefore, it was important to settle the legal actions against the approval using negotiation, if possible. This was aggravated by the fact that previous pipeline construction projects (in the 60s and 70s) had led to considerable resentment, particularly with the farmers.

For all of the municipalities and municipal special-purpose associations, this was successful through tough negotiations and the willingness of the project sponsor to make numerous adjustments to the route, upon request by the municipalities. In some municipalities, up to six inspections were made of the route, to which the stakeholders were invited. In some cases, they made contradictory demands, so that ultimately, compromises were able to be worked out on site at the inspections. The contact persons for rights of way were also temporarily active as contact persons for other issues (e.g. plan approval procedure), as so-called WAPs (rights-of-way consultants and contacts on site). The continuity of the contents made a significant contribution to the success.

These compromises were partially also found after the enactment of the plan approval and were approved by the approval authority in a cover-sheet procedure. It turned out to be extraordinarily helpful, if rights of way were already available on the respective section or were obtained during the course of the changes with the support of stakeholders on site.

This was also successful with most of the private individuals. Below the line, approx. 40 private claimants were left.

In order to obtain the rights of way, a Pipeline Expropriation Act was virtually unanimously approved in the

Landtag [state parliament] of the federal state. This turned out to be extraordinarily effective, but could only be adopted after a very precise justification of the necessity. This approach was recently confirmed by a supreme court. The installation has now successfully been in operation for several years.

6. NATURAL GAS PIPELINE PROJECT IN OPERATION

For the procedure for the 80-km-long natural gas pipeline with 80 bar, the municipalities were already involved in the regional planning procedure.

Through the very early communication with administrations, municipal councils and other stakeholders, such as farmers' associations and environmental protection associations, suggestions and considerations could also be taken into account. A deviation from the preferred route, from which a municipality would be burdened more than previously anticipated, was solved with an examination of alternatives. Similar to a plan approval procedure, this is performed in a very detailed manner. With these arguments, the municipal administrations and bodies were convinced about the approach, so that there was no resistance here.

In the municipality, which was then affected more intensively, several suggestions were implemented, with which the installation was moved further away from an existing residential development. Ultimately, the plan approval procedure was implemented without proceedings. A few expropriations were necessary, however, there were also no proceedings in this respect.

It turned out to be very helpful that the contact persons were the same – from the first encounter in the regional planning procedure right up to the opening ceremony – so that there was a high degree of continuity. Although additional service providers were brought in to obtain the rights of way, those who appeared in the critical cases were virtually always the same contact persons.

During the building phase, continuous support was available for the stakeholders. For example, events were offered on a regular basis for administrations, mayors and municipal councils, to present the building progress.

This approach has also proven itself in the meantime, as new building projects in the administrative districts concerned are now in the approval phase. The positive and open support of the municipal administrations, municipal councils and other stakeholders (also farmers' associations) has shown that this project sponsor is a reliable partner. This has turned out to be extraordinarily successful in the current procedures.

The installation has been in operation for a longer period of time.

7. NATURAL GAS PIPELINE IN THE APPROVAL PROCEDURE

Based on the experiences from 6, the procedure was refined further in a current procedure. There were essentially the following amendments to the procedure described in 6:

- First of all, an in-depth DNA of the route was worked out. This was not only performed on a desktop, but possible critical points were also identified in many confidential information discussions on site. This created a very cohesive picture of the situation on site.
- Even prior to the regional planning procedure, all municipal administrations were informed, events were held in virtually all municipal councils and additional stakeholders, such as farmers' associations and nature conservation associations were surveyed and asked for their ideas. The local knowledge of the stakeholders on site led to some good ideas, which may otherwise have only emerged in the procedure. Therefore, these suggestions can be incorporated at a very early stage and thus be avoided as objections in the planning approval procedure.
- The communication was also refined and supported at a very early stage with information brochures and a website. A newsletter is intended to provide regular information. It is sent to specific stakeholders and can be ordered on the Internet.
- A "hawker's tray" was developed, which contains various elements for communication (from flyers to information markets). This way, the individual requirements can be dealt with in every municipality. A municipality, which is affected peripherally by 200 m of pipeline, has different requirements than if the installation crosses several kilometres.
- It is more cost-effective than to perform large-scale events in all affected municipalities. Therefore, a great deal of importance is attached to customised communication.
- It is recommended not to hold large-scale events, at which residents (possibly loudly) have their say, but rather, e.g. information markets, at which each person effected has their say and can contribute their ideas. This creates trust.

It remains to be seen, whether these additional and very early measures bring the same success as the procedure described under 6, in the increasingly difficult environment.

8. ORGANISATION

The aforementioned experiences are used for optimising internal processes and organisation to obtain approvals

and rights of way. For this, the processes are first completely examined, the complexity is removed and SLAs (service level agreements) are formulated and signed between the organisational units concerned. This has shown that the additional requirements for approval procedures also need to be adapted to the organisation.

9. CONCLUSION – DEVELOP TRUST

It is difficult to assess, which of the measures ultimately lead to success, and which measures are superfluous.

“With advertising, fifty percent should always be thrown out. But it is not known which half that is.”

Quote by Henry Ford

It is similar with the support of approval procedures and the acquisition of rights of way.

The systematic handling of the stakeholders (also referred to by the author as “political engineering”) is much more than pure lobbying. It involves the systematic analysis of a route and working out the consequences to be drawn from it.

It is purposeful to start very early and systematically with the analysis of the environment and the stakeholders’ own skills, information and ideas.

Obtaining ideas and suggestions at an early stage leads to even more scope existing with the pipeline construction. This is more than pure citizens’ information, it is real citizens’ participation, in which the citizens can contribute their ideas and suggestions and the opportunity exists for implementing them.

LITERATURE

- [1] Baden-Wuerttemberg Guideline, https://beteiligung-sportal.baden-wuerttemberg.de/fileadmin/redaktion/beteiligungportal/StM/140717_Planungsleitfaden.pdf
- [2] North Rhine-Westphalia Guideline <https://www.brd.nrw.de/umweltschutz/pdf/Leitfaden-frue-he-OeB.pdf>
- [3] Guidelines VDI 7000, https://www.vdi.de/fileadmin/vdi_de/redakteur/bg-bilder/Richtlinie7000/VDI_7000_Inhaltsverz_.pdf
- [4] Preclusion
- [5] http://www.cms-hs.com/EuGH_Einwendungsausschuss_1015

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