The ecodesign and energy labeling process – challenges and solutions

Hans-Paul Siderius (NL Agency) – 27 February 2012

Summary and recommendations

The current process to prepare and adopt ecodesign and energy label implementing measures appears to be challenging, especially regarding (the uncertainty in) the total process time. Analysis suggest that the major[1] delay factors are:

- Contracting under qualified consultants for the preparatory study.
- Low quality preparatory study.
- Lack of data.
- Lack of cooperation by stakeholders.
- Technical complexity of the matter.
- Contentiousness, including political sensitivity of the matter.
- Delays in the process.

Assuming that action has been taken on the first 3 factors, the key in reducing uncertainty in total process time is the proper management of complexity and contentiousness. The influence of these factors on delays in total process time can be indicated as follows:

		Contentiousness	
		low	***High***
Complexity	***low***	**I**: no delays expected, process may even go faster	**III**: delays if process cannot be moved to the political level; also process may become more complex
	high	**II**: delays if technical expertise to deal with complexity cannot be organized	**IV**: delays to be expected; large delays if contentiousness and complexity are not or cannot be separated

It is suggested that the Commission assesses complexity and contentiousness during the preparatory study and plans the rest of the process taking into account the results of this assessment, thereby decoupling the preparatory study from the rest of the process which starts with the preparation for the Consultation Forum. This assessment could also take a more critical look at whether for a certain product an implementing measure currently is warranted.

The preparation for the Consultation Forum should only be started when it is ensured (availability of staff, technical assistance, etc) that the rest of the process can be executed. The planning including deadlines for reactions in the various steps should be communicated to stakeholders, thereby decreasing the uncertainty about the total process time; nevertheless this planning can never be more than indicative.

For each of the four categories indicated in the table a suggestion for a planning is provided. Furthermore it is suggested to keep the (last) Consultation Forum meeting (in step 4), step 5 and the start of the interservice consultation (in step 6) as close together as possible, and suggestions for the alignment of the ecodesign and energy label processes are given.

[1]Staffing, including quality of staff, and internal management of the Commission are not considered in this document but certainly are crucial for getting the work done that is planned on time.

1. Introduction – challenges

The process to prepare and adopt ecodesign implementing requirements[2] for energy relevant products is in principle straightforward (see figure 1). Regarding energy label implementing measures, step 8 is not applicable and step 9 and 10 are exchanged, i.e. first the measure is adopted by the Commission and then it is sent to the European Parliament and Council for scrutiny. Since the alignment of ecodesign requirements and energy labels is important, the adoption of an energy label measure will probably be done after the vote of the corresponding ecodesign measure in the Regulatory Committee. Finally, figure 1 does not show the final step of publication of the measure in the Official Journal.

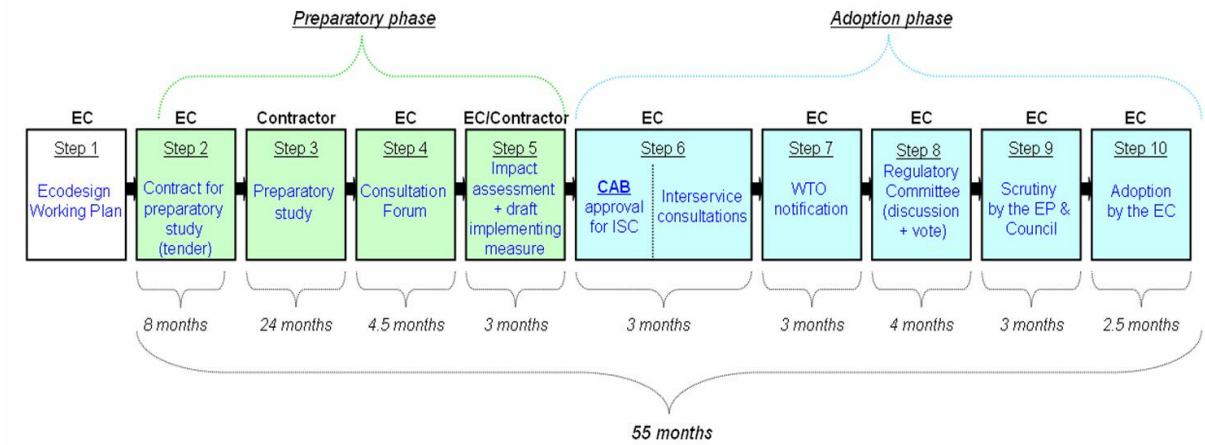

Figure 1. Ecodesign process[3]

Besides the quality of the adopted implementing measures, the total process time (estimated in figure 1 to be 55 months, about 4.6 years) is the main performance parameter of this process. Total process time is important to achieve timely savings. Another, and maybe more important aspect is the uncertainty in the total process time. Experience with the process to adopt the current measures show a large variation and failing predictions of total process time. Uncertainty in the process and in when the measure will be adopted makes it more difficult for industry and Member State experts to participate in the process and to prepare for implementation of the measure.

Regarding ***total process time*** only steps 2 and 3 (preparation of the contract for the preparatory study and the preparatory study itself) seem to offer opportunities for significantly reducing this time. The other steps are either fixed (WTO notification, scrutiny by EP and Council) or may offer only opportunities for small reductions. However, it may be that with careful planning and discipline steps 4 and 8 (Consultation Forum and Regulatory Committee) each could be reduced by 2 months. Especially for revisions of measures in force the duration of the preparatory study could be shortened to e.g. 12 months. The duration of step 2 could be shortened by outsourcing several preparatory studies in one go.

In the rest of this paper the emphasis is on uncertainty in total process time.

[2] The ecodesign directive (2009/125/EC) also refers to self-regulation measures, including voluntary agreements, as means to achieve the goals of the directive. Because allmost all measures within the ecodesign framework are implementing measures by the Commission, this document will focus on these measures. The limited experience with self-regulatory measures shows that the total process time is not very different from implementing measures and that apart from steps 8 and 9 the others steps of figure 1 appear in some form or the other in the process.

[3] Commission presentation on the second Ecodesign working plan (2012-2014) at the Consultation Forum on 20 September 2011.

2. Analysis of the uncertainties in lead times

In this section each of the steps 2-10 is analyzed for factors that influence the uncertainty in the process time of that step, except for steps 7 and 9 that have a more or less fixed lead time[4]. Uncertainty means that the lead time is not predictable, i.e. is longer than the period shown in figure 1 for a certain step, including the event that it is not known how much longer until the end of the step[5].

2.1 Some general observations

In general the process seems to be too "elastic", i.e. deadlines – if any – can be ignored, steps can be stretched almost endlessly without consequences and "old" issues can be raised at almost any point (again) in the process. This makes the process an ideal target for delaying tactics. Of course the advantages are that this offers maximum opportunities for consensus building and that serious omissions and mistakes can be corrected until the very end. Related to this is the impression that each step seems to be prepared and planned in isolation and sequential.

Furthermore, there are some general issues, e.g. the availability of meeting rooms and translation services (both for documents and Regulatory Committee meetings). Apart from careful planning and accepting meetings on unpopular days, these depend on the political priority of the issue (energy efficiency of products) compared to other issues. What can be noted though is that organizing an extra face-to-face meeting, even informally, results in a delay. Together with the issue of available Commission staff for ecodesign and labeling, these issues are not further addressed in this document. In other words it is assumed that enough staff of sufficient quality is available to process the measures, and issues like back-up in case of mater/fraternity leave, illness etc. are left to the (internal) management of the Commission. Note that this does not mean that the current staffing is sufficient to deal with all the implementing measures as foreseen in the work plan.

Finally, long delays between steps reinforce these delays, because (new) people need to study documents again, data has become obsolete, consensus issues are opened up for discussion again etc.

2.2 Step 2: Contract for the preparatory study

The process time for establishing the contract for the preparatory study is determined by internal Commission procedures, including Commission staffing, but also depends on the number of (potential) qualified contractors. Given the specific technical expertise, including contacts with industry, that is needed for a preparatory study, it is doubtful whether a general tender procedure is of any use. Since there has been already taken action on this subject and further action is considered, no further attention is paid to this step. However, there is an important connection between this step and the process time for other steps: low quality work, including mere copying information from stakeholders, will result in a poor preparatory study that leads to delays in the subsequent steps, notably 4 and 5.

2.3 Step 3: Preparatory study

In most cases the planning for the preparatory study is quite strict, because tied to a contract with deadlines that cannot be changed without administrative burdens. The following factors therefore influence mostly the process time of other steps.

---

[4] This is not true in case objections are raised in the WTO notification or the scrutiny by EP and Council. This has only happened once so far (EP scrutiny for energy label of cold appliances).

[5] In theory also a shorter lead time would mean uncertainty but because most of the steps (except 2 and 3) are relatively short, this will not impact the total process time very much.

First the **availability of data**; as such the non or lesser availability of data can be absorbed within the preparatory study without delay. It will however heavily influence the preparation of documents for the Consultation Forum (working document) and the interservice consultation (draft implementing measure). Furthermore, delays after the preparatory study can render data collected in this study obsolete and unsuitable for basing implementing measures upon. Data availability is not only based on stakeholders willingness to provide data or the existence of affordable commercial datasets, e.g. from GfK, but also on the availability of standard measurement methods.

Second the extent of **cooperation by stakeholders**, especially industry. Also this factor may not affect the lead time of this step but may result in less information available to prepare documents in other steps, which then leads to delays in these steps. This factor also covers withholding information that then in later steps is disclosed to challenge e.g. requirements or the scope of a measure. In general this can or should be dealt with by the contractor who should be qualified on the (technical aspects of the) product.

Third the **contentiousness** of the matter. For some products, e.g. space and water heaters, different (industry) groups exist that have opposite views. Although this certainly is an aspect that should be disclosed by the preparatory study, it can result in delays because no common ground for a proposal, metric etc. can be found. Although regarding technical aspects the contractor should be able to deal with different views, it is the more political issues that can raise problems.

2.4 Step 4: Consultation Forum

The link between the finalization of the preparatory study and the (preparation of the) Consultation Forum is critical, because with the preparation of the Consultation Forum the Commission takes over the responsibility of the documents. The working document discussed at the Consultation Forum is a Commission document, no matter to what extent it is based on the final report of the preparatory study or even prepared by a consultant.

Although the preparatory study is open to all stakeholders, the Consultation Forum meeting is the first formal consultation regarding the proposed implementing measure. This means that several stakeholders, including Member States experts, only now “wake up” and study documents for the first time.

The uncertainty in lead time of this and further steps is to a large extent determined by two factors:

- (technical) complexity of the matter
- contentiousness and/or political sensitivity of the matter

Both factors are (unfortunately) related: a complex matter has more chances of containing contentious issues and contentious issues are often disguised by making matters more technical complex. In the table below four situations are distinguished and the effect on delays from the standard lead times in figure 1 is summarized.

Table 1. Contentiousness and Complexity – four categories of processes

		Contentiousness	
		low	***High***
Complexity	***low***	**I**: no delays expected, process may even go faster	**III**: delays if process cannot be moved to the political level; also process may become more complex
	high	**II**: delays if technical expertise to deal with complexity cannot be organized	**IV**: delays to be expected; large delays if contentiousness and complexity are not or cannot be separated

As indicated the quality of the preparatory study can have a large influence. For example if the study suggests that the matter is not complex but stakeholders provide extra information in the Consultation Forum making the matter more complex.

Complex issues trigger the input of stakeholder and Member State *experts* which has to be dealt with by (experts hired by) the Commission[6]. So, complexity introduces an extra layer in the process (see figure 2[7]) thereby introducing delays.

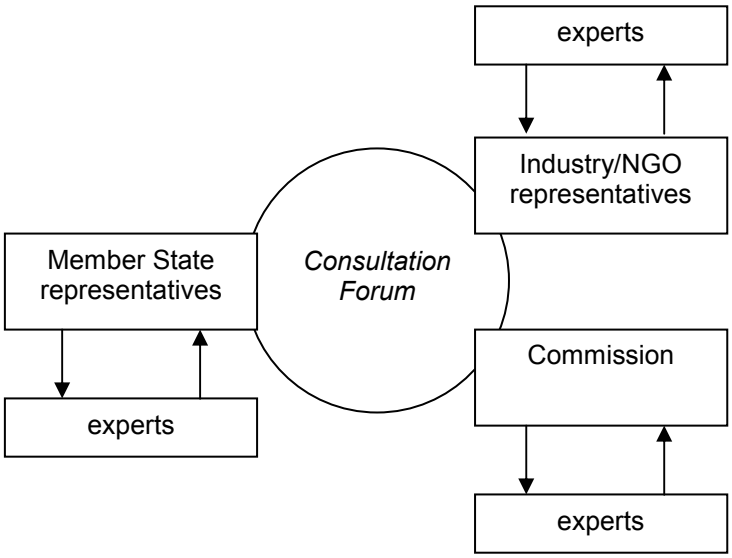

Figure 2. Involvement of experts in the consultation

Also in case of (large) Member States, industry organizations and NGOs an extra layer is introduced because they need to consult various ministries and/or stakeholders (Member States) or members (industry organizations, NGOs). One consultation round easily needs 4 weeks at a minimum.

[6] Already hiring an expert by the Commission can cause delays.
[7] Figure 2 and 3 are very simplified pictures of processes that are in reality much more complex.

Contentiousness also triggers the input of extra people but now on different hierarchical levels (see figure 3).

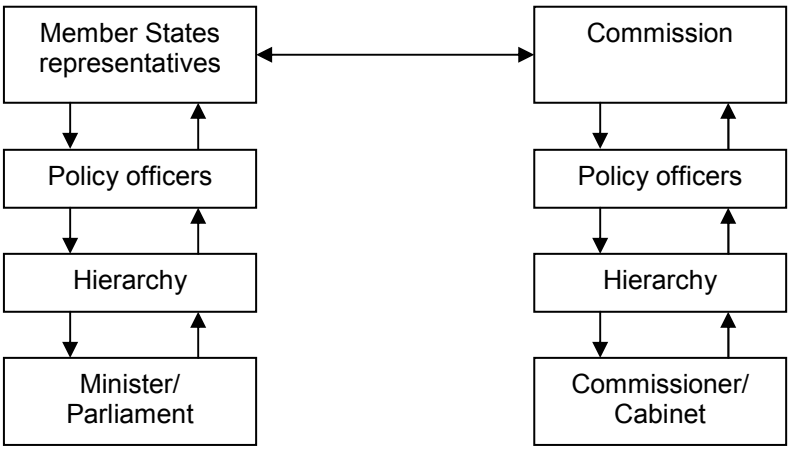

Figure 3. Involvement of higher political levels in the consultation

If complexity and/or contentiousness are not well managed in step 4 the result will be an increased complexity and/or contentiousness leading to increased delays.

2.5 Step 5: Draft implementing measure + impact assessment

The draft implementing measure is a first consolidated working document issued by the Commission for input in the interservice consultation. Consolidated means that it seeks to take into accout views and comments issued in the Consultation Forum, including written comments sent to the Commission before and after the Consultation Forum meeting. Furthermore, it contains a single proposal for an implementing measure, contrary to earlier working documents in the process that often contain several options for implementing measures, e.g. with different level for requirements or timing. In principle the text of the draft implementing measure should be such that when no comments would be issued and it would be voted and scrutinized positively the text could be adopted by the Commission and published in the Official Journal.

Althought the impact assessment seems a mere "administrative" burden, it provides for the record and history a good summary of the various aspects, including the impact, of the draft implementing measure. This might be helpful when revising the implementing measure.

In this step[8] sometimes still intensive informal bilateral discussions with stakeholders take place that can cause delays. If the complexity of the matter results in complex legislative texts then this can also cause delay because the Commission Legal Service needs to be more involved.

2.6 Step 6: Interservice consultation

The "nature" of the interservice consultation has changed recently in such way that the draft implementing measure that is sent to interservice consultation is also (informally) sent to the members of the Consultation Forum. Of course this triggers comments and proposals for amendments, including those from stakeholders that see this as an extra chance to bring forward their views that were not included in the draft implementing measure. Formerly this lobbying was done through the other DGs.

[8] One could also argue that this is still part of step 4.

However, there is another aspect. This is the first time that a full legal text of the measure is available for scrutiny by (Member State) experts. Although one would not expect any big structural mistakes, the devil can be in the details and writing a legal text is something different from writing a report or an explanatory memorandum.

2.7 Step 8: Regulatory Committee

The Regulatory Committee formally only applies to ecodesign implementing measures because the ecodesign directive is a pre-Lisbon directive. As with the preparation of the draft implementing measure for interservice consultation, the preparation of the final draft implementing measure can include intensive informal bilateral discussions with various stakeholders. If one of these stakeholders has the power to block the release of the final draft to the Committee then this can cause delays. Otherwise once the documents are sent to the Committee members and the date for the meeting is set, no delays are to be expected. There is enough (public) pressure on Member States representatives to sort out the final issues at the meeting and to vote upon the amended final draft. However, the Commission should allow enough time for discussion at the meeting of the Regulatory Committee, including time for delegates to read the final version of the proposal that is to be voted upon.

2.8 Step 10: Adoption by the European Commission

If the proposal is voted positively and no objections have been raised during the scrutiny by the European Parliament and the Council, this should be a straightforward step. Nevertheless, experience shows that it sometimes can take a long time before a measure is adopted[9].

2.9 Differences between ecodesign and energy label measures

As indicated in the introduction the process for adopting energy label measures differs from the ecodesign process as drawn in figure 1. The main difference is that the energy label process does not provide for a clear point in time when the text of the measure is fixed, corresponding to the vote in the Regulatory Committee for the ecodesign process. This means that after the Consultation Forum the process of finalizing the implementing measure becomes opaque, although it is unclear whether this causes delays.

Furthermore, although alignment between ecodesign and energy label measures is important, this also increases the complexity of the (combined) process.

2.10 Conclusions regarding the analysis

Although the process as such for preparing and adopting ecodesign and energy label implementing measures is more or less prescibed in the framework directives, internal Commission procedures, the EU Treaty and international treaties, and therefore not very open for change, it must be noted that the process is in principle (well) suited to deal with:

- the technical preparation for the implementing measures
- stakeholder consultations
- the (political) negotation process within the Commission and between Member States and the Commission[10]

[9] The ecodesign implementing measure for household airconditioners was voted upon positively on 31 May 2011 and is still not yet adopted (or in any case not yet published).

- democratic legitimacy

The major[11] delay factors can be summarized as follows:

- Contracting under qualified consultants for the preparatory study.
- Low quality preparatory study.
- Lack of data.
- Lack of cooperation by stakeholders.
- Technical complexity of the matter.
- Contentiousness, including political sensitivity of the matter.
- Delays in the process.

The delay these factors cause can mostly not be estimated on beforehand, thereby increasing uncertainty. The delay factors are interdependent; the most important interdependencies are the following. A low quality preparatory study can be the result of an under qualified consultant, lack of data or lack of cooperation. The latter factors can also be the result of an under qualified consultant. Lack of cooperation can be the result of contentiousness, and technical complexity can be increased by a low quality preparatory study, i.e. a study that is not able to present the most important issues and improvement options in a clear way. Finally delays in the process can be a cause of further delays.

Looking at these factors the first 3 have been acknowledged by the Commission and are being dealt with. Moreover, current implementing measures all have product information requirements meaning that manufacturers must make publicly available the energy relevant information for their products. Therefore the factors that this document will focus on are dealing with complexity and contentiousness, including the alignment of ecodesign and energy label processes. The "ideal" process might not be much shorter than the current process but could and should improve on the aspect of predictability, i.e. reducing the uncertainty in total process time. The next section contains some suggestions to this extent.

3. Some suggestions to reduce (uncertainty in) total process time

3.1 Introduction: decoupling steps 2 and 3 from the rest

Based on the analysis the key to reduce the (uncertainty in) total process time lies in properly dealing with the (technical) complexity and contentiousness of an implementing measure. This means that early in the process an assessment of these factors has to be made and that the rest of the process has to be planned taking this assessment into account. The assessment should be done in step 3 by the Commission. It cannot be done by the contractor of the preparatory study because first the contractor is or should be too knowledgeable on the technical aspects to assess the complexity for non-technical people and lacks the political sensitivity (also related to other dossiers being processed by the

[10] The energy label process performs less on this last aspect because the step of the Regulatory Committee is missing.

[11] As indicated before staffing, including quality of staff, and internal management of the Commission are not considered in this document but certainly are crucial for getting the work done that is planned on time.

Commission) to fully assess the contentiousness. Second the Commission is responsible for the process, certainly after the preparatory study.

The assessment and the information from the preparatory study can also be used to look more critically whether for certain products an implementing measure is warranted. Regarding limited capacity at the Commission it might be better not to go ahead with products that have limited savings (although these might still be significant) and have other problems like missing (parts of) a measurement standard.

The period of the preparatory study can also be used to already carry out large parts of the impact assessment because this can help with the assessment of complexity and especially contentiousness.

In order for the assessment to have effect on the process, steps 2 and 3 should be decoupled from the rest of the process. At the end of step 3 an evaluation of the type of process (according to the categorization in table 1) is available and a planning for the rest of the process can been made. This can also include the decision not (yet) to start the rest of the process, meaning there can be a gap between the end of the preparatory study and the start of step 4. The planning including deadlines for reactions should be communicated to stakeholders with the important disclaimer that the planning is indicative.

Before presenting in the next sections some suggestions for each of the categories, first two generic aspects will be discussed:

a) keeping the (last) Consultation Forum meeting (in step 4), step 5 and the start of the interservice consultation (in step 6) as close together as possible;

b) alignment of the ecodesign and energy label processes.

Re a) In principle stakeholders, including Member State experts, should provide their (main) comments and suggestions at or shortly after the Consultation Forum meeting. This means that they should have the working documents well in advance, e.g. 6 weeks. The other side of the coin is that the Commission can be strict in the deadline for comments: comments issued later than 1 week after the Consultation Forum meeting will not be taken into account for the draft implementing measure that will be sent to the interservice consultation. In this way it is clear for stakeholders that there is one opportunity to send comments to influence the draft implementing measure. Of course some comments will need bilateral clarification and discussion, but tying step 4 from the Consultation Forum meeting, step 5 and 6 till the start of the interservice consultation in a controlled time window, e.g. 4.5 months, prevents the emergence of several consultation cycles.

Re b) The final[12] legal text of Ecodesign measures is established in the meeting of the Regulatory Committee, the final legal text of the energy label measures is simply adopted by the Commission. However, as indicated before the alignment with the corresponding ecodesign measure is important. This can be achieved by the following procedure:

1. Both ecodesign and energy label draft implementing measures are sent to the members of the Consultation Forum when sent to interservice consultation. Deadline for comments on the energy label draft is 3 weeks.

[12] Apart from typos, which sometimes can luckily be used in a creative way.

2. Comments are processed in the final draft of the energy label measure that is sent to the members of the Regulatory Committee to inform them of the energy label measure together with the ecodesign measure that is to be voted upon.

3. Only editorial comments, including comments that improve the text from an objective point of view (i.e. changes should in any case be non contentious), and changes resulting from amendments in the ecodesign measure during the discussion in the Regulatory Committee in order to align both measures will be processed before adoption of the measure by the Commission.

3.2 Suggested planning for the four categories

Category I: low complexity, low contentiousness

In case of a product with low complexity and low contentiousness, the preparatory study should already contain building blocks for a draft implementing measure. In the working document for the Consultation Forum already an advanced draft could be presented.

In this case the planning can be straightforward and steps 4 and 8 could be shortened (see figure 4), and the planning should be strictly kept. With the Consultation Forum meeting 2 months after the start of step 4 total process time till the Regulatory Committee is 11 months after the Consultation Forum meeting.

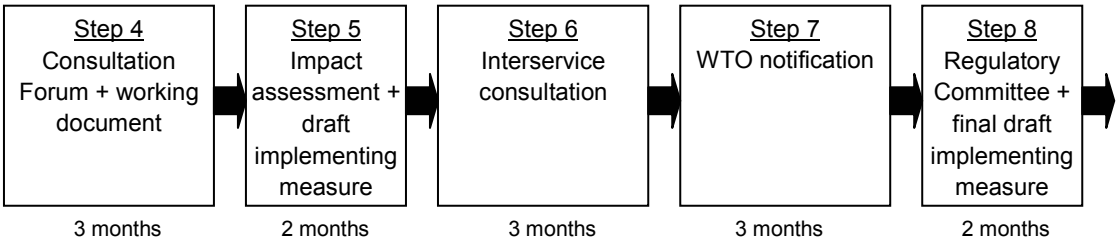

Figure 4. Suggested planning for category I process (total 13 months)

Category II: high complexity, low contentiousness

In case of a product with high complexity the Commission should at least be prepared to ensure further technical assistance. In order not to let the technical complexity increase contentiousness, a thorough preparation of the Consultation Forum meeting is necessary: the working document should aim at explaining how the technical complexity is reduced and mapped into the proposed regulation, especially assumptions made to simplify aspects should receive attention. If necessary a technical working group meeting can be arranged after the Consultation Forum meeting. The process time for step 4 might need to be increased to 6 months (see figure 5). In principle the (technical) complexity should have been dealt with in step 4 so that the process time of step 8 can be reduced.

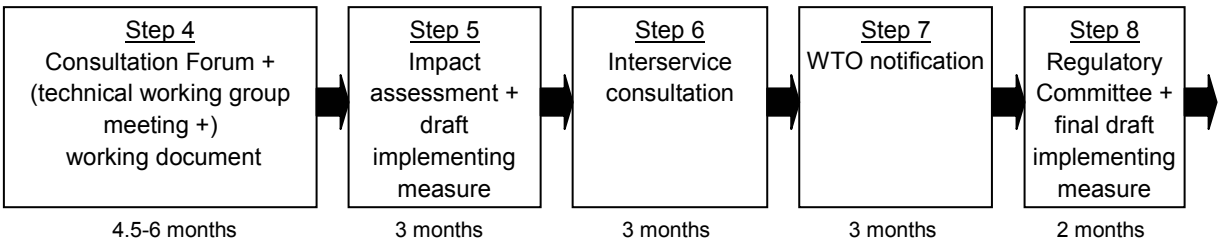

Figure 5. Suggested planning for category II process (total 15.5-17 months)

Category III: low complexity, high contentiousness

Because complexity and contentiousness are related the first task (preferably already done in task 3) is to distinguish which issues are in the technical realm and which represent political sensitivities that are contentious. The critical aspect is not to let contentious issues spread into the technical realm, suggesting complexities that are in reality different political opinions. More technical research will not solve these issues but only delay the process. Also it should be acknowledged that (some) contentious issues cannot be solved at the Consultation Forum meeting.

In general the timing of figure 1 should be suitable to deal with these type of processes (see figure 6). Contentious issues might be better resolved through bilateral discussion and informal meetings than through more Consultation Forum meetings.

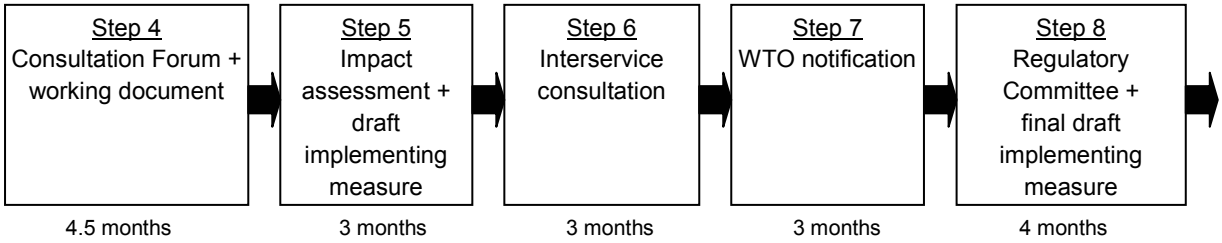

Figure 6. Suggested planning for category III process (total 17.5 months)

Category IV: high complexity, high contentiousness

Category IV is also the category that processes in category II and III tend to drift into when not properly managed. As for category III it is important to try to distinguish between the issues that are technical complex and those that are (politically) contentious. The first can be resolved with further (technical) research, the second not. Unfortunately also the discussion on what are technical issues and what political can be contentious.

This type of category will probably need a prolonged step 4 with two Consultation Forum meetings (see figure 7), where the first is used to get more clear what the issues are and which are of technical nature and which are politically contentious, and where the second meeting can be used to resolve the (main) technical issues. Also in this case technical support for the Commission is necessary. An additional criterion for this technical support is that the consultant is seen as "political" acceptable by (almost) all stakeholders.

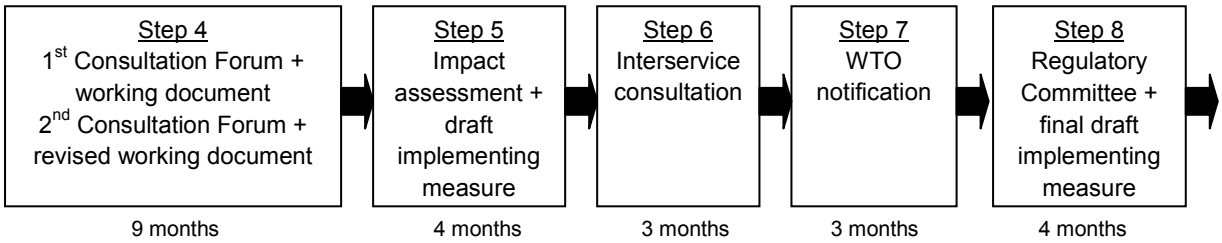

Figure 6. Suggested planning for category IV process (total 23 months)

The following table summarizes the role of the key documents in each of the categories.

Table 2. Role of key documents in each of the categories

Category	Key documents		
	Working document (Consultation Forum)	***Draft implementing measure (interservice consultation)***	***Final draft implementing measure (Regulatory Committee)***
I	WD is already almost draft IM	Draft IM is full legal text	Final draft IM issued for final fine tuning
II	WD focuses on technical issues	Draft IM is full legal text	Final draft IM issued for final fine tuning
III	WD should differentiate between technical and political issues	Draft IM is technically complete, political issues formulated based on assessment of achieving consensus	Final draft IM offers last opportunity to reach consensus at Regulatory Committee meeting
IV	1st CF meeting: discussion on what technical and what political issues are 2nd CF: solving technical issues, probing views on political issues	Draft IM is technically complete, political issues formulated based on assessment of achieving consensus	Final draft IM offers last opportunity to reach consensus at Regulatory Committee meeting

3.3 Some further suggestions

Finally the following suggestions that can reduce uncertainty in process time are provided:

1. Reduce complexity, including accepting less stringent requirements for some subcategories.
2. Identify on beforehand events that could disturb the critical path: elections of the European Parliament, a new Commissioner, summer holiday period, etc.
3. Plan not too tight, also regarding capacity, e.g. up to 80 %.
4. Develop standard formulations for aspects that are more or less the same in all regulations.
5. When a delay occurs, revise the planning and communicate the revised planning including new deadlines to all stakeholders.