

## **Decision in case 602/2019/SRS on the way the European Commission followed up on a cost-benefit analysis study concerning a ‘Project of Common Interest’ in the area of energy infrastructure**

Decision

**Case 602/2019/SRS - Opened on 18/12/2019 - Decision on 18/12/2019 - Institution concerned** European Commission ( No maladministration found ) |

### **The complaint to the European Commission**

1. This complaint, submitted by a French NGO, concerns a decision by the European Commission to include a gas interconnector project between France and Spain (known as the STEP/MidCat project) [1] on a list of EU ‘projects of common interest’ in the area of energy infrastructure (the ‘PCI’ list). [2] One important advantage of inclusion on the PCI list is that the project may be prioritised as regards obtaining EU funding, including under the Connecting Europe Facility.
2. In 2018, a number of MEPs and NGOs, including the complainant, sought to convince the Commission that the STEP/MidCat project did not meet the criteria to be included on the PCI list. [3] They stated that, in their view, a study produced for the Commission (the Pöyry study) found that the STEP/MidCat project does not improve the security of energy supplies in France or Spain and that its benefits do not outweigh its costs. [4]
3. Therefore, the complainant asked the Commission not to include the STEP/MidCat project and its components on the fourth PCI list, and to publish similar cost-benefit analyses for other gas projects. The complainants also asked the Commission not to grant further support to the project under the Connecting Europe Facility.

### **The Commission’s response to the complainant**

4. The Commission informed the complainant that the results of the Pöyry study showed there was a scenario under which the benefits for Spain (and Portugal) outweighed the project’s costs. Specifically, it stated that the results of the study indicate that the project shows benefits for Spain and Portugal in a situation where a very ‘tight’ Liquefied Natural Gas market would be



coupled with a significant reduction in supplies from Algeria (in that scenario, the benefits would result from allowing access to cheaper pipeline gas from the north). For the Commission, that scenario was consistent with the Commission's broader energy policy and 2030 forecasts for the EU energy system. It added that although the EU had set ambitious targets for energy efficiency, and although there was an agreement that at least 32% of its energy sources would come from renewable energy by 2030, a large part of the EU's energy mix would, in 2030, still have to be filled by other energy sources, such as gas. In this context, it stated that the STEP/MidCat project would allow access to cheaper pipeline gas from the north.

**5.** The Commission thus insisted that the project continued to meet the conditions for inclusion on the PCI list. [5]

**6.** The Commission added that the identification of PCIs is conducted in an open and transparent manner, providing the opportunity for individuals and civil society organisations and other stakeholders to express their views through regional groups. The Commission invited those organisations to participate in the work concerning the fourth PCI list, work that was about to start.

**7.** Concerning the request to withdraw public funding, the Commission saw no need to withdraw funding.

**8.** The complainant was not satisfied with the Commission's response. It turned to the Ombudsman arguing that the Commission should have removed the project from the PCI list. The complainant also contends that the Commission should have published the Pöyry study earlier.

## **The European Ombudsman's findings**

**9.** The establishment of a PCI list reflects an assessment, by the Commission, of strategic objectives and priorities in the energy sector. [6] The role of the Ombudsman in this area is not to take a view on these strategic objectives and priorities. The Commission has a broad margin of discretion when interpreting whether and how the criteria set out in the applicable rules [7] are met. The Ombudsman could take issue with the Commission's assessment only if there is a manifest error of assessment.

**10.** The Ombudsman can seek to ensure that the Commission is as transparent as possible as regards the strategic choices it makes, so that it can be held accountable, both by citizens and their representatives, for those choices. In addition, the role of the Ombudsman is to ensure that the decision-making is as participative as possible and that the Commission is open to engaging in debate with citizens and their representatives in drawing up its strategy. This is all the more important in areas such as energy policy, where many citizens have concerns about the impact of climate change.

**11.** The Commission documentation examined by the Ombudsman shows that the Commission



considered that the cost/benefit analysis reflected in the study in question was positive in light of the Commission's energy policy targets and forecast for 2030. Based on that assessment, the Commission decided to include the project on the PCI list.

**12.** The Commission's reply was reasonable and within its margin of discretion.

**13.** In addition, the Ombudsman notes that the Commission draws up the PCI list after receiving input from the Agency for the Cooperation of Energy Regulators (ACER). The draft PCI list can be adopted only if neither the Parliament nor the Council raise objections. In this case, Parliament and Council did not raise any objections. By not raising objections to the list, both branches of the EU legislature have made the political choice to endorse, either actively or tacitly, the manner in which the Commission exercised its discretion.

**14.** The complainant also takes issue with the fact that the study was not published in good time. As noted above, the Ombudsman considers that the Commission should be as transparent as possible as regards its decision making. As the study was disclosed soon after the complainant asked for access to the report, the Ombudsman considers that no further inquiries are justified into this aspect of the complaint.

**15.** The Ombudsman notes that the Commission invited the complainant and other organisations to express their views on **the fourth PCI list** through the work of the regional groups. This shows that the Commission is open to participation by interest groups in the decision-making process.

**16.** The complainant has asked the Commission to remove the project from the PCI list.

**17.** The Ombudsman's inquiry team has noted that, in the meantime, the fourth PCI list has been published and that the STEP/MidCat project does not feature on that list. [8] As noted above, the Commission has a broad margin of discretion as regards including (or removing) a project from the PCI list. As the project is not included on the current PCI list, no further inquiries are justified into this aspect of the complaint.

**18.** Based on the information provided by the complainant, the Ombudsman closes the case with the conclusion that there is no maladministration by the Commission as regards the inclusion of the project on the third PCI list, that no further inquiries are justified concerning the complainant's concern that the study was not published in good time and that no further inquiries are justified as regards the claim to remove the project from the PCI list. [9]

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Strasbourg, 18/12/2019



## **ANNEX**

The procedure leading to the adoption of the PCI-list by the Commission is as follows:

1) Each individual proposal for a project of common interest requires the approval of at least two EU Member States to whose territory the projects relate.

2) The initial assessment and selection of PCIs is carried out by Regional Groups [10] consisting of:

- representatives of competent ministries,
- national regulatory authorities,
- individual gas and electricity transmission system operators and other project promoters,
- the European Network of Transmission System Operators (ENTSO) for electricity and gas,
- the Agency for the Cooperation of Energy Regulators (ACER) and
- the European Commission.

The Regional Groups evaluate the applications against the general and specific criteria as defined in the PCI Regulation, focusing especially on the contribution of these projects to market integration, sustainability, security of supply and competition. [11]

ACER issues an opinion that examines the consistent application of the assessment criteria and the cost/benefit analysis across regions. [12]

3) After these assessments, the Commission adopts the list of approved PCIs via a delegated act procedure.

4) The list of projects is then submitted by the Commission to the European Parliament and Council. These institutions have two months to oppose the list, or they may ask for an extension of two months to finalise their position. If neither the Parliament nor the Council rejects the list, it enters into force. The Parliament and the Council cannot request amendments to the list.

[1] The South Transit East Pyrenees (STEP) is the first phase of the broader Midi-Catalonia (Midcat) project. The STEP would link Martorell, in Catalonia, with the French border.

[2] See [Commission Delegated Regulation \(EU\) 2018/540 \[Link\]](#) of 23 November 2017 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest.

[3] [Regulation \(EU\) No 347/2013 \[Link\]](#) of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure.



[4] The Commission has published the study online, see <https://op.europa.eu/en/publication-detail/-/publication/13aad129-4cea-11e8-be1d-01aa75ed71a1>.

[5] Article 5(8) of Regulation 347/2013.

[6] See annex for an overview of the decision making process leading to the establishment of a PCI list.

[7] Article 4(1) b) of Regulation 347/2013.

[8]

[https://ec.europa.eu/info/news/commission-publishes-4th-list-projects-common-interest-making-energy-infrastructure-2017-10-17\\_en](https://ec.europa.eu/info/news/commission-publishes-4th-list-projects-common-interest-making-energy-infrastructure-2017-10-17_en)  
[Link]

[9] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the [Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]

[10] See:

<https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest/regional-groups-and-their-role>  
[Link].

[11] Meetings of the Regional Groups are open to all interested parties, such as environmental and consumer organisations and representatives of civil society, who are invited, consulted and expected to contribute to the work carried out by these groups.

[12] The ACER opinion in this case dates from 10 October 2017, and can be accessed here: [https://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Opinions/Opinions/ACER%20Opinion%2013-2017](https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2013-2017) [Link]. The regional groups' decision-making bodies adopted the regional lists on 17 October 2017.