

Letter from the European Ombudsman to the European Commission opening the inquiry into the alleged failure to carry out a sustainability/climate assessment for all existing fossil fuel projects on the list of Projects of Common Interest

Correspondence - 10/02/2020

Case 1991/2019/KR - **Opened on** 10/02/2020 - **Decision on** 17/11/2020 - **Institution concerned** European Commission (No further inquiries justified) |

Ms Ursula von der Leyen

President

European Commission

Complaint 1991/2019/KR

Subject: The alleged failure to carry out a sustainability/climate assessment for all existing fossil fuel projects on the list of Projects of Common Interest

Dear President,

I have received a complaint from Mr X of 'Food & Water Europe' [1] , a civil society organisation, against the European Commission.

The complaint is about gas projects on the EU's list of Projects of Common Interest ('PCI-list') [2] . The complainant considers that the Commission has breached EU law by allegedly not evaluating adequately the PCI 'sustainability' criterion.

It is clear from the Commission's reply to the complainant that it has started work to improve the analytical tools and procedures it has in place to carry out a sustainability assessment of possible future gas projects as part of the cost-benefit analysis for future PCI-lists. The Commission said it wants the results to be fully reflected in the next (fifth) PCI-list.



However, the Commission's reply to the complainant can be understood as an admission that there were shortcomings in relation to past sustainability assessments of PCI status. The complainant is concerned that this risks undermining public trust in the EU's ability to establish the PCI-list in a manner that is in line with the EU's energy policy and climate objectives.

I have therefore decided to open an inquiry into this complaint to examine if and how the Commission has sought to ensure that sustainability was assessed for gas projects, as well as for oil projects [3] , obtaining PCI status.

I have now concluded that it would be useful to receive a written reply from the Commission to the following questions relating to this inquiry:

As regards gas projects included in the list of PCIs:

1. When and how did the Commission become aware that the data available in the procedure leading to the adoption of the fourth PCI-list did not allow for a meaningful assessment of the sustainability of gas projects?

2. The PCI regulation [4] does not require a gas project to make a significant contribution in terms of sustainability, which is just one out of four alternative criteria set out [5] . In this context, has it ever been the case that a gas project obtained PCI-status on the basis that it:

- was assessed to satisfy specifically the criterion that it made a significant contribution to sustainability, and that none of the other criteria listed in Article 4 (i), (ii) and (iii)?
- was assessed to make a significant contribution to sustainability, as well as to any of the other criteria listed in Article 4 (i), (ii) and (iii)?

As regards oil projects included in the list of PCIs:

3. Have oil projects that obtained PCI status been assessed in a meaningful way as regards “*efficient and sustainable use of resources through mitigation of environmental risks*” [6] and, if so, how was this done?

I would be grateful to receive the Commission's reply by 31 March 2020.

Please note that I am likely to send your reply and related enclosures to the complainant for comments [7] .

The responsible case-handler is Koen Roovers, who can be reached at koen.roovers@ombudsman.europa.eu [Link] and on 0032 22 84 11 41.

Yours sincerely,

Emily O'Reilly European Ombudsman



Strasbourg, 10/02/2020

[1] See: <https://www.foodandwatereurope.org/> [Link]

[2] According to the Commission's website, PCIs are key cross border infrastructure projects that link the energy systems of EU countries. They are intended to help the EU achieve its energy policy and climate objectives: affordable, secure and sustainable energy for all citizens, and the long-term decarbonisation of the economy in accordance with the [Paris Agreement](#) [Link]. PCIs are eligible for funding from the [Connecting Europe Facility](#) [Link] (CEF), the EU's €30 billion fund for boosting energy, transport, and digital infrastructure.

[3] The question as regards the sustainability assessment of oil projects on the PCI-list is implicit in the complaint. I have therefore added this on my own initiative, to allow the Commission to address this issue as well.

[4] Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC, OJ L 115, 25.4.2013, p. 39–75. See: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013R0347> [Link].

[5] Article 4 (b) of Regulation 347/2013 states that “ *for gas projects falling under the energy infrastructure categories ..., the project is to contribute significantly to at least one of the following specific criteria:*

(i) market integration, inter alia through lifting the isolation of at least one Member State and reducing energy infrastructure bottlenecks; interoperability and system flexibility;

(ii) security of supply, inter alia through appropriate connections and diversification of supply sources, supplying counterparts and routes;

(iii) competition, inter alia through diversification of supply sources, supplying counterparts and routes;

(iv) sustainability, inter alia through reducing emissions, supporting intermittent renewable generation and enhancing deployment of renewable gas;”

[6] As per Article 4 (d) (ii) of Regulation 347/2013.

[7] If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainant, please mark them ‘Confidential’. Such



documents can be sent through secure channels, such as Ares, CIRCABC or equivalent applications. The case handler can be contacted beforehand, if necessary.