



## Letter from the European Ombudsman to the European Commission on its role in assessing the sustainability of gas projects on the list of 'projects of regional significance' of the 'Energy Community'

Correspondence - 19/04/2021

**Case 327/2021/KR - Opened on 19/04/2021 - Decision on 15/07/2022 - Institution concerned** European Commission ( No maladministration found ) |

Ms Ursula von der Leyen

President

European Commission

Strasbourg, 19/04/2021

Complaint 327/2021/KR

**Subject: The European Commission's role in assessing the sustainability of gas projects on the Energy Community list of projects of regional significance - Commission reference: ENER.A/CLB/av/hr(2020)8834006**

Dear President,

I have received the enclosed complaint from X of 'Y' against the European Commission.

The complaint concerns the selection of projects of regional significance by the Energy Community, which is an international organisation that brings together the EU, countries in the Western Balkans and in the Black Sea Region and Norway. The Commission acts as EU representative under the Energy Community Treaty. [1]

The complainant considers that the Commission failed to secure a sound sustainability assessment of the gas projects that are on the Energy Community's list of projects of regional significance [2]. The complainant's concern is that the Commission, within the Energy Community, did not object to the use of a methodology for the sustainability assessment of gas projects similar to the one used in the EU for similar projects up to 2019 and which the



Commission has since acknowledged to be inadequate.

I have decided to open an inquiry into this complaint to examine the following issues:

- Can the Commission explain why the methodology used to assess the sustainability of the gas projects concerned was fit-for-purpose?
- What does the Commission do within the Energy Community to advance the methodology it considers to be the right one?

The Ombudsman cannot inquire into the actions of the Energy Community, which is an international organisation outside her mandate. This inquiry therefore concerns the actions of the Commission only. The Ombudsman's review in this case is not intended to determine what the right methodology is. It is rather to examine whether the Commission can adequately explain its actions.

I would like to receive a written reply from the Commission to the complaint, including the questions in Annex.

Please note that I am likely to send your reply and related enclosures to the complainant for comments [3] . We may also decide to publish your reply.

I would be grateful to receive the Commission's reply by 16 July 2021. The responsible inquiries officer is Mr Koen Roovers.

Yours sincerely,

Emily O'Reilly European Ombudsman

Enclosures:

· Annex with questions

· Complaint 327/2021/KR

Annex -- Questions

**1. a.** What was the Commission's contribution to the selection procedure for candidate gas projects for the Energy Community's list of projects of regional significance (comprising 'Projects of Energy Community Interest' (PECIs), between Energy Community 'contracting parties', and 'Projects of Mutual Interest' (PMIs), between contracting parties and EU member states):

- as member of the Energy Community's Group for gas projects,
- as member (and in its capacity as Vice-President) of the Energy Community's Regulatory Board, and
- ahead of the proposal of the Energy Community Secretariat to the Ministerial Council on 14 January 2021, which was stated to have happened in agreement with the services of the Commission? At this stage, what exactly happened for the Commission to arrive at this



agreement?

b. Did the Commission have other roles or tasks in the selection and adoption of the Energy Community's PECIs and PMIs?

**2.** Did the methodology for assessing sustainability of candidate gas PECIs and PMIs take into account potential negative impacts, such as possible increases in greenhouse gasses from these projects were they to be implemented?

If so, can the Commission describe this methodology and related data collection?

If the methodology for assessing sustainability did not take into account potential negative impacts, why was this not the case?

**3.** In reply to the complainant, representatives of the Commission described the methodology for assessing the contribution to sustainability of candidate gas PECIs and PMIs as being very similar to the methodology used for candidate gas projects for the 4<sup>th</sup> PCI-list. In reply to the Ombudsman, the Commission, on 11 June 2020, said that the methodology for assessing the sustainability of candidate gas PCIs lacked "*reliable, accurate and consistent project specific data*" and "*did not allow for a non-discriminative assessment of that criterion for all candidate projects*".

Did the Commission, at any point during the selection process of PECIs and PMIs, express its concerns as regards using a methodology that was similar?

**4.** One of the Energy Community's aims is to improve the environmental situation in relation with energy supply in the region and foster the use of renewable energy and energy efficiency. Could the Commission elaborate on how the list of projects of regional significance supports that objective?

**5.** Could the Commission provide an update as regards its efforts to improve the sustainability criterion so that it takes into account greenhouse gas emissions and efficiency impacts, which the Commission indicated in case 1991/2019/KR it was planning to have in place ahead of the assessment of candidate gas projects for the 5<sup>th</sup> PCI list?

[1] See: <https://www.energy-community.org/legal/treaty.html> .

[2] See:

[https://www.energy-community.org/dam/jcr:7c56ea47-20fa-4c60-865c-b0f75807c863/18thMC\\_Decision\\_](https://www.energy-community.org/dam/jcr:7c56ea47-20fa-4c60-865c-b0f75807c863/18thMC_Decision_)  
and

[https://www.energy-community.org/dam/jcr:7309508a-228b-4e3a-ae78-903e8c4af54f/18thMC\\_Recomm](https://www.energy-community.org/dam/jcr:7309508a-228b-4e3a-ae78-903e8c4af54f/18thMC_Recomm)

[3] 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'.



Encrypted emails can be sent to our dedicated mailbox [eo-secem@ombudsman.europa.eu](mailto:eo-secem@ombudsman.europa.eu) , which can be contacted beforehand for arrangements. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended.