

## **Decision on the European Commission's role in assessing the sustainability of gas projects on the list of 'projects of regional significance' of the 'Energy Community' (327/2021/KR)**

Decision

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

The complainant, a civil society organisation, raised concerns about the sustainability assessment of gas projects in the Energy Community, an international organisation for cooperation on energy between the EU and countries in the Western Balkans and in the Black Sea region. Such projects may benefit from streamlined permitting procedures and have to comply with the criteria set out in the EU's Trans-European Networks for Energy (TEN-E) Regulation, as applied also by the Energy Community.

The Energy Community is not an EU body and is thus outside the Ombudsman's mandate. However, as the European Commission represents the EU in the Energy Community, the Ombudsman asked the Commission to explain how it ensures that the sustainability of gas projects is properly assessed, and its role in the process.

In the context of this inquiry, the Commission also gave an update on its efforts to improve how the sustainability of EU gas 'projects of common interest' (PCI) is assessed, which was the subject of a previous Ombudsman inquiry.

The Ombudsman found the Commission's explanations satisfactory and closed the case with a finding of no maladministration.

## **Background to the complaint**

1. The complaint concerns the European Commission's role in relation to the sustainability assessment of gas projects in the Energy Community [1] .
2. The Energy Community is an international organisation that brings together the EU with 'contracting parties', namely countries in the Western Balkans and in the Black Sea region. [2] The Commission acts as the representative of the EU on the Energy Community's Ministerial



Council, which is its highest decision-making body. [3]

3. The Energy Community extends EU internal energy market rules and principles to the contracting parties. It does so with a view to creating an integrated, stable and competitive energy market, enhancing supply security and improving the environmental situation in relation to energy supply.

4. One of the tasks of the Energy Community is to designate priority energy infrastructure projects. The effect of such designation is in particular that the projects may benefit from streamlined permit procedures and may have easier access to financing on the financial markets. The projects have to comply with the criteria set out in the EU's Regulation on Trans-European Networks for Energy (TEN-E), as applied also by the Energy Community. [4] The projects may concern energy infrastructure for electricity, gas and oil.

5. The complainant, a civil society organisation, considered that the Commission had failed to ensure that the sustainability of gas projects was properly assessed before being included on the Energy Community's 2020 list of projects of regional significance [5] .

6. In April 2020, the complainant made its concerns known in a public consultation process on the Energy Community's list of projects of regional significance. Subsequently, the complainant raised its concerns directly with the Commission.

7. Dissatisfied with the Commission's response, the complainant turned to the Ombudsman in February 2021.

## The inquiry

8. The Ombudsman opened an inquiry into the following issues:

- Whether the Commission can explain why the methodology used to assess the sustainability of the gas projects concerned was fit for purpose; and
- What the Commission does within the Energy Community to advance the methodology it considers to be the right one.

9. Since the Energy Community is not covered by the Ombudsman's mandate, the inquiry did not assess its actions. The object of the inquiry was circumscribed to the Commission's actions as set out above.

10. In addition, as the issues relate to a previous Ombudsman inquiry [6] concerning the sustainability assessment of EU gas projects included on the EU's list of Projects of Common Interest (PCI list), the Ombudsman asked the Commission to provide an update on this.

11. In the course of the inquiry, the Ombudsman received the Commission's reply [7] and,



subsequently, the comments of the complainant in response to the Commission's reply [8] . The detailed arguments of the parties as well as the detailed assessment thereof are contained in the Annex.

**12.** The inquiry has incurred a delay for which the Ombudsman has apologized to the complainant.

**The Ombudsman's assessment**

**13.** This case is not about whether certain specific gas projects should have been designated as priority energy infrastructure projects or not. The decision to designate them as such pertains to the Energy Community, which is outside the Ombudsman's mandate. Moreover, the applicable rules allow a gas project to be so designated if it contributes significantly to at least one of four alternative criteria, of which sustainability is only one. [9] Thus a project may be designated even though it does not contribute to sustainability.

**14.** This case concerns the methodology for assessing the sustainability of gas projects. The complainant considers that the methodology used displayed shortcomings. The Commission's view is that the methodology was fit for purpose though the Commission is open to introducing improvements.

**15.** As the Ombudsman has previously stated [10] , the extent of the review that the Ombudsman is in a position to carry out in a case like this is limited. The Ombudsman is not a technical body that can decide what the right methodology is. The Ombudsman's role is limited to ascertaining whether the Commission provided the complainant with a reasonable reply and whether there is an indication of a procedural error or a manifest error of assessment in the Commission's actions. Principles of good administration require that a public authority should always be able to explain its actions.

**16.** The Commission - which has not disputed the important role it holds within the Energy Community - has explained the methodology and its actions within the Energy Community. The Commission has also explained how it has followed up on the previous Ombudsman inquiry mentioned above. It is also clear from the reply that the question of what the right methodology is, is not only technically complex, but also that the answer to that question evolves over time, as experience is gained.

**17.** The Ombudsman finds the explanations provided by the Commission satisfactory.

**18.** Nevertheless, the Ombudsman underlines the importance of the Commission being open to improvements to the methodology and of engaging with stakeholders like the complainant to that effect.

## **Conclusion**

Against this background, the Ombudsman closes this case with the following conclusion:



**There was no maladministration by the Commission.**

The complainant and the Commission will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 15/07/2022

[1] <https://www.energy-community.org/> [Link]

[2] <https://www.energy-community.org/aboutus/whoweare.html> [Link]

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

[4] Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure:

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013R0347> [Link]. The TEN-E Regulation establishes rules for identifying projects. There are two categories of priority status within the Energy Community, depending on the countries involved: projects of Energy Community interest (PECIs), connecting 'contracting parties' of the Energy Community, and projects of mutual interest (PMIs), connecting EU member states with contracting parties. EU projects under the TEN-E Regulation are referred to as PCIs (projects of common interest).

[5] The 2020 PEGI list can be found at:

[https://www.energy-community.org/dam/jcr:7c56ea47-20fa-4c60-865c-b0f75807c863/18thMC\\_Decision\\_2020-04\\_M](https://www.energy-community.org/dam/jcr:7c56ea47-20fa-4c60-865c-b0f75807c863/18thMC_Decision_2020-04_M) [Link]. The Recommendation of the Energy Community on PMIs can be found here: [https://www.energy-community.org/dam/jcr:7309508a-228b-4e3a-ae78-903e8c4af54f/18thMC\\_Recommendation\\_2020-04\\_M](https://www.energy-community.org/dam/jcr:7309508a-228b-4e3a-ae78-903e8c4af54f/18thMC_Recommendation_2020-04_M) [Link].

[6] See case 1991/2019/KR on the European Commission's action concerning sustainability assessment for gas projects on the current List of Projects of Common Interest:

<https://www.ombudsman.europa.eu/en/case/en/55870> [Link].

[7] See: <https://www.ombudsman.europa.eu/en/doc/correspondence/en/148741> [Link].

[8] See: <https://www.ombudsman.europa.eu/en/doc/correspondence/en/158305> [Link]

[9] Article 4(2) of the TEN-E Regulation.



[10] See for instance the Ombudsman's decision in case 2030/202/NH, paragraph 18, <https://www.ombudsman.europa.eu/en/decision/en/155352> [Link].