

Decyzja w sprawie 1416/2019/VB dotyczącej wpisania przez Komisję Europejską projektu budowy terminalu gazowego w Chorwacji do wykazu projektów będących przedmiotem wspólnego zainteresowania – transgranicznych projektów w zakresie infrastruktury energetycznej – oraz późniejszej decyzji o przyznaniu projektowi finansowania unijnego

Decyzja

Sprawa 1416/2019/VB - Otwarta 18/09/2019 - Decyzja z 16/12/2020 - Instytucja, której sprawa dotyczy Komisja Europejska (Dalsze prowadzenie postępowania uznano za nieuzasadnione) |

Sprawa dotyczyła projektu budowy pływającego terminalu skroplonego gazu ziemnego na chorwackiej wyspie. Skarżący byli zaniepokojeni faktem, że Komisja Europejska umieściła projekt na wykazie projektów będących przedmiotem wspólnego zainteresowania – transgranicznych projektów w zakresie infrastruktury energetycznej – i przyznała mu finansowanie unijne w ramach instrumentu „Łącząc Europę”. Skarżący uznali, że projekt nie spełniał odpowiednich kryteriów, aby zostać umieszczonym na wykazie projektów będących przedmiotem wspólnego zainteresowania i otrzymać finansowanie unijne.

Europejska Rzecznik Praw Obywatelskich zbadała sprawę i nie znalazła niczego, co wskazywałoby na popełnienie przez Komisję oczywistego błędu w ocenie podczas umieszczania projektu na wykazie projektów będących przedmiotem wspólnego zainteresowania i przyznawania mu finansowania unijnego. Ponieważ Komisja przedstawiła jasne wyjaśnienia odnoszące się do argumentów podniesionych przez skarżących, Rzecznik stwierdza, że dalsze prowadzenie dochodzenia w sprawie tej skargi nie jest uzasadnione.

Background to the complaint

1. Projects of Common Interest (PCIs) are key cross border infrastructure projects that link the energy systems of EU countries, thereby helping the EU to achieve its energy policy and climate objectives. [1] The criteria for identifying, planning and implementing PCIs are set out in the TEN-E Regulation. [2]

2. Every two years the European Commission draws up a list of these projects (the PCI list) [3] ,



which benefit from accelerated planning and permit procedures, and can be eligible for EU funding under the Connecting Europe Facility (CEF) [4] . The Commission submits the list of projects to the European Parliament and to the Council. If neither the Parliament nor the Council rejects the list, it enters into force.

3. The complaint concerns a project to construct a floating liquefied natural gas (LNG) terminal on the Croatian island of Krk. [5] The project was first included on the PCI list in 2013 [6] and was included on all subsequent PCI lists. In 2017, the project received EUR 101.4 million of EU funding under the CEF for the first phase, the construction of a floating storage and regasification unit. [7]

4. For a gas project to be included in the PCI list, it has to be part of the latest 'Ten Year Network Development Plan for gas' developed by the European Network of Transmission System Operators for Gas (ENTSOG). [8] In this context, the costs and benefits of a project are assessed on the basis of a methodology developed by ENTSOG. [9]

5. The complainants, a European environmental organisation and its Croatian affiliate, took issue with the inclusion of the project on the PCI list and with the decision to grant it CEF funding. The complainants consider that the project does not comply with the relevant rules set out in the TEN-E Regulation and with the criteria to receive CEF funding [10] .

6. In April 2019, nine Members of the European Parliament (MEPs) sent a letter to the Commission about the project, putting forward the same views and arguments as the complainants. They asked the Commission to withdraw the funding and not to include the project on the fourth PCI list. [11]

7. In May 2019, the Commission explained that the project was included on the PCI list because it reduces the dependence of the region on a single supplier, opens the region to alternative sources, increases competition, and reduces the cost of energy. The Commission also said that it would analyse the concerns raised by the MEPs in relation to the project regarding its compliance with the applicable rules.

8. Dissatisfied with the Commission's reply the complainants turned to the Ombudsman in July 2019.

The inquiry

9. The Ombudsman opened an inquiry into the complaint to ensure that the Commission addressed the complainants' concerns regarding the compliance of the project with (1) the criteria for inclusion on the PCI list, and (2) the criteria for CEF funding.

10. In the course of the inquiry, the Ombudsman received the reply of the Commission on her request for information. The complainants expressed disagreement with the Commission's reply but decided not to submit additional comments. The Ombudsman's inquiry team also received



an update from the Commission on its work in relation to the evaluation and the funding of PCIs.

Arguments presented to the Ombudsman

11. The complainants contended that the project does not have a cross-border impact, which is one of the conditions for a project to be designated as a PCI. [12] They added that the project does not comply with the award criteria to receive CEF funding due to the lack of a cross-border dimension and the fact that project is not at a 'mature' or sufficiently advanced stage. [13]

12. Regarding the project's cross-border impact, the complainants said that, under the relevant procedure [14], Hungary which, they claim, is the only other country mentioned in relation to the project [15], had not made a formal request to use the terminal.

13. Regarding the maturity of the project, the complainants said that the implementation of the project is not advancing. They noted that there was not sufficient interest from operators in using the terminal to make the project profitable. They added that the lack of market interest led the promoter to scale back the project.

14. The complainants also took issue with the cost-benefit analysis of the project, saying that it minimised its costs and did not convincingly demonstrate its benefits. They considered that this was due to the poorly defined sustainability criterion with which PCI gas projects have to comply, which limited the potential costs of a project generated by likely environmental impacts. The complainants referred to the fact that the Agency for the Cooperation of Energy Regulators (ACER) also raised concerns about the assessment of the sustainability and of the costs and benefits of gas projects. [16]

15. For its part, the Commission said that the project fulfils the criteria for being included on the PCI list. It noted that the project has a significant cross-border impact, as the Croatian gas system is connected to those of Slovenia and Hungary. It explained that the project's maximum capacity is higher than Slovenia's annual import needs and more than a quarter of Hungary's. The Commission added that direct involvement in carrying out the project or an official expression of interest from another Member State are not conditions for a project to be included in a PCI list, based on the cross-border criterion.

16. When the Commission included the project on the fourth PCI list, it carried out a new assessment of its compliance with the criteria set out in the TEN-E Regulation. Every PCI list is a new list, and the Commission assesses each project in the same way regardless of whether it was included in a previous list or not. This allows it to take into account market developments that might influence the assessment of a project. If a project that was on a previous PCI list did not meet newly established criteria, or if the benefits no longer outweighed the costs, it would not be included on the new list.

17. The Commission noted that the project would guarantee an alternative supply source and route for natural gas, which represents a significant energy security benefit. In light of the



evolution of the gas market, the Commission expects that the terminal will be used more than the initial expressions of interest suggest. It added that, even with a relatively low utilisation rate, the terminal would benefit consumers by increasing competition in the market.

18. The Commission said that, if market operators had already expressed sufficient interest in the capacity of the terminal to make the project viable, it would not be eligible for CEF funding. It noted that the lack of sufficient interest reinforces the justification for granting EU funds.

19. Regarding the maturity of the project, the Commission said that CEF funding was granted for the first phase of the project (constructing a floating storage and regasification unit), which was fully in line with the project's description on the PCI list. The Commission noted that, in 2019, the project promoter awarded a contract for this [17] and acquired the unit. Thus, in the Commission's view, the project is being implemented since the beginning of 2019.

20. The Commission added that it regularly monitors the project's compliance with the grant conditions and that, should it identify any irregularities or breach of obligations, it would take corrective measures.

The Ombudsman's assessment

21. The assessment of whether a project complies with the criteria set out in the TEN-E Regulation or meets the criteria for CEF funding requires specialist technical expertise. The role of the Ombudsman is therefore not to evaluate a project against those criteria, but to ensure that the Commission has provided clear explanations for its decisions. The Ombudsman could question the technical evaluation of a project only if it were based on clear evidence of a manifest error of assessment.

22. The Ombudsman finds that the Commission has now addressed, in a clear and exhaustive manner, the arguments raised by the complainants in relation to the maturity of the project and its cross-border impact. Based on the information obtained in the course of the inquiry, the Ombudsman does not find anything to suggest that the Commission committed a manifest error of assessment when it included the project on the PCI list and granted it EU funding.

23. Regarding the complainants' point that only Hungary was mentioned on the PCI list in relation to the project, the Ombudsman takes note of the Commission's statement that also other Member States, such as Slovenia, would benefit from the project. The fact that countries other than Hungary might benefit from the project is in line with the wording of the PCI list, which describes the project as a "[c] *luster Krk LNG terminal with connecting and evacuation pipelines towards Hungary and beyond* [...]" (emphasis added). [18]

24. Regarding EU funding granted to the project, the Ombudsman considers that the Commission clearly explained that the phase of the project that received funding is the one for the construction of a floating storage and regasification unit. The Commission provided clear examples of the actions undertaken by the project promoter to support its view that the financed



activities are being implemented.

25. The Ombudsman notes the Commission's reassurance that it carried out a new assessment of the project's compliance with the criteria set out in the TEN-E Regulation before including it on the fourth PCI list. By assessing each project in the same way regardless of whether it was included in a previous list or not, the Commission can identify if a previously listed project does not meet the criteria for being included on a new list.

26. Regarding the assessment of costs and benefits of PCI gas projects, the Ombudsman acknowledges that the way in which the sustainability of these projects was assessed might have influenced their cost-benefit analyses. The Ombudsman examined this matter in the context of a recent inquiry [19] .

27. According to the Commission, prior to the fourth PCI list, the sustainability of candidate gas projects was assessed in different manners and a lack of uniformly available, consistent and accurate data had prevented a fully satisfactory and consistent assessment. The Commission's attempt to resolve this in the context of the fourth PCI list did not prove effective, as the approach proposed by ENTSOG at the time was based on assumptions that all gas projects would show only positive benefits. [20]

28. The Ombudsman found that the sustainability of gas projects that were included on the PCI lists had not been sufficiently taken into account. However, she also found that the Commission is working on improving the methodology for assessing candidate gas projects [21] . For future PCIs, the sustainability assessment will take into account the level of greenhouse gas emissions and efficiency impacts, as well as the impact on the overall greenhouse gas intensity of energy production in EU Member States and the emissions related to the functioning of the infrastructure itself. Therefore, the Ombudsman found that further inquiries were not justified. The Ombudsman's conclusion in that case applies also to this case.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

No further inquiries into this complaint are justified.

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

Emily O'Reilly European Ombudsman

Strasbourg, 16/12/2020



[1] More information on PCIs can be found at

https://ec.europa.eu/energy/topics/infrastructure/projects-common-interest/key-cross-border-infrastructure-projects_
[Link].

[2] Regulation (EU) 347/2013 of the European Parliament and the Council of 17 April 2013 on guidelines for trans-European energy infrastructure,

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013R0347> [Link].

[3] PCI lists can be found at

https://ec.europa.eu/energy/topics/infrastructure/projects-common-interest/key-cross-border-infrastructure-projects_
[Link].

[4] The Connecting Europe Facility (CEF) is an EU funding instrument that supports the development of trans-European networks in the fields of transport, energy and digital services,

<https://ec.europa.eu/inea/en/connecting-europe-facility> [Link].

[5] More information on the project can be found on the website of the project's promoter (LNG Croatia LLC), <https://lng.hr/en/> [Link].

[6] Commission Delegated Regulation (EU) 1391/2013 of 14 October 2013 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure as regards the Union list of projects of common interest, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1391> [Link].

[7] The implementation schedule of the action is from February 2018 to December 2020. More information:

<https://ec.europa.eu/inea/en/connecting-europe-facility/cef-energy/6.5.1-0018-hr-w-m-16> [Link].

[8] TEN-E Regulation ANNEX III.2. Every two years, ENTSOG adopts a 'ten-year network development plan'. Projects that are included in the plan can apply for inclusion on the PCI list. See: <https://www.entsog.eu/> [Link].

[9] Article 11(1) of the TEN-E Regulation.

[10] Call for Proposals concerning Projects of Common Interest under the Connecting Europe Facility in the field of trans-European energy infrastructure, CEF-Energy-2016-2,

https://ec.europa.eu/inea/sites/inea/files/cef_energy_2016_2_call_text_for_publication.pdf [Link]

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[11] During the course of the inquiry, the Commission adopted the fourth PCI list, which still includes the project, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32020R0389>
[Link].

[12] The criteria are listed in Article 4 of the TEN-E Regulation, available at:



<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013R0347> [Link]

[13] CEF-Energy-2016-2, point 9.

[14] The project promoter organised a call for those interested in using the terminal in order to estimate the demand for basic and additional services of the terminal. The procedure ran from January 2018 until February 2019 and was prolonged several times.

[15] The [third PCI list](#) [Link] refers to 'Cluster Krk LNG terminal with connecting and evacuation pipelines towards Hungary and beyond, including the following PCIs:

6.5.1 Development of a LNG terminal in Krk (HR) up to 2,6 bcm/a – Phase I and connecting pipeline Omišalj – Zlobin (HR)

6.5.5 'Compressor station 1' at the Croatian gas transmission system

6.5.6 Expansion of LNG terminal in Krk (HR) above 2,6 bcm/a – Phase II and evacuation pipelines Zlobin – Bosiljevo – Sisak – Kozarac – Slobodnica (HR).

[16] Opinion 14/2019 of the Agency for the Cooperation of Energy Regulators, of 27 June 2019 on the ENTSOG DRAFT TEN-YEAR NETWORK DEVELOPMENT PLAN 2018, https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2014-2019 [Link].

[17] The promoter awarded an EPC contract, which is a building contract used for large or complex projects under which the contractor is responsible for the design, construction and completion of the project for a fixed price and by a fixed date. The contract also transfers most of the risks from the owner to the contractor who is required to deliver a completed project on a turnkey basis.

[18] This reference to Hungary and beyond is included on the second, third and fourth PCI lists. The first PCI list referred to ' *Cluster Krk LNG Regasification Vessel and evacuation pipelines towards Hungary, Slovenia and Italy* ' [...].

[19] Decision of the European Ombudsman in 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/decision/en/135095> [Link].

[20] The Commission explained this was due to fuel-switches from polluting to less polluting fossil fuels, for example from coal to gas, and a significant volume of renewable gas.

[21] See:

https://op.europa.eu/en/publication-detail/-/publication/364d69a4-1744-11eb-b57e-01aa75ed71a1/language-en?WT.mc_id=OP-MKTG-2021-01 [Link]