

Odločba v zadevi 1991/2019/KR o ravnanju Evropske komisije v okviru ocenjevanja trajnostnosti projektov plinske infrastrukture z obstoječega seznama projektov skupnega interesa

Odločba

Primer 1991/2019/KR - **Preiskava uvedena dne** 10/02/2020 - **Odločba z dne** 17/11/2020
- **Zadevna institucija ali organ** Evropska komisija (Nadaljna preiskava ni utemeljena) |

Zadeva se je nanašala na vključitev projektov plinske infrastrukture na seznam projektov skupnega interesa EU za leto 2019. Gre za čezmejne projekte energetske infrastrukture, ki bi morali prispevati k doseganju ciljev energetske in podnebne politike EU. Pritožnik je izrazil pomislek, da trajnostnost projektov plinske infrastrukture s seznama projektov skupnega interesa ni bila zadovoljivo in ustrezno ocenjena.

Komisija je že potrdila, da ocenjevanje trajnostnosti kandidatnih projektov plinske infrastrukture zaradi pomanjkanja podatkov in neustreznih metodologij ni bilo optimalno. Med preiskavo je Komisija evropsko varuhinjo človekovih pravic obvestila, da posodablja merilo, ki se uporablja za ocenjevanje trajnostnosti projektov, ki so kandidati za uvrstitev na naslednji seznam projektov skupnega interesa, ki ga bo sestavila leta 2021.

Ta posodobitev naj bi med drugim omogočala, da se pri oceni projektov upoštevajo ravnovesje CO₂ in metana ter vplivi na učinkovitost. Kazalnik naj bi odražal pričakovani vpliv infrastrukture na splošno intenzivnost sproščanja toplogrednih plinov pri proizvodnji energije v določeni državi članici EU in emisije, povezane z delovanjem same infrastrukture.

Evropska varuhinja človekovih pravic pozdravlja dejstvo, da bo Komisija merilo posodobila, preden bo sprejeta odločitev o naslednjem seznamu projektov skupnega interesa. Naslednji seznam projektov skupnega interesa bo predvidoma sprejet v zadnjem četrtletju leta 2021.

Glede na cilje EU na področju podnebnih sprememb in trajnostnosti je obžalovanja vredno, da so bili projekti plinske infrastrukture na prejšnje sezname projektov skupnega interesa uvrščeni, ne da bi bila njihova trajnostnost pravilno ocenjena. To je pomenilo, da jih ni bilo mogoče razvrstiti v skladu z njihovo stopnjo trajnostnosti. Vendar Komisija sprejema potrebne ukrepe, zato nadaljnje preiskave evropske varuhinje človekovih pravic v tem



trenutku niso upravičene.

Background to the complaint

1. Projects of Common Interest (PCIs) are key cross border infrastructure projects that link the energy systems of EU countries, with a view to helping the EU achieve its energy policy and climate objectives. Every two years since 2013, the European Commission has drawn up a list of PCIs (the PCI list). Projects included on this list can benefit from accelerated planning and permit procedures, and can be eligible for EU funding under the Connecting Europe Facility [1] .

2. The TEN-E Regulation [2] establishes a framework for the identification, planning and implementation of PCIs. It identifies nine strategic geographical energy infrastructure priority corridors in the fields of electricity, gas and oil.

3. The complainant works for an environmental NGO. Between 19 and 28 October 2019, the complainant and the Commission exchanged a number of emails on the inclusion of fossil fuel projects on the fourth PCI list (the most recent list). The complainant was concerned about the sustainability of a particular gas project and how this had been assessed before the Commission decided to include the project on the PCI list.

4. In this exchange, the Commission referred to an opinion of the Agency for the Cooperation of Energy Regulators (ACER), which raised concerns about how the sustainability of gas projects is assessed in the context of drawing up the PCI list, and what that means for the long-term viability of those projects. [3]

5. The Commission indicated to the complainant that it is working on improving the analytical tools and procedures for assessing the sustainability of gas projects as part of the analysis of candidate projects for future PCI lists.

6. However, the complainant reiterated its concerns that the fourth PCI list contains projects that had not been assessed in a meaningful way for climate or sustainability impacts. Dissatisfied with the Commission's answer, the complainant turned to the Ombudsman on 29 October 2019.

The inquiry

7. The Ombudsman opened an inquiry to examine if and how the Commission has sought to ensure that the sustainability of gas projects was assessed before they were included on the PCI list. [4]

8. In the course of the inquiry, the Ombudsman sent detailed questions to the Commission [5] and received its reply [6] , on which the complainant commented [7] .

9. On 22 September 2020, the Ombudsman's inquiry team asked the Commission for an update as regards the new sustainability criterion that it had announced for mid-2020, as well as a related study. The Commission provided the update on 27 October 2020.



Arguments presented to the Ombudsman

Previous sustainability assessments of PCIs

10. The Commission said that, prior to the fourth PCI list, the sustainability of candidate gas projects was assessed in different manners. However, a lack of uniformly available, consistent and accurate data had prevented a fully satisfactory and consistent assessment. An objective for the fourth PCI list was to correct this. As such, the European Network of Transmission System Operators for Gas (ENTSOG) [8] was tasked to include a sustainability assessment in its cost/benefit analysis. This was to ensure the uniform assessment and consistency required for sustainability, to be used in the ranking of candidate gas projects. For the first time an attempt was made at quantifying sustainability benefits in the form of CO₂ emissions reduction.

11. The Commission said that ENTSOG's proposed approach was based on assumptions that *all* gas projects would automatically show *only* positive benefits towards CO₂ mitigation, because of fuel switches from coal to gas, and a significant share of renewable gas [9]. Negative impacts, such as possible increases in greenhouse gases, were not taken into account. As no detailed analysis of the different situations in the individual countries was undertaken, real project specific sustainability benefits would remain invisible and unquantifiable. This approach therefore did not enable any distinction to be drawn between projects that truly bring sustainability benefits and those that do not and which might even increase greenhouse gas emissions. The Commission indicated that it realised the flaws in the sustainability assessment of candidate gas projects when the assessment methodology for the fourth PCI list was developed and applied in the spring of 2019.

12. In September 2019, the gap in the assessment methodology was referred to publicly by ACER. It noted that the approach adopted in the PCI selection process, namely of not using the sustainability assessment provided by ENTSOG and not suggesting any alternative, leads to significant gaps in the assessment of important merits or disadvantages of the projects. According to ACER, the absence of a sound assessment of the projects' contribution to sustainability leads to great uncertainty and doubts about the viability (or even the need) for the projects in the long run.

13. The Commission noted that the sustainability assessment did not form a basis for awarding these gas projects PCI status. It said that all gas projects on PCI lists " *so far have shown contributions to the rest of the criteria [...] on the basis of which they have been chosen as PCIs* " [10].

14. The complainant disagreed with the Commission's conclusion that the sustainability of gas projects on the PCI-list had been assessed appropriately. He argued that the ACER opinion indicated that the assessment was flawed, and that it thus cannot be fully compliant with EU law. The complainant remained of the view that the Commission should reassess all fossil fuel projects on the current PCI list.



Future sustainability assessments of PCIs

15. The Commission stated that an updated sustainability criterion was in the process of being developed and should be ready for assessing candidate projects for the fifth PCI list. [11] To this end, the Commission commissioned a study to determine the relevant data collection and the provision of analytical methodologies for analysing the sustainability of candidate projects for the PCI list. This study was published. [12]

16. Based on the study's results, the Commission indicated that it will make the sustainability criterion operational. The study includes a number of recommendations that the Commission is working with ENTSOG to include. In addition, a methodology will be developed in the regional groups to include the sustainability criterion in the process to select future PCIs. [13] The Commission also indicated that it is drawing on the European Green Deal [14] and the decarbonisation transition for a new definition of how to assess the sustainability of projects. [15]

17. The updated sustainability criterion should ensure that the level of CO₂ and methane emissions, as well as efficiency impacts, are taken into account in the assessment of projects. In particular, this should take into account the expected impact from the proposed infrastructure on the overall greenhouse gas intensity of energy production in a given EU Member State and the emissions related to the functioning of the infrastructure itself.

18. Finally, the Commission indicated that its Directorate-General for Energy started carrying out research in 2019 into methane emissions launched. The final study is expected in 2020, and is said to analyse the climate aspect of the 'gas value chain', by which is meant the totality of gas exploration and production; treatment and liquefaction, transport and distribution. [16] An EU strategy to reduce mineral methane emissions is also forthcoming.

The Ombudsman's assessment

19. Both the Commission and the complainant agree that sustainability assessments of candidate gas projects have been suboptimal. As a result, the sustainability of gas projects that were included on the fourth PCI list (and previous lists) has not been sufficiently taken into account.

20. The Ombudsman notes that the EU's objectives concerning climate change targets and sustainability have gained in urgency with the increasing awareness of the accelerating climate crisis. In this context, the Ombudsman finds it regrettable that the Commission did not attempt at an earlier stage to improve the available data and the analytical methodologies applied, so that a ranking of candidate gas PCIs based on their sustainability would have been possible.



21. The Ombudsman notes that the Commission is working on improving the methodology for assessing the sustainability of candidate gas projects, with a view to taking into account the greenhouse gas (CO₂ and methane) emissions of projects, as well as the potential efficiency impacts.

22. The TEN-E regulation [17] requires that a candidate gas project must contribute significantly to at least one of four alternative criteria listed above (sustainability being one). The Ombudsman's inquiry has allowed the conclusion to be drawn that none of the candidate gas projects was selected based on the expectation it would make a significant contribution as regards sustainability. As such, the selection of PCIs, which happened based on other criteria, appears to have happened in accordance with the applicable rules.

23. The TEN-E regulation lists indicators [18] that should be taken into account in the assessment of gas projects, stating that sustainability "*shall be measured as the contribution of a project to reduce emissions, to support the back-up of renewable electricity generation or power-to-gas and biogas transportation, taking into account expected changes in climatic conditions*".

24. The Ombudsman notes that 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.

25. Given that the Commission is now taking the necessary action, the Ombudsman concludes that no further inquiries are justified. The measures planned by the Commission should address the shortcomings in the sustainability assessment of candidate gas projects of common interest. In particular, this implies updating the sustainability criterion so that it takes into account 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 proposed infrastructure itself. This updated criterion should be in place ahead of the assessment of candidate gas projects for the fifth PCI list, which should be adopted in the last quarter of 2021.

26. Lastly, the Ombudsman takes note of the Commission's commitment towards sustainability in the context of the European Green Deal, as well as the initiative taken by the Commission in the context of the goal of making the EU climate neutral by 2050. The public arguably expects this to be reflected in the concrete policies and initiatives proposed by the Commission in the future, for example in the field of energy. To this end, the projects that are included on future PCI lists should have sustainability to the fore and the evaluation of candidate gas projects should be criteria-based. Improving how the sustainability of candidate gas projects is assessed would be an important step to this end.

Conclusion

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

As the Commission is working on improving the methodology and data collection for



assessing the sustainability of candidate gas projects for the PCI-list, the European Ombudsman considers that no further inquiries are justified at this point.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 17/11/2020

ANNEX

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

- 1) Candidate projects are proposed by their promoters.
- 2) The initial assessment and selection of PCIs is carried out by Regional Groups [19] 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 gas, the Agency for the Cooperation of Energy Regulators and the European Commission.

The Regional Groups evaluate the applications against the general and specific criteria as defined in the TEN-E regulation.

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.

- 3) After these assessments, the Commission adopts the list of approved PCIs via a delegated act procedure [20] .

- 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] See:

<https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest/key-cross-border-infrastructure>



[2] Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure:
<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013R0347> .

[3] The ACER opinion of 25 September 2019 is available here:
https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%20

[4] The question as regards the efficient and sustainable use of resources criterion for oil projects on the PCI-list was implicit in the complaint. The Ombudsman therefore added this on her own initiative, to allow the Commission to address this issue as well. After receiving the Commission's explanation, the Ombudsman decided there were insufficient grounds to inquire further into this aspect.

[5] See: <https://www.ombudsman.europa.eu/en/correspondence/en/124432> .

[6] See: <https://www.ombudsman.europa.eu/en/correspondence/en/129929> .

[7] See: <https://www.ombudsman.europa.eu/correspondence/135062> .

[8] ENTSOG's mission is to facilitate and enhance cooperation between national gas transmission system operators (TSOs) across Europe in order to ensure the development of a pan-European transmission system in line with EU energy goals. 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/> .

[9] 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.

[10] The TEN-E regulation does not necessarily require a gas project to make a significant contribution in terms of sustainability. According to Article 4 (b), "*gas projects* [should] *contribute significantly to at least one of the following specific criteria:*

(i) market integration...; (ii) security of supply...; (iii) competition...; (iv) sustainability. See also footnote 1.

[11] The process to select gas projects for inclusion in the next list will start at the end of 2020. The adoption of the list is planned for the last quarter of 2021.

[12] The study can be found here:
<https://op.europa.eu/en/publication-detail/-/publication/364d69a4-1744-11eb-b57e-01aa75ed71a1/language->
. The date on the final version of the study is of June 2020. Before publication, the report was presented and discussed internally. The report was sent for publication in October and published ahead of the annual Energy Infrastructure Forum, which was organised in



Copenhagen, on 29 October. Here the study was presented and discussed with stakeholders.

[13] Please see the annex for more detail on the procedure to establish a PCI-list.

[14] See: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en .

[15] See: <https://www.investigate-europe.eu/en/2020/klaus-dieter-borchardt/>.

[16] See :

https://ec.europa.eu/energy/topics/oil-gas-and-coal/methane-emissions_en#a-study-to-identify-knowledge-ga
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[17] Article 4(2)(b)

[18] In line with Article 4(3) of the regulation: "*For projects falling under the energy infrastructure categories set out in Annex II.1 to 3, the criteria listed in this Article shall be assessed in accordance with the indicators set out in Annex IV.2 to 5.*"

[19] See:

<https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest/regional-groups-and-their-rol>
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[20] See for more information:

https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/implementing-and-delegated-acts_en
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