

Comments of the Commission on a request for information from the European Ombudsman - Complaint 1991/2019/KR on the alleged failure to carry out a sustainability/climate assessment for all existing fossil fuel projects on the list of Projects of Common Interest (PCIs)

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

The criteria applied for the assessment of PCIs are described in Article 4 and Annex IV of the Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure (TEN-E Regulation). Article 4(2) provides for specific criteria applying to PCIs in each category. In line with Article 4(2) (b) *“for gas projects falling under the energy infrastructure categories set out in Annex II.2, the project is to contribute significantly to at least one of the following specific criteria”*: (i) market integration; (ii) security of supply; (iii) competition and (iv) sustainability. In line with Article 4(2) (d) *“for oil transport projects falling under the energy infrastructure categories set out in Annex II.3, the project is to contribute significantly to all of the following specific criteria: (i) security of supply reducing single supply source or route dependency; (ii) efficient and sustainable use of resources through mitigation of environmental risks; (iii) interoperability”*. In line with Article 4(3): *“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.”*

According to Annex IV(3)(d) sustainability for gas projects *“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”*. As regards oil projects efficient and sustainable use of resources is defined by Annex IV(5)(c) as *“measured by assessing the extent to which the project makes use of already existing infrastructure and contributes to minimising environmental and climate change burden and risks”*.

II. THE COMPLAINT

On 10 February 2020, the European Ombudsman sent to the Commission an inquiry linked to complaint 1991/2019/KR from Mr Andy Gheorghiu of ‘Food & Water Europe’. The complaint regards the alleged failure to carry out a sustainability assessment for all existing fossil fuel projects on the list of Projects of Common Interest (PCIs).

III. THE COMMISSION’S COMMENTS TO THE COMPLAINANT’S ARGUMENTS

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?

The TEN-E Regulation provides that only gas projects which are included in the relevant Ten Year Network Development Plan (TYNDP) adopted by the European Network of Transmission System Operators in Gas (ENTSO-G) can apply for inclusion in the Union

list of PCIs. Each TYNDP¹ is based on scenarios regarding the development of the EU's overall energy system. The scenarios are elaborated for every TYNDP process to reflect the latest assumptions at the time regarding the role of gas in the energy system in line with the latest EU targets and agreements regarding the EU's energy and climate agenda. This is ensured during the process of the elaboration of the scenarios where the Commission and stakeholders² are closely involved³. The assessment of additional gas transmission infrastructure needs and benefits is always performed against these scenarios. Therefore, the role of gas transmission infrastructure as reflected in the TYNDPs over time has always been in line with the EU climate targets and goals.

Concerning the individual gas projects, the so-called project specific cost-benefit analysis (PS CBA) performed by ENTSOG as part of the TYNDP⁴ is an important input for the assessment and ranking of candidate PCIs. The latest ENTSOG CBA assessment includes for the first time⁵ a quantification of the sustainability benefit in the form of CO2 emissions reduction and benefits deriving from fuel switch.

During the PCI process for the 4th Union list⁶, more specifically during the development and application of the PCI assessment methodology [period April-May 2019] the regional groups⁷ observed that the ENTSOG calculation of the sustainability benefits includes significant limitations: the key underlying assumption in the CBA was that all gas projects would automatically show only positive benefits towards CO2 mitigation, while any negative impact (such as possible increase in CO2 emissions) is excluded by the methodology. By only using CO2 savings from the assumptions taken (fuel-switches from coal to gas and a significant volume of renewable gas) without carrying out a detailed analysis of the different situations in the individual countries, real project-

¹ The TYNDP is developed every two years.

² National Regulatory Authorities in the field of energy, the Agency for the Cooperation of Energy Regulators, industry representatives, as well as environmental and consumers NGOs.

³ For example, as regards the latest TYNDP process, following work in 2016 on a consistent and interlinked model, ENTSOG and ENTSO-E joined efforts to develop a common set of scenarios, building on their combined expertise and modelling capabilities as well as on the input received from stakeholders from the industry, NGOs, National Regulatory Authorities and Member States. The joint scenarios outline different possible paths towards a low-carbon energy system in line with the European Union's decarbonisation plans, the agreed 2020 and 2030 energy and climate objectives.

⁴ According to Annex III(2)(1) of the TEN-E Regulation, the PS CBAs are one of the documents to be submitted by project promoters when proposing a project for inclusion on the PCI list. As they need to be drafted based on the methodologies developed by the ENTSO for gas and in order to ensure consistency between the submissions relating to different projects, the ENTSO have been entrusted by the project promoters with drafting the PS CBAs on the basis of data they provide.

⁵ In previous PCI exercises, sustainability as a specific criterion for individual gas projects in accordance with the TEN-E Regulation, has been assessed and tackled in different manners by the regional groups. They aimed at the constant improvement of the use of this criterion. Nevertheless, the lack of uniformly available consistent and accurate data did not allow for a fully satisfactory consistent assessment. Therefore, the regional groups decided during the PCI process for the elaboration of the 3rd Union list that for the purposes of the 4th Union list, ENTSOG would be tasked to include the sustainability assessment in the CBA. This was considered to ensure the uniform assessment and consistency required for sustainability to be used in the ranking of gas PCI candidates.

⁶ Commission Delegated Regulation (EU) 2020/389 of 31 October 2019 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest, OJ L 74, 11.3.2020, p. 1–19.

⁷ Regional groups for gas are composed of representatives of the Member States, national regulatory authorities, TSOs, as well as the Commission, the Agency and the ENTSO for Gas.

specific sustainability benefits remain invisible and unquantifiable, hampering the robustness of the results of the assessment of such benefits as subsequently acknowledged by ACER in its Opinion⁸. In fact, the use of the proposed methodology would have led to more gas projects having a positive assessment and becoming PCIs. However, at the same time it was important to address the uncertainty of future scenarios regarding the role of gas and the risk of stranded assets.

As such, because of the mentioned problems, these sustainability benefits calculated in the individual PS CBAs have not been taken forward by the regional groups in the methodology for ranking candidate projects for the 4th Union list.

To ensure for the future a comprehensive assessment of sustainability benefits provided by gas infrastructure projects in the PCI process, the Commission services commissioned a study for relevant data collection and the provision of analytical methodologies, in order to enable a robust analysis of the contribution of candidate PCI projects to sustainability. An updated sustainability criterion that will be ready by mid-2020 is to be used for assessing candidate PCI projects for the 5th list. Without pre-judging the results of the study, the aim of the sustainability criteria is to take into account the CO₂ and methane balance, as well as efficiency impacts, in the assessment of projects. In particular, this indicator would consider the infrastructure's expected impact on the overall GHG intensity of energy production in a given Member State and the emissions related to the functioning of the infrastructure itself.

Furthermore, the Directorate-General for Energy is carrying out research into the climate aspects of the gas value chain in an ongoing study on methane emissions launched in 2019 and will publish an EU strategy to reduce mineral methane emissions in 2020.

2. The PCI regulation 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. In this context, has it ever been the case that a gas project obtained PCI-status on the basis that it:

All gas PCIs are in line with the EU decarbonisation targets and climate policy:

- The PCI identification process as provided by the TEN-E Regulation is conducted in an open and transparent manner⁹. It also allows for a balanced participation of stakeholders including environmental NGOs.
- As described above, by the elaboration of the ENTSOG scenarios in line with the latest EU targets and agreements regarding the EU's energy and climate goals, it has been ensured that the assessment of additional gas transmission infrastructure

⁸ The Opinion No 19/2019 of the European Union Agency for the Cooperation of Energy Regulators of 25 September 2019 on the draft regional lists of proposed gas projects of common interest 2019 notes that '(28) the contribution of the PCI candidate projects to sustainability in general and to meeting the climate change policy goals of the European Union in particular, is not quite clear. ACER believes that the preliminary assessment provided by ENTSOG, which assigned a positive sustainability benefit to each and every candidate project, is tenable only under the specific assumptions that gas will be a substitute of more polluting fuels in the European Union's primary energy mix, and also that the total volume of consumed gas will be within a range that ensures that overall greenhouse gas emissions resulting from gas use will stay below the European Union's policy targets.'

⁹See the publicly available folder of the TEN-E Regional Groups:

<https://circabc.europa.eu/ui/group/3ba59f7e-2e01-46d0-9683-a72b39b6defc>

needs and the role of gas transmission infrastructure is in line with the EU climate targets and goals.

- In the PCI selection process, Member States have a very important role to play including a veto right for projects on their territory. They have thus the opportunity to check whether the proposed gas projects comply with the national ambitions and plans.
- National Regulatory Authorities also assess projects on the draft PCI list and they can raise the climate dimension of the respective project.

One obvious example of the important positive climate and environmental impact of certain gas projects, is that one only has to consider projects that aim directly at replacing coal with gas in countries that still have considerable percentages of coal in their energy mix¹⁰ and projects enabling the use of LNG as maritime fuel in the Baltic Sea allowing for low sulphur emissions.

- 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)?

While gas projects were assessed as regards the sustainability criterion, all projects on Union lists so far have shown contributions to the rest of the criteria listed in Article (4)(2)(b) of the TEN-E Regulation on the basis of which they have been chosen as PCIs.

In fact, given the context of European gas infrastructure so far it would have been very unlikely for such project, making only a significant contribution to sustainability, to exist. The TEN-E Regulation was enacted in 2013¹¹, after the gas disruption crisis in 2008/2009, when the European gas grid still had significant flaws in terms of supply security, integration and when many Member States still had access to only one source of gas. In addition, this pre-dates major developments of climate policy such as the Paris Agreement, the Clean Energy Package and the Green Deal, as well as national strategies to phase out coal and lignite use in a number of Member States. The state of the gas grid now has completely turned around as, with the gas projects to be implemented in the next few years, all Member States are ensured access to three sources of supply, including to the global LNG market. The phasing out of coal generation has become a tangible goal as well as the decarbonisation of gas. In this context, sustainability will play an increasingly stronger role in transmission infrastructure planning.

- was assessed to make a significant contribution to sustainability, as well as to any of the other criteria listed in Article 4 (2) (b) (i), (ii) and (iii)?

As regards sustainability as a specific criterion under Article 4(2) (b) of the TEN-E Regulation for gas PCIs, the lack of reliable, accurate and consistent project specific data did not allow for a non-discriminative assessment of that criterion for all candidate projects.

¹⁰ See report regarding the Baltic Pipe between Poland-Denmark and Norway: <https://www.baltic-pipe.eu/wp-content/uploads/2019/10/baltic-pipe-climate-report-en.pdf>

¹¹ As a continuation of previous acts implementing the TEN-E policy.

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” and, if so, how was this done?

According to the TEN-E Regulation the Oil supply connections in Central Eastern Europe (‘OSC’) priority corridor’s goal is to ensure interoperability of the oil pipeline network in Central Eastern Europe to increase security of supply and reduce environmental risks. Unlike the electricity and gas corridors under TEN-E, it is a regional corridor, with a limited number of Member States concerned: Austria, Croatia, Czech Republic, Germany, Hungary, Poland and Slovakia.

Oil PCIs ensure making best use of existing infrastructure, which keeps the environmental impact at the possible minimum level. Moreover, using pipelines is the safest way of crude oil transportation with the lowest environmental impact.

The projects’ assessment, including the assessment of the *efficient and sustainable use of resources* criterion is performed by the dedicated OSC Regional Group. The group comprises the national competent authorities, the project promoters (pipeline and storage operators), other stakeholders from the oil sector (like refineries) and the Commission. The assessment of the *efficient and sustainable use of resources* criterion takes into account two indicators: the extent to which the projects divert oil from being transported on a vessel to a pipeline and whether the route poses an increased environmental risk. Marks are awarded to each of the two indicators for each project depending on its specific circumstances and data.

For the 1st Union PCI list an external study, carried out by consultants in 2010 (Study on the Technical Aspects of Variable Use of Oil Pipelines (by ILF CONSULTING ENGINEERS and PURVIN & GERTZ)) for the elaboration of the TEN-E Regulation, was used for the assessment and ranking. Whereas for the 2nd PCI list, in 2015, an external consultant (“Assistance for the identification of Projects of Common Interest in the field of oil infrastructure in the context of the TEN-E Regulation (347/2013)” by Ramboll) assisted the Regional Group in its assessment. For the 3rd and 4th Union lists, the Regional Group, based on the previously mentioned external studies, conducted its own assessment of the projects.

IV. CONCLUSIONS

The Commission services are of the opinion that the climate assessment for all existing fossil fuel projects on the list of PCIs has been carried out appropriately and in full respect of EU law. Moreover, the assessment of the sustainability indicator for all fossil fuel projects has been carried out, even though, for gas projects, the identified benefits did not play a role in the ranking of candidate PCIs.

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