

# Complaint regarding the sustainability assessment criteria in the fifth Projects of Common Interest (PCI) list

Food & Water Action Europe  
Friends of the Earth Europe  
Global Witness

## 2. Against which European Union (EU) institution or body do you wish to complain?

European Commission

## 3. What is the decision or matter about which you complain? When did you become aware of it?

We contact you concerning the selection process for fossil gas projects under the fifth list of projects of common interest (PCIs). This process is currently underway and due to be finalised in the form of a draft final PCI list in November 2021 (which can then, as a whole, only be adopted or rejected by Council and the European Parliament).

Last year, The Ombudsman found significant shortcomings in her inquiry assessing the fourth PCI list selection process under Case 1991/2019/KR, concluding that *“the sustainability of gas projects that were included on the fourth PCI list (and previous lists) has not been sufficiently taken into account”*. The Ombudsman noted that the Commission was working to improve the methodology for assessing the sustainability of candidate gas projects and that this implied *“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.”* The Ombudsman also stated that *“(t)his 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”*.

In response, the European Commission promised it would take several steps to remedy the situation. These steps are outlined in the Ombudsman’s decision and include publishing a new study, developing a methodology to include the sustainability criterion in future PCI selection processes and creating a new definition for how to assess the sustainability of projects. The Ombudsman stressed that both the carbon dioxide and methane emissions as well as efficiency impacts should be taken into account when assessing projects.

On 10 July 2020, the European Parliament passed a motion (2020/2549(RSP)) calling on the European Commission *“to propose transitional guidance on spending under the Connecting Europe Facility and on the selection of projects for the fifth PCI list by the end of 2020 to ensure that spending and selection is in line with commitments made under the Paris Agreement”*.

It is worth noting that while the Trans-European Energy Infrastructure (TEN-E) regulation, which sets out the rules for the selection of PCIs, is currently under revision, the revised rules will only apply to future project lists. The fifth PCI list is therefore still drafted under the 2013 TEN-E regulation.

Despite the Ombudsman's decision and the opinion of the European Parliament, it is our view that the European Commission has failed to sufficiently reform the process for assessing the sustainability of candidate projects for the fifth PCI list. We have come to this conclusion after engaging with the Commission during its work in preparing the draft fifth PCI list this year. Our view was confirmed after the adoption of the Commission's updated PCI gas project assessment methodology (21 June 2021).

The process remains incompatible with the climate objectives of the European Union, and is not transparent. This creates a high risk that multiple fossil gas projects will be included in the fifth PCI list. These projects would obtain the highest level of political support possible for an energy project as well as potential access to several forms of public financing.

#### **4. What do you consider that the EU institution or body has done wrong?**

We are deeply concerned by two documents crucial for the selection to future gas PCIs: the [needs methodology](#), which sets the rules to assess and determine member state's overall needs for gas and; the [projects assessment methodology](#), determining a set of indicators and criteria by which PCI candidate projects are assessed and allocated points to determine their inclusion on the fifth PCI list.

We find that the final PCI gas project assessment methodology (adopted on 21 June 2021) as drafted by the EU Commission is not in line with commitments under the Paris Agreement, the precautionary principle (particularly on methane emission considerations), the do no significant harm principle, and the conclusions of the Ombudsman case 1991/2019/KR.

Furthermore, this process is inconsistent with the EU [climate law](#) requiring that “[t]he Commission shall assess the consistency of any draft measure or legislative proposal, including budgetary proposals, with the climate-neutrality objective set out in Article 2(1) and the Union 2030 and 2040 climate targets before adoption, and include that assessment in any impact assessment accompanying these measures or proposals, and make the result of that assessment publicly available at the time of adoption”.

Despite minor improvements to the [sustainability methodology](#) for the fifth list compared to the (nonexistent) fourth PCI list sustainability assessment methodology, we find that the current methodology still fails to sufficiently address the recommendations both in the last Ombudsman decision on the case and in the recommendations given by the consultancy Artelys as part of a report commissioned by the EU Commission which included a [study](#) on the sustainability assessment of the fifth PCI list.

The reasons are as follows:

- While the EU commission claims that a mandatory sustainability assessment of all PCI gas candidate projects is being carried out, **the sustainability criterion still remains optional**. A negative sustainability assessment therefore, does not automatically lead to the exclusion of a fossil gas project from accessing top EU priority status on the PCI list. The assessment is designed to ensure that climate-wrecking, [unnecessary](#) fossil gas projects can still access the PCI list.
- Even if the sustainability criteria were to be made essential to the overall scoring of a project, **allocations of points for sustainability can reach a maximum of 5 while other indicators go as high as 10**. This makes the entire sustainability assessment extremely weak. Further, a complete lack of transparency means that civil society will not be informed of any results of the sustainability assessment and what it leads to: 1) The points allocated will be used to produce a ranking which is under no circumstances published. 2) The ranking is used to determine the fifth PCI list, but given the lack of transparency the public/NGO stakeholders cannot assess whether or to what extent the ranking influences the final design of the PCI list. We strongly doubt that it is admissible to designate top EU priority projects that get access to EU money while carrying out an inappropriate sustainability assessment that can moreover not be verified by the public or an independent body.
- Both the Artelys study and the Ombudsman decision (Ombudsman: *“this update is expected to take into account the CO2 and methane balance”*) highlight the importance of not only assessing CO2 emissions and possible CO2 emission savings, but also methane, which is an important greenhouse gas. **The final European Commission fifth PCI candidate projects assessment however does not take into account methane emissions at all**. This means that methane emissions risk being assumed as zero given that not even conservative emission estimates are being used. We find that this clearly violates the [TFEU 191](#), the precautionary principle, and ignores growing evidence of the importance of methane emissions linked to gas transmission infrastructure not only out-but also inside the EU as satellite and recent [camera footage](#) shows.
- In her decision, the Ombudsman also expected that **“overall greenhouse gas intensity of energy production in a given EU Member State and the emissions related to the functioning of the infrastructure itself”** be reflected in the assessment. We do not see this recommendation reflected in the current European Commission methodology, given the ignorance of methane (and other non-CO2) emission impacts and the failure to refer to energy production at all.
- Furthermore, the Ombudsman required *“efficiency impacts”* to be taken into account, and the Artelys study recommends to *“reflect alternatives to infrastructure investments, such as energy efficiency measures, in line with the Energy Efficiency First principle”*. Despite an improvement in the methodology in relation to actual expected gas flows (and not merely the capacity of infrastructure projects), as well as a suggestion that existing

infrastructure should be prioritized over building new infrastructure, **the methodology does not mention energy efficiency and its impact on infrastructure needs at all.** The lack of any reference to the energy efficiency principle is equally manifest in the PCI [needs methodology](#) which is the base of the project assessment. Both the projects and needs methodology do not contain any reference to electricity or any other energy system integration measures. This siloed approach risks assuming an artificially high need and/or benefits from building gas infrastructure which might not be the case in a more holistically assessed energy system.

Furthermore, just as with the fourth (and older) PCI lists, it is highly problematic that the base of the entire selection process is set by the fossil gas transport industry which has a clear conflict of interest. In its [opinion](#) in May 2021, ACER, the Agency for the Cooperation of Energy Regulators, found that the Ten Year Network Development Plan as prepared by ENTSO-G, is **not in line with EU law**. More specifically, it is not in line with Article 8(2) of Regulation (EC) No 715/2009 as the *“the TYNDP 2020 does not sufficiently contribute to the objectives of non-discrimination and efficient functioning of the market”*. The opinion calls for an improvement of the TEN-E in line with the EU Green Deal and criticises among other things a) shortcomings in terms of lack of neutrality and credibility given the role of the ENTSOs, b) *“shortcomings in public consultations”* and c) *“[t]oo many conventional gas projects - close to €75billion – are proposed by network operators”*.

Ultimately, in this final PCI assessment, the European Commission disregards not only overall legal commitments concerning sustainability and climate protection, but also important recommendations made by the Ombudsman in 2020, and by ACER as laid out in the findings of the study it commissioned on the issue. Additionally we find that public opinion and NGO input has been disregarded repeatedly throughout the process.

We find these shortcomings particularly disappointing given promises that top-ranking Commission officials made to the public about this issue. EU Climate Action Commissioner and Vice President of the European Commission published a [tweet](#) assuring EU Green Deal alignment with the PCI list: *“to receive EU funding, projects on the PCI list will have to support our #EUGreenDeal ambitions.”* Also Energy Commissioner Kadri Simson confirmed the links to the EU Green Deal in a [written answer](#) to EU Parliament ENVI committee chair Pascal Canfin. We do not find any reference in the PCI projects assessment methodology to the EU Green Deal including reference to these promises or turning them into a proper assessment. The needs methodology does mention the EU Green Deal, but only in the context of explaining that sustainability will not be playing any role in the needs assessment.

A large share of public funding has already been granted to fossil gas PCIs: directly due to PCI status and via the Connecting Europe Facility (CEF), [over €1.5billion](#) has been awarded to fossil gas projects between 2014 and 2021 - 75% of which was handed out to projects [owned by ENTSO-G](#), who are heavily involved in the PCI process and governance. It is worthwhile noting that the fifth PCI list currently includes 74 gas candidate projects summing up to more than [€41 billion](#) including CAPEX and OPEX, as found by Food & Water Action Europe and Climate Action Network Europe. Investing scarce public resources into fossil gas infrastructure in the

early 2020's would be completely at odds with climate emergency and limiting the temperature increase to 1.5°C.

Indirectly, PCI status continues to facilitate access to national public funding e.g. through state aid (see the recent [case](#) of €166.7million granted to a Greek PCI fossil gas import (Liquified Natural Gas, LNG terminal) contradicting the binding EU climate targets and obligations under the Paris Agreement. This represents a breach of Article 11 TFEU, Article 191 TFEU and Article 37 of the Charter of Fundamental Rights of the European Union. To align with EU climate objectives, the PCI list should not contain any fossil gas projects - this revision is being discussed under the TEN-E process. Meanwhile, none of the fossil gas projects on the fifth PCI list should be eligible without an appropriate sustainability/climate assessment. It should be noted that PCI list projects get access to important benefits in terms of streamlined environmental impact assessments, fast tracked permit granting procedures and EU public funding through the CEF. Even if no CEF funding is given to projects, the prestigious PCI status is sought after for general benefits and diverse national level benefits.

Supporting, and channeling scarce public money into these projects risks creating a dangerous fossil fuel lock-in, and significant stranded assets (a [report](#) by Global Witness found that at least €440million has been wasted on failed PCI projects). Both outcomes would have dire consequences for European economies and citizens alike.

## 5. What, in your view, should the institution or body do to put things right?

1. **An independent scientific sustainability/climate assessment needs to be completed for all fossil fuel project candidates**, and the project must then be assessed in light of the result. If a project is found not to be sustainable and aligned with the EU Green Deal or the Paris Agreement a project must not get top EU priority via the PCI list nor access to public funding.
2. **The sustainability climate assessment has to be improved** and the recommendations by the Ombudsman and the consultancy carrying out the study on the sustainability criterion need to be taken into account properly.
3. The findings of the sustainability impact assessment and an explanation how the assessment influences the final composition of the fifth PCI list should be made **publicly available**.
4. **Civil society input to the process should be reflected in decision making**, and deviations from this input should be explained with the explanation being made publicly available. Input to public consultations and stakeholder meetings should help frame the revision of this process and should contribute to the ways in which revision proposals are made.
5. **The upcoming EU law to reduce methane emissions as announced in the methane strategy must not be used as an excuse to fully ignore the impact of methane emissions** of all fifth PCI list gas candidate projects. The sustainability assessment has

to include methane emissions to give a more realistic picture of the climate impact of fossil gas and gas infrastructure as well as the claimed greenhouse gas emissions reductions.

## **6. Have you already contacted the EU institution or body concerned in order to obtain redress?**

This complaint is a follow up to a previous case 1991/2019/KR in 2020. Since then we have been in constant exchange with the European Commission, raising the issue in several public and personal online meetings. If further detail than the evidence below is required, please reach out for further information such as emails and meeting notes.

Food & Water Action Europe criticized the approach towards sustainability as well as the exclusion of sustainability from the needs assessment and the project assessment methodology in each of these meetings along with other NGOs like Bankwatch, Climate Action Network, Za Zemiata (Friends of the Earth Bulgaria) who voiced concerns and discontent about the process and project assessment. Evidence of this can be seen in the PCI group meeting recordings:

- 22 April (Western Europe & Baltic States): [Day 1 webstream](#).
- 23 April (Eastern Europe & Southern Gas Corridor) [Day 2 webstream](#).
- 21 June (all regional groups) [Day 1 webstream](#) (Day 2 was without the possibility for NGOs to attend)

Moreover, Food & Water Action Europe submitted an analysis and [criticism of the needs assessment](#) which completely ignores sustainability, as well as [criticism of the project assessment](#) which includes a biased/weak sustainability element to the European Commission. Additionally, CEE Bankwatch made a submission criticising this assessment.

These complaints were “duly noted” but NGOs have not seen any of the points raised taken into account in the [final needs assessment](#) and [projects assessment](#) methodologies. Moreover, the concern about sustainability is not only one shared by NGOs, both the fourth and fifth PCI public consultation on fossil gas projects showed a clear concern by civil society about these projects: Results of the [public consultation on the fourth PCI list](#) showed that 99.6% of respondents oppose fossil gas projects, while [the public consultation on the fifth PCI list](#) showed opposition by 96.4% of the respondents.