



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr John McElligott

johnmcelligott@hotmail.com

Strasbourg, 28/11/2019

Complaint 1933/2018/KR

Subject: Decision of the European Ombudsman in the above case on the European Commission's action relating to the drawing up of the EU list of 'Projects of Common Interest' in the energy sector

Dear Mr McElligott,

You submitted a complaint to the European Ombudsman against the European Commission concerning the above issue.

After a careful analysis of all the information submitted to me, I have decided to close my inquiry with the following conclusion:

There was no maladministration by the Commission.

As regards the 'EU Energy Plan', in your complaint you argued that the Shannon LNG Terminal is part of an energy plan to import gas from the US. This, you stated, risks importing gas from unconventional gas sources, specifically from hydraulically fractured wells, that could exacerbate the climate crisis through related methane emissions into the atmosphere.

The Ombudsman can investigate issues that concern the administrative work of the Commission only. The Ombudsman understands the EU Energy Plan and its objectives to be a matter of political objectives, and not an administrative matter. Therefore, this issue does not fall within the Ombudsman's mandate to examine.

I apologise for the length of time it has taken to complete this inquiry.

Please find enclosed my decision on your complaint¹.

¹ Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707>



Yours sincerely

Emily O'Reilly
European Ombudsman

Enclosure: Decision on complaint 1933/2018/KR



Emily O'Reilly
European Ombudsman

Decision

in case 1933/2018/KR on the European Commission's action relating to the drawing up of the EU list of 'Projects of Common Interest' in the energy sector

The case concerned the inclusion of a project on the EU's third list of Projects of Common Interest ('PCIs'). PCIs are infrastructure project proposals that the Commission considers will improve and integrate energy markets in the EU.

The complainant, a member of an NGO called 'Safety Before LNG', is concerned about the inclusion of a project on the PCI-list, namely the 'Shannon Liquefied Natural Gas (LNG) Terminal and connecting pipeline project'. He is of the view that this project should have been the subject of a strategic environmental assessment (SEA), before it was included on the third PCI-list.

The Commission pointed out that it is the responsibility of the Member States in which projects are carried out to ensure that the project meets all EU and national environmental rules. The Ombudsman noted, in this regard, that the Member State authorities in Ireland, including the courts, are carefully examining the compliance of the proposed gas terminal with EU law. The Ombudsman further accepted the Commission's argument that it has no power to carry out an SEA. The Ombudsman thus found the Commission's explanation on the matter to be convincing.

*The Ombudsman takes note, however, of the complainant's point about heightened awareness of the negative impact of certain fossil fuels on the climate. Given that the list of PCIs is intended to help the EU achieve its energy policy and **climate objectives** in accordance with the Paris Climate Agreement, she trusts that the Commission too will continue to pay particular attention to this issue of major importance to citizens.*

Background to the complaint

1. Every two years since 2013, the European Commission has drawn up a list of 'projects of common interest' (PCIs) intended to help the EU achieve its energy policy and climate objectives in accordance with the Paris Climate Agreement¹.

¹ The Paris Agreement is the first-ever universal, legally binding global climate deal. For more information, see: https://ec.europa.eu/clima/policies/international/negotiations/paris_en.



2. The PCI Regulation² 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 oil³. One of the benefits for a project featuring on the PCI-list is that its promoters have the right to apply for funding from the Connecting Europe Facility⁴.

3. In November 2017, the Commission published its third list of PCIs. The list contains 173 projects⁵. One of these projects was the Shannon Liquefied Natural Gas (LNG) Terminal and connecting pipeline⁶.

4. The complainant is an Irish citizen and member of the group 'Safety Before LNG'. He is concerned about the Shannon LNG Terminal and the fact that it was placed on the PCI-list. His concerns deepened after a number of public statements were made, including a joint Commission-US statement that "*The European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply*"⁷ and a press release mentioning the Shannon LNG Terminal as an entry point for that gas⁸.

5. The complainant raised his concerns about the establishment of the PCI-list with the Commission's Directorate-General for Energy. He considered that the reply from the Commission failed to address his concerns in a satisfactory manner.

6. The complainant turned to the Ombudsman on 12 November 2018.

The inquiry

7. The Ombudsman opened an inquiry into the complainant's concerns arising from the inclusion of the project in question on the PCI-list.

8. In the course of the inquiry, the Ombudsman asked the Commission to reply to aspects of the complaint related to the eligibility criteria of projects considered for the PCI-list, including in terms of strategic environmental assessments (SEA).

² Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure, OJ L 115, 25.4.2013, p. 39–75, see <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013R0347>.

³ It also identifies three EU-wide energy infrastructure priority areas, namely smart grids, electricity highways and carbon dioxide transportation networks. Please see the annex for more detail on the procedure to establish a PCI-list.

⁴ See: <https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest/key-cross-border-infrastructure-projects#content-heading-1>.

⁵ See: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.090.01.0038.01.ENG&toc=OJ.L:2018:090:TOC.

⁶ The project, planned in County Kerry, Ireland, aims "to build an LNG import terminal", which "will consist of up to four LNG storage tanks, each with storage capacity of 200,000 cubic metres, and a jetty capable of receiving the largest LNG tankers in operation", see: <http://www.shannonlng.ie/index.html>. The Commission's proposal for the fourth PCI-list was published on 31 October 2019, and also included the Shannon LNG Terminal and connecting pipeline project:

https://ec.europa.eu/energy/sites/ener/files/c_2019_7772_1_annex.pdf.

⁷ See: https://europa.eu/rapid/press-release_STATEMENT-18-4687_en.htm.

⁸ See: https://europa.eu/rapid/press-release_IP-18-4920_en.htm.



9. The Ombudsman received the reply of the Commission and gave the complainant the opportunity to comment on it.

As regards establishing the PCI-list

Arguments presented to the Ombudsman

10. The complainant argued that when the Shannon LNG Terminal and connecting pipeline obtained planning permission in 2008, the negative impact of certain fossil fuels on the climate was not clearly established. He considered that recent information on the negative impact of fossil fuels should have been taken into account when adding the project to the third PCI-list, including by conducting an SEA.

11. The Commission noted that the purpose of the PCI Regulation is to provide guidelines for identifying projects that can help to overcome gaps in energy infrastructure and strengthen the connection of EU Member States to the European energy network. As such, it does not specify or prejudge the location, routing or technology of the PCIs, it does not grant the permits necessary for implementing these projects, and it is not responsible for the authorisations required to build the PCI infrastructure.

12. The Commission argued that the inclusion of a given infrastructure project on the PCI-list⁹ does not prejudge whether or not EU environmental law has been complied with. All PCIs must respect the requirements of EU and national environmental policies and law. The environmental impact of each PCI is assessed within this framework. For example, most PCIs require an environmental impact assessment (EIA)¹⁰ that is usually conducted after the project has obtained PCI status. An EIA needs to be carried out by the project promoters, and national authorities must ensure that all legal requirements are met.

13. The Commission pointed out that EU law does not confer any obligation or competence on the EU administration to carry out an SEA on plans and programmes.

14. The Commission stated that a project may be removed from the PCI-list if its inclusion on that list was based on incorrect information, or the project promoter failed to ensure that the project complies with EU law¹¹. The Commission noted that at the time of writing, this had never happened.

⁹ See the annex for more information on how the Commission establishes the PCI-list.

¹⁰ Under Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, see: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0092>.

¹¹ Pursuant to Art. 5(8) of the TEN-E Regulation (No 347/2013) on guidelines for trans-European energy infrastructure, see: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013R0347>.



The Ombudsman's assessment

15. The Ombudsman notes the Commission's assurance that PCIs must respect the requirements of all EU and national environmental policies and law. It is for Member States, and their courts, to ensure that these rules are respected. If they are not, the Member State is required to ensure that the project does not go ahead. **The fact that a project is on a PCI-list does not in any way alter this situation.**

16. As regards the complainant's arguments about the need to carry out an SEA before including a project on the PCI-list, the Ombudsman notes that the SEA Directive, like all Directives, applies **to EU Member States**. It is for a Member State that intends to implement a project, which falls under the SEA Directive, to carry out all the necessary steps to ensure compliance with that Directive. It is not for the Commission. The Commission has no power to carry out an SEA under the SEA Directive. However, if a Member State were not to comply with its obligations under any EU environmental rules, including the SEA Directive, the Commission has the power to inquire into the matter, including through infringement proceedings.

17. The Ombudsman takes no view as regards whether the building of a specific gas terminal, or aspects thereof, requires a specific SEA, or indeed a specific EIA. It is for Member States, and not the Commission, to ensure that all necessary environmental assessments are carried out. If a project ceases to have all the necessary planning and approvals in place, it can be removed from the PCI list.

18. As regards the obligation of the Irish authorities to ensure that the project complies with EU law, including EU environmental law, the Ombudsman notes that if there is any dispute as regards whether the project does actually comply with EU law, that dispute can be submitted to the Irish courts. These courts have access to the information required to take a view on compliance with EU law, and the legal means to block construction until all requirements under EU law and national law are met. Indeed, press reports indicate that such steps were underway in Ireland.¹²

19. Consistent with this view, the Ombudsman notes that the Commission has indeed taken steps to remove one project from the PCI-list because the project failed to get all the necessary planning approvals at national level. Specifically, the Gothenburg LNG Terminal in Sweden was removed from the BEMIP¹³ gas regional list agreed by the relevant decision-making body following the Swedish authorities' decision to deny authorization for the LNG terminal to be

¹² See report of February 2019: <https://www.irishtimes.com/news/environment/developers-of-shannon-gas-processing-terminal-ordered-not-to-begin-construction-1.3795310>.

¹³ For more information, see: <https://ec.europa.eu/energy/en/topics/infrastructure/high-level-groups/baltic-energy-market-interconnection-plan>.



connected to the gas transmission grid (without this connection the project does not have the required cross border impact).¹⁴

20. In light of the above, the Ombudsman considers that there was no maladministration.

21. That having been said, the Ombudsman notes the complainant's point about heightened awareness of the negative impact of certain fossil fuels on the climate. She notes, for example, that the European Investment Bank (EIB) recently announced the decision to end financing for fossil fuel energy projects from the end of 2021¹⁵. Given that the list of PCIs is intended to help the EU achieve its energy policy and **climate objectives** in accordance with the Paris Climate Agreement, she trusts that the Commission too will continue to pay particular attention to this issue of major importance to citizens.

Conclusion

Based on the inquiry, 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, 28/11/2019

¹⁴ See <https://data.consilium.europa.eu/doc/document/ST-10743-2019-INIT/en/pdf>.

¹⁵ See: <https://www.eib.org/en/press/all/2019-313-eu-bank-launches-ambitious-new-climate-strategy-and-energy-lending-policy>.



ANNEX

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

- 1) Each individual proposal for a project of common interest requires the approval of at least two EU Member States to whose territory the projects relate.
- 2) The initial assessment and selection of PCIs is carried out by Regional Groups¹⁶ 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 electricity and gas,
 -) the Agency for the Cooperation of Energy Regulators (ACER) and
 -) the European Commission.

The Regional Groups evaluate the applications against the general and specific criteria as defined in the PCI Regulation, focusing especially on the contribution of these projects to market integration, sustainability, security of supply and competition¹⁷.

ACER issues an opinion that examines the consistent application of the assessment criteria and the cost/benefit analysis across regions¹⁸.

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

¹⁶ See: <https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest/regional-groups-and-their-role>.

¹⁷ 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.

¹⁸ The ACER opinion in this case dates from 10 October 2017, and can be accessed here: https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2013-2017.pdf#search=PCI%20list%20opinion%202017. The regional groups' decision-making bodies adopted the regional lists on 17 October 2017.



Safety Before LNG

Protecting the Shannon Estuary and its people

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29 October 2019

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Re: **Complaint 1933/2018/KR**

Dear Mr Roovers,

Further to your letter to me dated October 25th 2019, I am now urgently bringing to your attention the fact that on October 17th, 2019, the Deputy Director General of DG Energy, Klaus-Dieter Borchardt, at a meeting of the Committee on Industry, Research and Energy (ITRE), admitted that The European Commission itself broke EU law when it refused to assess emissions under the sustainability criteria of the PCI Regulation 347/2013¹ when it was deciding on which gas projects to keep on the PCI list.

At the same meeting, he also agreed that PCIs set the framework for development consent which is the main indicator that an SEA is required.

These statements from the Commission now prove the following central points in this complaint 1933/2018/KR:

1. That PCI accreditation sets the framework for future development consent and the PCI process is therefore a Plan and Programme subject to SEA to assess reasonable alternatives as defined under the SEA Directive 2001/42/EC because the Deputy Director General of DG Energy himself has stated publicly on October 17th, 2019:

*“PCIs are under a **special regulatory framework which also facilitates the implementation**”.*

Article 3 of the SEA Directive 2001/42/EC² clearly obliges an SEA if plans “*set the framework for future development consent of projects*” and

2. That there was maladministration by the European Commission in the preparation of the PCI lists to date because the Deputy Director General of DG Energy himself has stated publicly on October 17th, 2019:

¹ PCI Regulation (EU) No 347/2013 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

² SEA Directive 2001/42/EC <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0042>

*“And also, to discuss, what you have claimed, rightly so, where is the sustainability or Climate Impact Assessment. **Unfortunately, we are not doing it. This is certainly a missing link that is in our current catalogue of criteria which need to be added. And the Commission knows it**”³,*

going on to state:

*“And I take that, that here is **a missing link in our system**. That we should have, for **future projects**, a real scrutiny, a real assessment on the climate policy compatibility of these projects”.*

The PCI Regulation 347/2014 Assessment Criteria

The European Commission has only assessed gas projects under three of the 4 obligatory criteria (under Article 4(3) of the PCI Regulation 347/2013) of “Market Integration”, “Competition” and “Security of Supply”, whilst illegally omitting the fourth criteria of “Sustainability”. To not do so, is illegal by Article 3(5)(a) of the PCI Regulation. The PCI Regulation defines sustainability as “[...] *the contribution of a project to reduce emissions [...] taking into account expected changes in climatic conditions*”.

TFEU and Paris Agreement Obligations to consider Climate Impacts

Article 11 of the Treaty on the Functioning of the European Union (TFEU) states:

“Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development”.

Along with Article 191 TFEU and the obligations under the Paris Agreement it is now clear that assessment of the “Sustainability” criteria under Article 4(3) of PCI Regulation 347/2013 is not a choice but a legal obligation on DG Energy under EU law.

ACER

The Agency for the Cooperation of European Regulators, ACER, the opinion of which the Commission must take on board, declared on September 25th, 2019 that the European Commission was not properly considering the merits of the projects in terms of potential contribution to sustainability when it concluded:

the PCI Selection methodology was “Not properly considering the merits of the projects in terms of potential contribution to sustainability”

and

“ACER notes that the approach adopted in the PCI selection process, namely of not using the sustainability assessment provided by ENTSOG and not suggesting any alternative, is suboptimal, as it leads to a large lacuna in the assessment of important merits or disadvantages of the projects. 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.”⁴

³ <https://www.europarl.europa.eu/ep-live/en/committees/video?event=20191017-0900-COMMITTEE-ITRE> and https://www.youtube.com/watch?v=hQqF_YtNQ1w&feature=youtu.be

⁴ [https://www.acer.europa.eu/Official documents/Acts of the Agency/Opinions/Opinions/ACER%20Opinion%202019-2019%20on%20Gas%20PCI%20list.pdf](https://www.acer.europa.eu/Official%20documents/Acts%20of%20the%20Agency/Opinions/Opinions/ACER%20Opinion%202019-2019%20on%20Gas%20PCI%20list.pdf)

This open admission of maladministration by the Deputy Director General of the European Commission, supported by the obligatory legal opinion of ACER that found that there was no property sustainability assessment, along with the legal obligations of Article 11 and 191 of TFEU and the Paris Agreement now completely support the assertion by me that there should have been an assessment of the Environmental Impacts of the Energy Plan to import fracked gas from the USA for projects put on the PCI list to assess reasonable alternatives and I ask you to find accordingly.

We are in a rules-based process. It is simply unacceptable to any right-minded person for DG Energy to endorse a contravention of EU laws to import US fracked gas into Europe, on the understanding that proper assessments will be done for "*future projects*".

The full statements of Deputy Director General of DG Energy, Klaus-Dieter Borchardt at the October 17th, 2019 meeting of the Committee on Industry, Research and Energy (ITRE) are included below for your information.

I await your feedback,

Yours sincerely,
John McElligott

The full statements of Deputy Director General of DG Energy, Klaus-Dieter Borchardt at the October 17th, 2019 meeting of the Committee on Industry, Research and Energy (ITRE)⁵ are as follows:

*"There was a question of the Shannon. Thank you for that. It's a good example where our problems lay today. Also for the Commission. Because you have to understand that the PCI Process in the first place is in the hands, as I said, it's bottom up, of Member States, of what they want to have. And then it goes to regional groups, et cetera. So we as a Commission when it comes to us, we have to follow some clear rules. We cannot keep a project on the list if One Member State opposes it. And we have had these cases this time. On the other hand, if there is no opposition, and we are doing a Cost Benefit Analysis and it shows a positive social welfare ratio, then we are, at this moment in time, obliged to take it. And that is also as Mister Peterson has raised. And I take that, that here is **a missing link in our system**. That we should have, for **future projects**, a real scrutiny, a real assessment on the climate policy compatibility of these projects. ...*

Now, why is there such a keen interest to get on this PCI list. And there are mainly three reasons for that. The first is that our regulation, the TEN-E Regulation foresees that the PCI has to undergo an accelerated permit-granting procedure and it is said that the whole permit granting - all permits, by the way, should go through a one-stop shop - have to be delivered within three and a half years.

*The second is that PCIs are under a **special regulatory framework which also facilitates the implementation**. For instance, we also have the prerequisite that the hosting countries, at least two Member States, they have to agree on such an infrastructure project, which already takes away all the risk that there are some political implications that could hamper the development of a project. That is already cleared through the PCI process.*

And then last, but not least, and for the developers of course, the most important one, is the EU Financial assistance. And here, we have a direct connection between the PCI and the Connecting Europe Facility. Because we can only accept a project for funding under the Connecting Europe Facility if, it has previously been taken on the list for PCI. [...]

*And also, to discuss, what you have claimed, rightly so, where is the sustainability or Climate Impact Assessment. **Unfortunately, we are not doing it. This is certainly a missing link that is in our current catalogue of criteria which need to be added. And the Commission knows it.***

[...]

Because the danger is there. If you are putting today such a pipeline into the water, it stays there for the next 50 years. And that is certainly something where we also have, if you look into the future, the problem."

⁵ <https://www.europarl.europa.eu/ep-live/en/committees/video?event=20191017-0900-COMMITTEE-ITRE> and https://www.youtube.com/watch?v=hQqF_YtNQ1w&feature=youtu.be

From: ROOVERS Koen <koen.roovers@ombudsman.europa.eu>
Sent: Friday 25 October 2019 16:06
To: 'John McElligott .' <johnmcelligott@hotmail.com>
Subject: Your case with reference 1933/2018/KR

Dear Mr McElligott,

I am writing to let you know that we are in the process of finalising the conclusion in the case above.

However, due to the school holiday next week, we will only be able to continue this work in the beginning of November.

Best wishes,

Koen Roovers



European Ombudsman

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Safety Before LNG

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4 September 2019

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Re: **Complaint 1933/2018/KR**

Dear Mr Roovers,

Further to my letter to you dated August 30th 2019, I would like to highlight a further issue which was not raised to date but which corroborates my assertion that the PCI Approval process is a Plan subject to SEA.

Article 3(6) of the PCI Regulation 347/2013 clearly states:

"Projects of common interest included on the Union list pursuant to paragraph 4 of this Article shall become an integral part of the relevant regional investment plans under Article 12 of Regulations (EC) No 714/2009 and (EC) No 715/2009 and of the relevant national 10-year network development plans under Article 22 of Directives 2009/72/EC and 2009/73/EC and other national infrastructure plans concerned, as appropriate. Those projects shall be conferred the highest possible priority within each of those plans".

Does this not mean that any projects that obtain PCI accreditation, such as the Shannon LNG project in Ireland for the importation of US fracked gas into Europe, are therefore already approved by EU Regulation 347/2013 for inclusion in, for example, the Irish Member State 10-year network development Plan (which is an SEA Plan) and cannot be removed from that Plan as they are deemed by Regulation 347/2013 to be an "integral part" of that plan in which it shall be "conferred the highest possible priority".

The 10-year network development plan in Ireland has not even been subjected to a Strategic Environmental Assessment (SEA).

Is this not now clear proof that DG Energy in the European Commission is proactively or inadvertently bypassing EU laws, such as the SEA and Public Participation Directives, by obliging the Energy Plan to import US fracked gas into Europe on a massive scale via 14 LNG import terminals to be part of Member State Plans without any SEA to assess reasonable alternatives and without any possibility of removing it from Member State Plans? Does this not make a mockery of Public Participation by presenting the public with Plans that cannot be modified because of Article 3(6) of the PCI Regulation 347/2013?

Yours sincerely,
John McElligott



Safety Before LNG

Protecting the Shannon Estuary and its people

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Re: **Complaint 1933/2018/KR**

Dear Mr Roovers,

I refer to the letter from the EU Ombudsman dated 3 July 2019 to me requesting comments regarding my complaint referenced above and informing me that you are the new contact person for this case. In advance, I thank you for your time in dealing with this matter.

My complaint to the EU Ombudsman was made in 3 parts entitled as follows:

1. Complaint: that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA (submitted 12 November 2018),
2. Complaint that maladministration by the European Commission occurred in allowing the Irish Competent Authority ('An Bord Pleanála') give development consent for the extension of the PCI-listed expired Shannon LNG project without an SEA which did not comply with Union Law (submitted 1 April 2019) and
3. Complaint that there was maladministration by the European Commission in the implementation of the Energy Plan to import fracked US gas announced by President Juncker in July 2018 following his visit to President Trump in the USA without any prior SEA (submitted 1 April 2019).

From reading the Ombudsman's letter to me, I am deeply concerned that the European Commission is unclear on the difference between an SEA and an EIA. I accept completely that an EIA takes place at the development consent stage of an individual project, but my complaint in all 3 parts refers to the lack of an SEA (Strategic Environmental Assessment) and it is the SEA aspect of my complaint that I wish the EU Ombudsman to deal with specifically in all 3 parts submitted by me.

Secondly, the EU Ombudsman refers to a legal challenge brought in the High Court in Ireland. This legal challenge is *not* being made on grounds of the lack of an SEA and therefore the Irish legal system cannot be deemed to be dealing with the subject matter of my complaints.

The European Commission's comments on my complaint on 8 May 2019 do not deal specifically with the core of my complaint.

Explanatory Note on PCI Accreditation

The European Commission itself describes Projects of Common Interest (PCIs) as *"key cross-border infrastructure projects that link the energy systems of EU Countries. They are intended to help the EU achieve its energy policy and climate objectives: affordable, secure and sustainable energy for all citizens, and the long-term decarbonisation of the economy in accordance with the Paris Agreement"*¹.

It goes on to admit that *"PCIs may benefit from accelerated planning and permit granting"*. The PCI list includes electricity and gas projects and is updated every 2 years. Each Member State has to approve the projects in its territory being added to the list and the final list has to be approved by vote of the European Parliament. This master plan for gas and electricity projects, therefore, is not a set of guidelines for individual projects but a plan of joined-up projects with a goal in mind - to help the EU *"achieve its energy policy"*.

The problem, however, is that there is now an energy plan to import fracked gas from the US on a massive scale via 14 LNG terminals in Europe without any strategic assessment of what impact this plan will have on the environment and climate and without any strategic assessment of reasonable alternatives. The most recent peer-reviewed study by Professor Robert Howarth of Cornell University in New York has concluded that *"shale-gas production in North America over the past decade may have contributed more than half of all of the increased emissions from fossil fuels globally and approximately one-third of the total increased emissions from all sources globally over the past decade."*²

At the European Commission DG Energy meetings in Brussels on May 7th and 8th, 2019 discussing the latest candidate PCI projects, I was astonished to hear some spokespersons for different gas projects, which had already been on the PCI list previously and had already received an agreement for funding from the 'Connecting Europe Facility' (a €30 billion EU Fund). When I heard that these project promoters were applying to be maintained on the next PCI list because it would help them in the development consent process, I was shocked. It was clear that these developers knew that getting PCI accreditation was setting the framework for development consent through the streamlined planning consent promised to them by the PCI Regulation, even if the Commission claims the contrary in their response to this complaint.

This complaint is an attempt to have the EU Ombudsman acknowledge that the PCI process is a Plan or Programme which should have a Strategic Environmental Assessment (SEA) undertaken to assess reasonable alternatives before approval by the Member States, the European Commission and by the European Parliament.

¹ <https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest/overview>

² Howarth, R. W.: Ideas and perspectives: is shale gas a major driver of recent increase in global atmospheric methane?, Biogeosciences, 16, 3033–3046, <https://doi.org/10.5194/bg-16-3033-2019>, 2019 .

PCI Accreditation of “overriding public interest” setting the framework for development consent

I agree with the Commission's assertion that the PCI accreditation does not grant permission, but it does, indeed, set the framework for development consent. This is because, as clearly outlined by me already in my complaints, the PCI Directive (Regulation (EU) No 347/2013) Article 7(3) clearly states "*projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes*" and Article 7(8) goes on to state "*With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled*".

The importance of this Article 7 is that some of the projects will only obtain development consent if they are of “*overriding public interest*”, a status which is obtained through the Article 7 of the PCI Accreditation. In other words, Article 7 is setting a framework for development consent.

For example, projects being completed in an SAC area (such as the Shannon LNG project anywhere on the Shannon Estuary in Ireland which is an SAC area in its entirety) where the mitigation measures put forward to protect EU Habitats and outlined at the AA (Appropriate Assessment) stage would still lead on to “*adversely affect the integrity*” of the SAC, can only obtain development consent if they are of overriding public interest, a status obtained through the Article 7 of the PCI Accreditation. This is because Article 6.4 of the Habitats Directive (92/43/EEC) states:

“[...]in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest [...]”.

This derogation given by the PCI Regulation is also true for obligations on Member States to protect inland waterways where Article 4.7 of the Water Framework Directive (2000/60/EC) states that Member States are not in breach of this Directive when

“[...] the reasons for those modifications or alterations are of overriding public interest [...]”

This assertion is supported by European Court of Justice case law:

The European Court of Justice (ECJ) in the case of *Grace & Sweetman versus An Bord Pleanála* - (Case C-164-17) found that measures designed to compensate for known negative effects of the project should not be taken into account for the purposes of the appropriate assessment carried out under Article 6(3) when it was not sufficiently certain that those measures would be effective in avoiding harm to the site. It ruled:

“Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, where it is intended to carry out a project on a site designated for the protection and conservation of certain species, of which the area suitable for providing for the needs of a protected species fluctuates over time, and the temporary or permanent effect of that project will be that some parts of the site will no longer be able to provide a suitable habitat for the species in question, the fact that the project includes measures to ensure that, after an appropriate assessment of the implications of the project has been carried out and throughout the lifetime of the project, the part of the site that is in fact likely to provide a suitable habitat will not be reduced and indeed may be enhanced may not be taken into account for the purpose of the assessment that must be carried out in accordance with Article 6(3) of the directive to ensure that the

project in question will not adversely affect the integrity of the site concerned; that fact falls to be considered, if need be, under Article 6(4) of the directive”.

This means that the only way such projects following under this category can be undertaken, if the appropriate assessment concludes that the development will adversely affect the site despite any proposed mitigation measures, is if the project is for “*imperative reasons of overriding public interest*” as per Article 6(4). I assert that PCI accreditation gives this overriding public interest designation and therefore sets the framework for future development consent.

The PCI Process as a Plan or Programme subject to SEA Screening

As previously stated by me, the European Court of Justice ruling in the case of Patrice D'Oultremont and Others vs. Region Wallone (C-290/15) clearly rejects narrow interpretations of Plans or Programmes and adopts a purposeful interpretation. The Opinion of Advocate General Kokott delivered on 4 March 2010 in the case of Terre wallonne ASBL (C-105/09) and Inter-Environnement Wallonie ASBL (C-110/09) v Région wallonne highlights that an essential element to be considered is whether the plan or programme sets the framework for future development consent. I assert that since, under the PCI Directive (347/2013) “*projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes*” the PCI list of projects itself sets the framework for future development consent in Member States and should therefore have an SEA at the European level, where the list was created.

The Commission refers to the Guidance document 'Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs)’³ to discuss the EIA but, this document also discusses SEA where it clearly states:

"According to the SEA Directive (2001/42/EC), an environmental assessment is mandatory for plans/programmes in certain fields, including for energy, town & country planning or landuse and which set the framework for future development consent of projects listed in the EIA Directive."

³ http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf

Other Considerations

I now implore the EU Ombudsman to consider the following facts in assessing this complaint:

1. No distinction is made by the Commission in its reply of 6 March 2019 between LNG from conventional gas sources and from unconventional gas sources (fracking).
2. In the Commission reply of 6 March 2019, the Commission also admits "*reducing fugitive methane emissions in the energy sector is one of the priorities of the Commission*" but then only goes on to state that it intends to carry out "*an analysis of methane emissions in the energy sector with a view to developing a strategy on how to reduce those emissions*". It discusses a Commission document on minimum principles for the exploration and production of hydrocarbons but makes absolutely no reference to the plan to import US fracked gas. An SEA Screening report would seem to any objective observer to be the ideal method to address this question as the SEA Directive obliges the consideration of reasonable alternatives.
3. No SEA Screening Report was undertaken by either the Commission or by Member States on the energy plan to import fracked gas or on the selection of the PCI list of projects.
4. The Commission also states that "*EU primary legislation does not confer any obligation or competence on the EU to carry out an SEA on plans or programmes. The Directive is binding, as to the results to be achieved, on each Member State to which it is addressed*". However
 - a. The EU is a party to the Espoo Convention (The Convention on Environmental Impact Assessment in a Transboundary Context), has ratified the Espoo Convention and is therefore bound by its obligations. The 1991 Espoo Convention sets the rules for carrying out environmental impact assessment in a transboundary context. The EU has ratified the Espoo Convention, which makes it an integral part of the EU's legal order and gives it precedence over secondary legislation adopted under the Treaty on the Functioning of the European Union (TFEU). This means that EU legal provisions should be interpreted in accordance with the Espoo Convention.⁴ The EU is also a party to the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context – the SEA Protocol. Pursuant to the provisions of the Espoo Convention and in particular Article 2(1), which states that all parties to the Convention (i.e. including the EU) "*should take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impacts from proposed activities.*" The Convention does not state "*proposed projects*" rather it states "*proposed activities*" and requires parties and countries to alert and consult with neighbouring countries on developments which may have cross border impacts.
 - b. The Energy plan to import US fracked gas via 14 LNG terminals in Europe has not been subjected to any SEA in any of the Member States either, to my knowledge.
 - c. The PCI list must be approved by each Member State involved and the Commission should ensure that before this approval, the Member State should carry out, as a minimum, an SEA Screening report as obliged both by the SEA Directive and the Espoo Convention and the SEA Protocol.

⁴ <https://ec.europa.eu/environment/eia/pdf/Transboundry%20EIA%20Guide.pdf>

- d. Section 3.1 of The European Commission Recommendation of 22 January 2014 on minimum principles for the exploration and production of hydrocarbons (such as shale gas) using high-volume hydraulic fracturing (2014/70/EU) states

*"Before granting licenses for exploration and/or production of hydrocarbons which may lead to the use of high-volume hydraulic fracturing, Member States should prepare a strategic environmental assessment to prevent, manage and reduce the impacts on, and risks for, human health and the environment. This assessment should be carried out on the basis of the requirements of Directive 2001/42/EC."*⁵

I assert that it is contrary to the precautionary principle and is not equitable or legal for the Commission to require an SEA if fracked gas is being produced in the EU but to turn a blind eye if the plan is to create more demand for fracking in the US by importing US fracked gas on a massive scale into the EU.

5. In her Opening Statement in the European Parliament Plenary Session, Ursula von der Leyen, Candidate for President of the European Commission, at Strasbourg, on July 2019 stated "Emissions must have a price that changes our behaviour. To complement this work, and to ensure our companies can compete on a level-playing field, I will introduce a Carbon Border Tax to avoid carbon leakage."⁶

This policy to avoid carbon leakage, or the relocation of carbon-intensive production to countries outside of the EU, means that the exporting of fugitive emissions from European Fracking Production to the USA Fracking Production via the plan to import US Fracked gas into Europe should be assessed by an SEA to assess reasonable alternatives and to assess if carbon leakage is taking place which would possibly lead to a related carbon border tax in the future.

PCI Accreditation in Context – Shannon LNG as a case study

PCI accreditation from the European Commission is an extremely powerful initial development consent for gas projects such as the proposed Shannon LNG US fracked gas import terminal because it sets the framework for future development consent within the Member States. Article 7 of the PCI Regulation⁷ states that *"projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes"*. The Regulation goes on to state that *"With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled"*.

The boom in proposed LNG import terminals throughout Europe is motivated by the expansion of the US fracking industry which has moved the US from being a net importer to an exporter of gas.

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014H0070>

⁶ https://europa.eu/rapid/press-release_SPEECH-19-4230_en.htm European Commission Press Release 16 July 2019

⁷ PCI Regulation (EU) No 347/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

However, this comes with a high environmental, public health and climate change price. The most up-to-date scientific knowledge is categorical on the following points: The number one climate threat in Europe is fracked gas. Cornell University's Professor Robert Howarth, a leading scientist in this area, states that this is no bridge fuel, that switching from coal to shale gas is accelerating rather than slowing global warming, that methane's impact on climate over 10 years is 105 times more potent than carbon dioxide, that one half of Methane emissions in the US is coming from Shale Gas Leakage and that, to put it simply, fracked gas is the dirtiest of all fossil fuels with a bigger climate footprint than coal.⁸ This was not the thinking over 10 years ago when the Shannon LNG project initially obtained planning permission.

Indeed, DG Trade, in its final Trade Sustainability Impact Assessment (SIA) on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA in March 2017⁹, citing the UN Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement found that while a shift to gas away from coal in the EU could lead to some environmental gains "*locally*", "*environmental benefits from LNG over coal (which are debatable due to methane leakage during extraction and energy needed during production, conversion and transport) are perhaps even negative if a combination of LNG+coal crowded out 'greener' energy sources such as renewables in the global energy mix*".

However, The European Commission is proceeding, nevertheless, with the implementation of the Energy Plan to import fracked US gas¹⁰ announced by President Juncker in July 2018¹¹ following his visit to President Trump in the USA through multiple LNG terminals and countries and imposed via the PCI procedure. We assert that this represents unlawful State Aid and Misuse of aid at each Member State Level and is also a breach of the SEA Directive, which requires an assessment of reasonable alternatives to a plan. A project is not allowed to have the PCI status unless it is approved by the Member State because Article 3.3(a) of Regulation 347/2013 states "*each individual proposal for a project of common interest shall require the approval of the Member States, to whose territory the project relates*". The current PCI list was approved by Ireland on 17th October 2017¹².

Shannon LNG is applying once more for inclusion on the 4th PCI list on the grounds that it promotes diversification and gives security of supply to Ireland. However, this criteria is not fulfilled since the N-1 condition through a joint risk approach where Ireland and the UK are treated as a single region was already achieved¹³ and will be enhanced with the completion of the construction of the twinning of the second independent interconnector from Brighthouse to Cluden in Scotland (PCI 5.2). The PCI 5.2 Twinning of the Interconnector for the final 50km in Scotland already brings security of supply to Ireland with 2 completely independent interconnectors, representing 2 separate pieces of gas infrastructure. In addition, the European Commission itself recognises that Ireland and the UK represent the one "area" in the gas region that is the North-South gas interconnections in Western Europe ('NSI West Gas') priority corridor¹⁴. The UK already has access to US fracked gas imports with the first fracked gas imports arriving to the UK in September 2018. This also means that the

⁸ Howarthlab.org

⁹ European Commission DG Trade: "SIA in support of the negotiations on a Transatlantic Trade and Investment Partnership (TTIP) - Final Report" - March 2017 http://trade.ec.europa.eu/doclib/docs/2017/april/tradoc_155464.pdf

¹⁰ http://europa.eu/rapid/press-release_IP-19-2313_en.htm

¹¹ Joint U.S.-EU Statement following President Juncker's visit to the White House Washington, 25 July 2018 (http://europa.eu/rapid/press-release_STATEMENT-18-4687_en.htm)

¹² 23 January 2019. Irish Member State Parliamentary Answer by the Minister admitting formal Member State support for the Shannon LNG PCI project (<https://www.oireachtas.ie/en/debates/question/2019-01-23/204/>)

¹³ "Energy Policies of IEA Countries. Ireland 2019 Review - International Energy Agency", page 66 https://www.connaissancedesenergies.org/sites/default/files/pdf-actualites/Energy_Policies_of_IEA_Countries_Ireland_2019_Review.pdf

¹⁴ <https://www.cru.ie/wp-content/uploads/2014/07/CER14795b-Part-D-of-Gaslink-GNIs-CEF-Grant-application.pdf> ("Connecting Europe Facility 2014-2020. Energy Call for proposals 2014" page 14)

security of supply and competition criteria put forward by Shannon LNG will not be met technically because the UK already has access to appropriate connections, diversion of supply sources, supplying counterparts and routes.

If anything, an LNG terminal for fracked US gas in Ireland will create fossil fuel lock in and compromise the development of the indigenous biogas industry, which could help in the reduction of the GHG emissions from the agricultural sector. Developing domestic renewable energy sources could enhance the country's energy security in the middle to long term

Ireland banned both fracking and the importation of fracked gas. Why is there no consideration of fracked gas in the energy mix of what is being supplied under the generic heading of "LNG"? Only one Member State is affected - Ireland - unless the aim is to export gas from Shannon LNG to the UK (once the PCI project of the Reverse Flow of the Interconnector to Moffat is implemented), benefiting from lower corporation tax in Ireland and the implementation of the US-EU trade deal. The Trade Deal should have nothing to do with the PCI process.

Ultimately, the Shannon LNG project in particular, and the importation of fracked US gas to Europe in general, is a highly politically-motivated energy plan which is favouring trade over climate, which gives strong support for the removal of Shannon LNG from the proposed list of Projects of Common Interest.

CONCLUSION

I am therefore looking for 3 declarations from the EU Ombudsman:

- a) That PCI accreditation sets the framework for future development consent and the PCI process is therefore a Plan and Programme as defined under the SEA Directive.
- b) that an SEA screening report is needed before approval of the PCI list by the European Commission by the Member States, and by the European Parliament.
- c) that the European Commission has breached its obligations under the Espoo Convention in refusing to have a Strategic Environmental Assessment undertaken of the proposed activities outlined in the PCI list.

A new Energy Plan to import US fracked gas into an EU Member State which sets the framework for development consent for projects on the PCI list should have a Strategic Environmental Assessment (SEA) undertaken to assess alternatives.

Yours sincerely,

John McElligott



Unit 2 - Coordination of Public Interest Inquiries

Mr John McElligott

johnmcelligott@hotmail.com

Strasbourg, 03/07/2019

Complaint 1933/2018/KR

Subject: Request for comments

Dear Mr McElligott,

I am sending you a copy of the European Commission's reply in your case. I apologise for the short delay in forwarding this information to you, which is due to an internal technical problem that has now been rectified.

If you wish to make any comments on the Commission's reply, please send them to the Ombudsman before 31 August 2019. If you decide not to send any comments, the Ombudsman will base her decision on the information you have already provided, and on the Commission's reply.

The Commission's reply to you states that the inclusion of a given infrastructure project on the EU's list of 'Projects of Common Interest' does not prejudge whether that project will comply with EU environmental law. The preliminary view of the inquiry team in this case is that this response is reasonable. The placing of a project on a PCI list does not imply that a project will in fact be carried out (some projects on PCI lists may never be carried out). The inclusion of a project on a PCI list merely implies that the envisaged project is of 'common interest' to at least two Member States. It is only when it is decided that a given project will go ahead that an environmental impact assessment will be needed. That environmental impact assessment is necessary before works actually start. Therefore the Commission was, in our view, correct when it informed you that an environmental impact assessment cannot be an eligibility condition for inclusion of a project on the PCI list.

You may also be aware that 'Friends of the Irish Environment Limited' (FIE), an environmental group, has brought a legal challenge before the High



Court of Ireland over the decision to extend planning permission to develop the Shannon LNG project. FIE claimed that the developer, Shannon LNG Ltd, erred in law by allegedly failing to take account of up to date and relevant information available to it in the course of its screening for appropriate assessment under the EU Habitats Directive¹. On 15 February 2019, the High Court of Ireland referred the case to the Court of Justice of the European Union², where the case is being examined. This development confirms that the question of whether the planned project complies with EU environmental rules is a matter that the Irish legal system is examining carefully.

Please note that the new contact person for your case is Mr Koen Roovers, who can be reached at: koen.roovers@ombudsman.europa.eu. As he is currently on leave, he will examine your reply in September.

Yours sincerely,

Fergal Ó Regan
Coordination of Public Interest Inquiries - Unit

Enclosure: Copy of the reply from the European Commission, including three letters the Commission addressed to the complainant in November 2018, January 2019 and March 2019

¹ Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, commonly referred to as the 'Habitats Directive', ensures the conservation of a wide range of rare, threatened or endemic animal and plant species. One of FIE desired outcomes is a declaration stating that the developer failed to exclude the possibility that the development would have significant effects on bottlenosed dolphins in the Lower River Shannon Special Area of Conservation.

² Reference for a preliminary ruling from the High Court (Ireland) made on 26 March 2019 – Friends of the Irish Environment Limited v An Bord Pleanála, see: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=215069&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7824437>.

Comments of the Commission on a request for information from the European Ombudsman - Complaint by Mr John McElligott, ref. 1933/2018/EA

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

On 12 November 2018, the complainant submitted a complaint to the European Ombudsman concerning the Commission's role in drawing up the 4th Union list of projects of common interest (PCI) adopted under Commission Delegated Regulation (EU) 2018/540 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest ("PCI Regulation")¹.

By letter dated 27 February 2019, the European Ombudsman informed the Commission about the present complaint and that she decided to open an inquiry.

The Commission was approached by the complainant previously on the similar issues and the Commission replied by letters of 23 November 2018, 30 January 2019, and 6 March 2019.

II. THE COMPLAINT

The European Ombudsman asks clarifications on the following points:

- 1) Before adding a project to the PCI list, does the Commission have to ensure that an environmental impact assessment was conducted? If yes, how does the Commission verify that?
- 2) In the event that a national authority did not follow the necessary procedure before granting authorisation to a project, is the relevant project removed from the PCI list?

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

- 1) The sole purpose of the PCI Regulation is to identify projects that are necessary for reducing energy infrastructure bottlenecks and ending the energy isolation of the EU Member States. In this context, the PCI Regulation does not specify or even prejudge the location, routing or technology of the PCIs, it does not grant permission(s) necessary for the implementation of these projects, and it does not grant authorisation(s) to build the PCI infrastructure. While measures and decisions taken in the course of the implementation process by project promoters and national authorities

¹ Commission Delegated Regulation (EU) 2018/540 of 23 November 2017 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 90, 6.4.2018, p.38

may have significant effects on the environment, it is not the list of PCIs itself that would produce such effects.

The environment impact on the territory needs to be assessed within the framework of applicable environmental legislation for each PCI. All PCIs must respect the requirements of EU and national environmental policies and law. To improve and better coordinate environmental assessment procedures and to ensure a maximum level of environmental protection through comprehensive environmental assessments of PCIs, the Commission published a Guidance document “Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs)”². Most energy infrastructure PCIs will require an environmental impact assessment (EIA) under Directive 2011/92/EU³, which needs to be carried out by the project promoters. For the reasons explained above, the EIA is usually conducted after the project has received PCI status. Therefore, the conclusion of an EIA cannot be an eligibility condition for a PCI.

The Commission underlines the fact that, as was already explained to the complainant in letters of 23 November 2018 and of 30 January 2019, the inclusion of a given infrastructure project on the Union list of PCIs does not prejudice the fulfilment of EU Environmental Law.

- 2) Directive 2011/92/EU is binding, as to the results to be achieved, on each Member State to which it is addressed. In accordance with the EU legal and institutional system, the Member States have transposed the Directive in their national legislation. Thus, it is the responsibility of national authorities to ensure that the requirements under that Directive are fully met. However, pursuant to Art. 5(8) of the TEN-E⁴ Regulation a PCI may be removed from the PCI list if its inclusion in that list was based on incorrect information, which was a determining factor for that inclusion, or the project promoter failed to ensure that the project complies with Union law. This has never been the case.

IV. CONCLUSIONS

The Commission does not agree with the complainant's allegation and arguments submitted by the complainant.

List of enclosures

- Letter of 23 November 2018 – Ares(2018)6017704
- Letter of 30 January 2019 – Ares(2019)538422
- Letter of 6 March 2019 – Ares(2019)1512540

² http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf

³ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, p. 1

⁴ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure, OJ L 115, 25.4.2013, p. 39



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market
B.1 - Networks & Regional Initiatives

Brussels,
ENER.B.1/CS

John McElligott
Safety before LNG
Island View
5 Convent Street, Listowel
County Kerry, Ireland
E-mail:
johnmcelligott@hotmail.com

Dear Mr. McElligott,

I am writing to you concerning your complaint no. 9481 filed on 2 November 2018 against the European Commission for supposed maladministration in the process of the preparation of the 3rd Union list of Projects of Common Interest (PCIs). With this letter, I would like to address the allegations therein.

The third Union List of Projects of Common Interest (PCIs) has been adopted in the form of a Commission Delegated Regulation (EU) 2018/540 (PCI Regulation) as defined by Article 290 of the Treaty on the Functioning of the European Union (TFEU) and, as a legal act of a general scope of application, it can be neither considered a plan nor a programme.

The process of identification and selection of PCIs is carried out with full respect for the European Union's decarbonisation plans and the agreed 2020 and 2030 energy and climate objectives, fully reflected in the underpinning assessment methodologies agreed by the regional Working Groups, that bring together a broad range of members of the civil society representatives, as well as , environmental and consumer stakeholders.

The sole purpose of the PCI Regulation is to provide guidelines in identifying projects that are necessary for reducing energy infrastructure bottlenecks and ending the energy isolation of the EU Member States. In this context, the PCI Regulation does not specify or prejudge the location, routing or technology of the PCIs, it does not grant permission(s) necessary for the implementation of these projects, and it does not grant authorisation(s) to build the PCI infrastructure. Directive 2001/42/EC, which lays down the conditions for the assessment of the effects of certain plans and programmes on the environment, sets the obligation for the preparation and/or adoption of such plans and

programmes on the *authority* at national, regional or local level; in this case the Irish planning authority. While measures and decisions taken in the course of the implementation process by project promoters and national authorities may have significant effects on the environment, the list of PCIs itself cannot produce such effects.

Contrary to your allegations, the inclusion of a given infrastructure project on the Union list of PCIs does not prejudice the fulfilment of EU Environmental Law, in particular the provisions of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, Directive 2009/147/EC on the conservation of wild birds, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, and Directive 2000/60/EC establishing a framework for community policy in the field of water. Article 7(8) of the PCI Regulation refers to the fulfilment of the conditions set out in Directives 92/43/EC and 2000/60/EC.

I would also like to refer to the decision of the European Ombudsman no. 240/2014/FOR which confirms that Regulation (EU) 347/2013 provides for safeguard measures in this respect, by setting the obligation on individual projects on the Union list of Projects of Common Interest to undergo a complete permit-granting procedure at national level, whilst consulting the general public, local communities and stakeholders before they can be implemented.

I hope that we have been able to clarify your concerns in that matter.

Yours faithfully,



Catharina SIKOW-MAGNY
Head of Unit



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market
B.1 - Networks & Regional Initiatives
Head of Unit B1

30 JAN. 2019

Brussels,
ENER.B.1/CSM/EO/fm/Ares(2019)s604336

Mr John McElligott
Island View, 5 Convent Street
Listowel, County Kerry V31 PW61
Ireland

Subject: Shannon LNG import terminal

Dear Mr. Elligott,

I am writing to you concerning your complaint no. 10534 filed on 21 December 2018 against the European Commission for supposed maladministration in allowing the Irish Competent Authority ('An Board Pleanála) to give development consent for the extension of the Shannon LNG project, which is on the current 3rd Union list of Projects of Common Interest (PCIs), without an SEA.

I would like to refer you to my letter dated 23 November 2018 in response to your complaint no. 9481 in which I have set out the procedure, according to which the 3rd Union list of PCIs has been identified and selected. In that letter I have explained the purpose of the PCI Regulation and clarified that the inclusion of a given infrastructure project on the Union list of PCIs does not prejudice the fulfilment of EU Environmental Law.

The development consent for the extension of the Shannon LNG project by the Irish Competent Authority is a decision taken at the national level and independently of the project's status as PCI. The European Commission was not involved in this decision-making process.

I would like to take this opportunity to draw your attention to the ongoing identification and selection of projects for the 4th Union list of PCIs to be adopted in October 2019 and highlight, once again, that stakeholders' opinion is a key element in this process.

Yours sincerely,


Catharina SIKOW-MAGNY



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate A - Energy policy
The Director

Brussels, 06 March 2019
ENER.A/MR/JP/cvc(2019) S-1495720

John McElligott
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Ireland

E-mail: johnmcelligott@hotmail.com

Subject: Meeting between Presidents Juncker and Trump on LNG of July 2018 and the Shannon LNG import terminal

Dear Mr McElligott,

On 24 January 2019 you sent a letter to President Juncker alleging “maladministration by the European Commission in the implementation of the Energy Plan to import fracked US gas announced by President Juncker in July 2018 following his visit to President Trump in the USA without any prior SEA”. I am replying on behalf of President Juncker.

The importance of diversifying the sources of energy that is imported into the European Union has been clearly identified as a priority in the EU’s Energy Union Strategy of 2015¹. In particular, on page 5, there is a clear reference to the importance of Liquefied Natural Gas (LNG) and an EU strategy for liquefied natural gas and gas storage² was adopted in February 2016, following a public consultation that took place between 8 July and 30 September 2015³. The LNG Strategy underlined that, as domestic production of natural gas in the EU will continue to decline, further diversification of the EU’s natural gas supply is a key objective for security of supply, resilience, and competitiveness reasons. It underlined the importance of ensuring that the necessary infrastructure is in place to allow Member States to benefit from access to international LNG markets, as well as taking actions to ensure completion of the EU’s internal energy market and co-operation with international partners “*to promote free, liquid and transparent global LNG markets. This means intensifying dialogues with current and future suppliers and other major LNG consumers to remove obstacles to the trading of LNG on global gas markets*”⁴.

The agreement between Presidents Juncker and Trump of 25 July 2018 should be seen in this context, namely that competitively priced US LNG should enter the EU gas market as part of a long standing strategy to diversify the sources of imported natural gas.

¹ https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC_1&format=PDF

² https://ec.europa.eu/energy/sites/ener/files/documents/1_EN_ACT_part1_v10-1.pdf

³ Reference the Commission Staff Working Document accompanying the LNG Strategy <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0023&qid=1550668071687&from=EN>

⁴ Third paragraph, page 3, of the EU Strategy for liquefied natural gas and gas storage.

Concerning your argument that the EU is obliged to carry out a strategic environmental assessment (SEA), pursuant to Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (the SEA Directive), on the “Energy Plan” to encourage the import of US LNG into the EU, EU primary legislation does not confer any obligation or competence on the EU to carry out a SEA on plans and programmes. The Directive is binding, as to the results to be achieved, on **each Member State to which it is addressed**. In accordance with the EU legal and institutional system, the Member States have transposed the SEA Directive in their national legislation. Thus, the national authorities are vested with the responsibility to ensure that the SEA procedure is put in place in their national legislation.

With respect to your concerns relating to the EU Projects of Common Interest (PCIs) that are highlighted in the Commission’s press release of 9th August 2018, this issue was addressed in a letter to you of 23rd November 2018 (reference ARES(2018)6017704) from Ms Sikow-Magny. That letter set out the objectives of the PCI Regulation as well as the process of identification of the PCIs and recalled that PCIs are carried out with full respect for the EU’s decarbonisation plans and agreed 2020 and 2030 energy and climate objectives.

With respect to your concerns relating to the Shannon LNG import terminal, this was addressed in a letter of 30 January 2019 (reference ARES(2019) 604336), which highlighted that the development consent for the extension of the Shannon LNG projects was a decision taken at national level and independently of the project’s status as a PCI. With respect to your complaint to the European Ombudsman that the Commission should not have added the Shannon LNG Terminal project in Ireland to PCI list since no Strategic Environmental Assessment was conducted the Commission will be responding to the Ombudsman's questions raised and in line with the normal procedure.

On the issue of extracting unconventional gas, I would like to draw your attention to the work that has been carried out by the Commission on this subject, which includes a Commission Recommendation of 22 January 2014 “on minimum principles for the exploration and production of hydrocarbons (such as shale gas) using high-volume hydraulic fracturing”⁵. In addition, reducing fugitive methane emissions in the energy sector is one of the priorities of the Commission as part of its efforts to move towards a carbon-neutral energy system that provides for secure, competitive and affordable energy. In this context, the Commission intends to carry out, together with the United Nations Environment Programme (UNEP), an analysis of methane emissions in the energy sector with a view to developing a strategy on how to reduce those emissions. This issue is also an integral part of our ongoing trans-Atlantic dialogue in the framework of the EU-US Energy Council.

Yours sincerely,

E-signed

Megan Richards

⁵ http://ec.europa.eu/environment/integration/energy/unconventional_en.htm



Unit 2 - Coordination of Public Interest Inquiries

Mr John McElligott

johnmcelligott@hotmail.com

Strasbourg, 27/02/2019

Complaint 1933/2018/EA

Dear Mr McElligott,

On 12 November 2018, you submitted a complaint to the European Ombudsman against the European Commission about its drawing up of the EU list of "Projects of Common Interest" ('PCI') in the energy field. I have been assigned responsibility for your case.

I understand that you are concerned that the Commission should not have added the Shannon LNG Terminal project in Ireland to this list since no Strategic Environmental Assessment was conducted and there was no consideration of reasonable alternatives.

I have contacted the Commission on the Ombudsman's behalf to ask for a written reply to questions arising from your complaint (attached).

I will keep you informed of further developments in this inquiry.

If you have any questions, please feel free to contact me at the following telephone number: (tel.: +32 (0)2 284 3548), or the case handler, Ms Elpida Apostolidou (tel.: +32 (0)2 284 1876, e-mail address: elpida.apostolidou@ombudsman.europa.eu).

Yours sincerely,

Fergal Ó Regan

Coordination of Public Interest Inquiries - Unit 2



Enclosure:

- Request for reply to the Commission



Unit 2 - Coordination of Public Interest Inquiries

Mr Christian Linder
Secretariat-General
Head of Unit - C2
Ethics, Good Administration &
Relations with the European Ombudsman
European Commission

Strasbourg, 27/02/2019

Complaint 1933/2018/EA

Subject: The drawing up by the European Commission of the EU list of “Projects of Common Interest” in the energy field

Dear Mr Linder,

The Ombudsman has received a complaint from Mr John McElligott against the European Commission. The Ombudsman has asked me to deal with the case on her behalf.

The complaint is about the Commission’s role in drawing up the EU list of “Projects of Common Interest”¹ in the energy field (‘PCI list’²). In particular, the complainant considers that the Commission should not have added the Shannon LNG Terminal project in Ireland to this list since no Strategic Environmental Assessment was conducted and there was no consideration of reasonable alternatives.

We have decided to open an inquiry into this complaint. We have now concluded that it would be useful to receive a written reply from the Commission to this complaint and, notably, to the following questions:

¹ These projects may benefit from accelerated planning and permit granting, a single national authority for obtaining permits, improved regulatory conditions, lower administrative costs due to streamlined environmental assessment processes, increased public participation via consultations, and increased visibility to investors. They also have the right to apply for funding from the Connecting Europe Facility.

² Commission Delegated Regulation (EU) 2018/540 of 23 November 2017 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest.



1) Before adding a project to the PCI list, does the Commission have to ensure that an environmental impact assessment was conducted³? If yes, how does the Commission verify that?

2) In the event that a national authority did not follow the necessary procedure before granting authorisation to a project, is the relevant project removed from the PCI list?

Please note that we are likely to send your reply and related enclosures to the complainant for comments. If you wish to submit documents or information that you consider to be confidential and which should not be disclosed to the complainant, please include them in a separate annex marked 'Confidential'. Please feel free to contact our case handler beforehand, Ms Elpida Apostolidou (tel.: +32 (0)2 284 1876, e-mail address: elpida.apostolidou@ombudsman.europa.eu).

We would be grateful to receive the Commission's reply by **27 May 2019**.

Yours sincerely,

Fergal Ó Regan
Coordination of Public Interest Inquiries - Unit 2

Enclosure: Complaint 1933/2018/EA

³ We note that footnote 1 above refers to 'streamlined environmental assessment processes'.



Mr John McElligott

johnmcelligott@hotmail.com

Strasbourg, 19/12/2018

Complaint 1933/2018/EA

Subject: Admissibility of your complaint

Dear McElligott,

On 12 November 2018, you submitted a complaint to the European Ombudsman. On 10 December 2018, you submitted further correspondence you had with the European Commission and your related comments. I have been assigned responsibility for your case.

The main issue you raise concerns the Commission's alleged maladministration in drawing up the EU list of "Projects of Common Interest" ('PCI') in the energy field¹.

This aspect of your complaint fulfils the admissibility requirements, in that you wrote to the Commission and received a reply which, in your view, failed to address your concerns in a satisfactory manner.

This decision on the admissibility of your complaint is simply an administrative step: it does not imply that the Ombudsman has taken any position on the substance of your complaint. Neither does it imply that the Ombudsman has decided if it will be necessary to contact the Commission to obtain its view or further information.

Normally, we would expect to let you know the outcome of our further consideration of your complaint within two months.

¹ Commission Delegated Regulation (EU) 2018/540 of 23 November 2017 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest.



I note that in the correspondence attached to your complaint you also contacted the Commission about an alleged breach of EU law by the Irish competent authority. The Commission invited you to resubmit your complaint using the standard complaint form². If you wish to pursue this matter, I suggest that you complete the form in question. If you do not receive a satisfactory response from the Commission within a reasonable time, you may make a new complaint to the Ombudsman on this aspect of your case³.

Please note that the contact person for the case is Ms Elpida Apostolidou, who can be reached on tel.: +32 (0)2 284 1876 and at e-mail address: elpida.apostolidou@ombudsman.europa.eu

Yours sincerely,

Fergal Ó Regan
Coordination of Public Interest Inquiries - Unit 2

² https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/

³ It is a requirement of Article 2(4) of the Ombudsman Statute that, before complaining to the Ombudsman, the complainant must first have made “*appropriate administrative approaches*” to the institution in question. The purpose of this provision is to allow the institution in question an opportunity to deal with the matter before the Ombudsman becomes involved.



Safety Before LNG

Protecting the Shannon Estuary and its people

John McElligott

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Listowel,
County Kerry

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JohnMcElligott@hotmail.com

Web:

www.SafetyBeforeLNG.ie

10 December 2018

Complaints Handling Secretariat,
European Ombudsman.
eo@ombudsman.europa.eu

Complaint Number: 201801933 - that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA

Dear Sir/Madam,

I have received highly relevant updated correspondence from Catharina SIKOW-MAGNY, Head of Unit at DG Energy dated 23/11/2018 which I am hereby forwarding to you with the following high-level observations on the assertions made by DG Energy in this same letter:

1. DG Energy asserts that the Union List of Projects of Common Interest (PCI) is an "*act of a general scope of application, it can be neither considered a plan nor a programme*".
 - a. I assert that this claim by DG Energy is at best the deliberate implementation of a silent policy and silent energy plan/programme to have massive European-wide energy projects without any document called a plan or programme - to not tell anybody that this is an energy plan but to go straight to individual projects.
 - b. Like project splitting, any SEA at an individual project level is meaningless when the plan includes the importation of fracked gas from the US to Europe through multiple LNG terminals and countries.
2. DG Energy asserts that the "*sole purpose of the PCI Regulation is to provide guidelines in identifying projects that are necessary for reducing energy infrastructure bottlenecks and ending the energy isolation of the EU Member States*". DG Energy goes on to assert that "*the PCI Regulation does not specify or prejudge the location, routing or technology of the PCIs, it does not grant permission(s) necessary for the implementation of these projects, and it does not grant authorisation(s) to build the PCI infrastructure*".
 - a. I assert that providing "*guidelines*" is not the sole purpose of the PCI Regulation because The PCI Directive (Regulation (EU) No 347/2013) Article 7(3) clearly states "*projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes*" and Article 7(8) goes on to state "*With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy*

perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled".

- b. The timing of the vote by the European Parliament on the PCI list on March 14th 2018 must now be examined in the context of no mention being made in Parliament on the importation of Fracked US gas at the time of the vote while less than 5 months later clear commitments were made in the joint European Commission-US statement of 25 July 2018 (attached) following President Juncker's visit to the White House stating that *"we agreed today to strengthen our strategic cooperation with respect to Energy. The European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply"*.

I ask, how could President Juncker be able to claim that the EU *"wants"* to import more liquefied natural gas (LNG) from the United States if it was not already part of an energy plan? This energy plan is even more clear in the follow-up European Commission press release on 9 August 2018 (attached) which stated *"The EU has co-financed or committed to co-finance LNG infrastructure projects worth over €638 million (see list of projects in Annex 2). In addition to the existing 150 billion cubic meters of spare capacity in the EU, the EU is supporting 14 liquefied natural gas infrastructure projects, which will increase capacity by another 15 billion cubic meters by 2021, which could welcome imports of liquefied natural gas from the U.S., if the market conditions are right and prices competitive"*. It went on to state: *"Regulatory restrictions by the U.S. need to be lifted. The EU has no non-market barriers for U.S. natural gas coming to the EU. The EU is seeking similar treatment from the U.S. side, in particular as regards the removal of the requirement for prior approval of liquefied natural gas exports to the EU"*.

- c. I assert that on March 14th 2018, the EU parliament took part in what I consider to be a sleight of hand which will legally force EU members to accept massive gas infrastructure projects (such as the proposed Shannon LNG project in Ireland), where all adverse impacts on climate change and impacts on the environment will have to be ignored for reasons of overriding public interest. No environmental screening report of this plan was presented to Parliament before it voted on this plan to approve the Energy Programme of Projects of Common Interest (PCI) - a clear breach of the EU SEA Directive. I believe this took place to help the EU Commission avoid having to live up to the Global Paris Climate Agreement that the EU ratified in 2016 by not considering *"reasonable alternatives"* as obliged under the SEA Directive.
 - d. For DG Energy to assert that the *"PCI Regulation does not specify or prejudge the location, routing or technology of the PCIs"* is simply not credible because, for example, the Shannon LNG import terminal project on the PCI list clearly specifies the location and the routing. However, the technology of the Shannon LNG project to import fracked gas from the US by New Fortress Energy was only announced publicly on August 24th, 2018 once Shannon LNG was added to the PCI list.
3. DG Energy asserts that the SEA Directive sets the obligations for the preparation and/or adoption of plans and programmes subject to Strategic Environmental Assessments *"on the authority at national, regional or local level; in this case the Irish planning authority"*. DG

Energy also asserts that, while projects on the PCI list "*may have significant effects on the environment, the list of PCIs itself cannot produce such effects*";

- a. I assert that since the PCI list of projects is chosen by the European Commission at a European Regional Level which is international (e.g. Shannon LNG is grouped on the PCI list in the Priority Corridor North-South Gas Interconnections in Western Europe (NSI West Gas) along with the physical reverse flow of the Moffat Interconnector to Scotland and therefore the relevant "*authority*" is indeed the European Commission and European Parliament. To attempt to assert that Ireland is the relevant authority for the preparation of an EU energy plan is, at the least, disingenuous.
- b. The European Court of Justice ruling in the case of Patrice D'Oultrement and Others vs. Region Wallone (C-290/15) clearly rejects narrow interpretations of Plans or Programmes and adopts a purposeful interpretation. The Opinion of Advocate General Kokott delivered on 4 March 2010 in the case of Terre wallonne ASBL (C-105/09) and Inter-Environnement Wallonie ASBL (C-110/09) v Région wallonne highlights that an essential element to be considered is whether the plan or programme sets the framework for future development consent. I assert that since, under the PCI Directive (347/2013) "*projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes*" the PCI list of projects itself sets the framework for future development consent in Member States and should therefore have an SEA at the European level, where the list was created.
- c. The PCI Directive (347/2013) sets the criteria for projects to be accepted on the PCI list which includes the obligation to have a significant impact on at least two EU Member States. They must also contribute to the sustainability objective, e.g. by supporting renewable generation. Only those electricity and gas projects included in the latest Ten-Year-Network Development Plans prepared by the European Network of Transmission System Operators for gas and for electricity (ENTSO-G and ENTSO-E) are allowed to become PCIs, as these Plans highlight the projects' socio-economic benefits on the EU energy system. The benefits of being on the PCI list highlighted by the Directive include:
 - streamlined permit granting procedures (a binding three-and-a-half-year time limit);
 - improved, faster and better streamlined environmental assessment;
 - a single national competent authority (one-stop-shop) coordinating all permit granting procedures;
 - a procedure allowing for the allocation of investment (construction) costs among Member States benefiting from the PCI;
 - under specific conditions, possibility of receiving financial assistance under the Connecting Europe Facility (CEF) in the form of grants and innovative financial instruments.

It is therefore only logical that an SEA cannot be undertaken at a national level for projects added to the PCI list because the PCI list itself has to be examined in its totality at a European Regional level.

4. DG Energy asserts that projects on the PCI list must "*undergo a complete permit-granting procedure at national level whilst consulting the general public, local communities and stakeholders before they can be implemented*".
 - a. I assert that since, under the PCI Directive (347/2013 "*projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes*"), then no meaningful consultation with the general public at a national level can take place because development consent cannot be refused.
 - b. I also assert that Member States are already involved in agreeing to the PCI projects in their countries being added to the list in the first place and that this prior agreement takes place without any prior public consultation e.g. the proposed importation of Fracked US gas by US company New Fortress Energy for the proposed Shannon LNG project. This does not conform to integrity in Climate Action as regards the Paris Climate Agreement. The Member States therefore facilitate projects getting on to the PCI list in the first instance without prior consideration in a plan or programme at a national level (e.g. fracked gas as part of the Irish Energy Mix given that it is illegal in Ireland to store fracked gas since 2017) and then at development consent stage in the Member State consent for such projects cannot be refused. In other words, we are going from a Policy to a Project without an official Plan/Programme if, as DG Energy asserts, the PCI list is not a plan or programme.

This reply from DG Energy, provides, I believe, clear prima facie evidence that DG Energy is deliberately attempting to implement an energy plan/programme for the entire European Region without any SEA, simply by referring to it as guidelines. In addition, the agreement to import Fracked Gas from the US via projects added to the PCI list without any SEA is an indirect rejection of the Paris Climate Agreement by the European Commission. The US is withdrawing from the Paris Climate Accord, but the European Commission is now attempting to import Fracked US gas, the dirtiest of all fossil fuels due to leakage of the greenhouse gas Methane which has the highest climate impact in the short term. The pollution caused by US fracked gas imported in to Europe is considered to be part of US pollution because the US is where the pollution is produced.

In summary, the PCI list is an overarching energy plan in the Region of the entire European Union drawn up by the European Commission, not by national authorities, and should therefore have had an SEA at the European level before it was voted on by the European Parliament in March 2018. This is required both by the SEA Directive and the UNECE Protocol on Strategic Environmental Assessment. At the very least it should have had an SEA screening assessment to determine if a full SEA was required.

I await your feedback,

Yours faithfully,

John McElligott



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market
B.1 - Networks & Regional Initiatives

Brussels,
ENER.B.1/CS

John McElligott
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johnmcelligott@hotmail.com

Dear Mr. McElligott,

I am writing to you concerning your complaint no. 9481 filed on 2 November 2018 against the European Commission for supposed maladministration in the process of the preparation of the 3rd Union list of Projects of Common Interest (PCIs). With this letter, I would like to address the allegations therein.

The third Union List of Projects of Common Interest (PCIs) has been adopted in the form of a Commission Delegated Regulation (EU) 2018/540 (PCI Regulation) as defined by Article 290 of the Treaty on the Functioning of the European Union (TFEU) and, as a legal act of a general scope of application, it can be neither considered a plan nor a programme.

The process of identification and selection of PCIs is carried out with full respect for the European Union's decarbonisation plans and the agreed 2020 and 2030 energy and climate objectives, fully reflected in the underpinning assessment methodologies agreed by the regional Working Groups, that bring together a broad range of members of the civil society representatives, as well as , environmental and consumer stakeholders.

The sole purpose of the PCI Regulation is to provide guidelines in identifying projects that are necessary for reducing energy infrastructure bottlenecks and ending the energy isolation of the EU Member States. In this context, the PCI Regulation does not specify or prejudge the location, routing or technology of the PCIs, it does not grant permission(s) necessary for the implementation of these projects, and it does not grant authorisation(s) to build the PCI infrastructure. Directive 2001/42/EC, which lays down the conditions for the assessment of the effects of certain plans and programmes on the environment, sets the obligation for the preparation and/or adoption of such plans and

programmes on the *authority* at national, regional or local level; in this case the Irish planning authority. While measures and decisions taken in the course of the implementation process by project promoters and national authorities may have significant effects on the environment, the list of PCIs itself cannot produce such effects.

Contrary to your allegations, the inclusion of a given infrastructure project on the Union list of PCIs does not prejudice the fulfilment of EU Environmental Law, in particular the provisions of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, Directive 2009/147/EC on the conservation of wild birds, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, and Directive 2000/60/EC establishing a framework for community policy in the field of water. Article 7(8) of the PCI Regulation refers to the fulfilment of the conditions set out in Directives 92/43/EC and 2000/60/EC.

I would also like to refer to the decision of the European Ombudsman no. 240/2014/FOR which confirms that Regulation (EU) 347/2013 provides for safeguard measures in this respect, by setting the obligation on individual projects on the Union list of Projects of Common Interest to undergo a complete permit-granting procedure at national level, whilst consulting the general public, local communities and stakeholders before they can be implemented.

I hope that we have been able to clarify your concerns in that matter.

Yours faithfully,



Catharina SIKOW-MAGNY
Head of Unit



Joint U.S.-EU Statement following President Juncker's visit to the White House

Washington, 25 July 2018

We met today in Washington, D.C. to launch a new phase in the relationship between the United States and the European Union – a phase of close friendship, of strong trade relations in which both of us will win, of working better together for global security and prosperity, and of fighting jointly against terrorism.

The United States and the European Union together count more than 830 million citizens and more than 50 percent of global GDP. If we team up, we can make our planet a better, more secure, and more prosperous place.

Already today, the United States and the European Union have a \$1 trillion bilateral trade relationship – the largest economic relationship in the world. We want to further strengthen this trade relationship to the benefit of all American and European citizens.

This is why we agreed today, first of all, to work together toward zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto industrial goods. We will also work to reduce barriers and increase trade in services, chemicals, pharmaceuticals, medical products, as well as soybeans.

This will open markets for farmers and workers, increase investment, and lead to greater prosperity in both the United States and the European Union. It will also make trade fairer and more reciprocal.

Secondly, we agreed today to strengthen our strategic cooperation with respect to energy. The European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply.

Thirdly, we agreed today to launch a close dialogue on standards in order to ease trade, reduce bureaucratic obstacles, and slash costs.

Fourthly, we agreed today to join forces to protect American and European companies better from unfair global trade practices. We will therefore work closely together with like-minded partners to reform the WTO and to address unfair trading practices, including intellectual property theft, forced technology transfer, industrial subsidies, distortions created by state owned enterprises, and overcapacity.

We decided to set up immediately an Executive Working Group of our closest advisors to carry this joint agenda forward. In addition, it will identify short-term measures to facilitate commercial exchanges and assess existing tariff measures. While we are working on this, we will not go against the spirit of this agreement, unless either party terminates the negotiations.

We also want to resolve the steel and aluminum tariff issues and retaliatory tariffs.

STATEMENT/18/4687



EU-U.S. Joint Statement of 25 July: European Union imports of U.S. Liquefied Natural Gas (LNG) are on the rise

Brussels, 9 August 2018

Since the arrival of the first U.S. LNG carrier in the Portuguese port of Sines April 2016 and today, EU imports of liquefied natural gas from the U.S. have increased from zero to 2.8 billion cubic meters.

In their [Joint Statement](#) of 25 July in Washington D.C., President **Juncker** and President Trump agreed to strengthen EU-U.S. strategic cooperation with respect to energy. In this context, the European Union would import more liquefied natural gas from the United States to diversify and render its energy supply more secure. The EU and the U.S. will therefore work to facilitate trade in liquefied natural gas.

European Commission President Jean-Claude **Juncker** said: *"The European Union is ready to facilitate more imports of liquefied natural gas from the U.S. and this is already the case as we speak. The growing exports of U.S. liquefied natural gas, if priced competitively, could play an increasing and strategic role in EU gas supply; but the U.S. needs to play its role in doing away with red tape restrictions on liquefied natural gas exports. Both sides have much to gain by working together in the energy field."*

Commissioner for Climate Action and Energy, Miguel **Arias Cañete**, said: *"Diversification is an important element for ensuring the security of gas supply in the EU. Increasing imports of competitively priced liquefied natural gas from the U.S. is therefore to be welcomed. This is happening at a time when EU indigenous gas production is declining more rapidly than foreseen and there is an accelerated phase-out of coal power plants in the EU."*

The EU has co-financed or committed to **co-finance LNG infrastructure projects worth over €638 million** (see list of projects in Annex 2). In addition to the existing 150 billion cubic meters of spare capacity in the EU, the EU is supporting 14 liquefied natural gas infrastructure projects, which will increase capacity by another 15 billion cubic meters by 2021, which could welcome imports of liquefied natural gas from the U.S., if the market conditions are right and prices competitive.

Currently, U.S. legislation still requires prior regulatory approval for liquefied natural gas exports to Europe. These restrictions need to be addressed and U.S. rules made easier for U.S. liquefied natural gas to be exported to the EU.

Presidents **Juncker** and Trump set up an **Executive Working Group** at their meeting in Washington, D.C. on 25 July. Since then contacts have taken place between Presidents **Juncker** and Trump, between EU Trade Commissioner **Malmström** and U.S. Trade Representative Lighthizer, and between the senior advisers of President **Juncker** and President Trump (Commission Secretary-General Martin Selmayr and White House Chief Economic Adviser Larry Kudlow).

It has been agreed that on 20 August the Trade Adviser of President **Juncker** and a senior EU trade official will travel to Washington, D.C. to meet their U.S. counterparts to continue work on implementing the Joint Statement. In this context, the EU and the U.S. are working within the framework of this Executive Working Group to increase U.S. exports of liquefied natural gas to Europe.

Background

The global liquefied natural gas market is becoming increasingly fluid and competitive. Between 2017 and 2023, global liquefied natural gas trade is expected to grow by more than 100 billion cubic meters, from 391 to 505^[1]. The International Energy Agency expects liquefied natural gas imports to Europe to **increase by almost 20% by 2040** compared to 2016 levels.

The increasing gas production in the U.S. and the start of U.S. liquefied natural gas exports to the EU in 2016 have improved the security of gas supply in Europe and globally. Europe is currently importing around 70% of the gas it needs, and this share is expected to increase in the coming years. Liquefied natural gas is also an important part of the EU's diversification strategy; and as the second biggest single gas market in the world after the U.S., the EU is therefore an attractive option for the U.S.

In order to increase imports to Europe further, U.S. prices for liquefied natural gas need to be competitive on the EU market. In addition, the following actions are key to facilitating imports:

Development of liquefied natural gas capacities in the EU and in the U.S.:

- **Development of liquefied natural gas capacities** in the EU and in the U.S.:

The EU has well developed liquefied natural gas import capacities, with about 150 billion cubic meters currently spare. At the same time, given their strategic importance for diversification, **current capacities are being expanded and new capacities are being developed** in the Adriatic Sea (on the island of Krk in Croatia), in the Baltic Sea, notably in Poland, and in the Mediterranean Sea in Greece. This would allow for a significant increase of liquefied natural gas imports to the EU.

The U.S. currently has 28 billion cubic meters of liquefaction capacity and is foreseen to **add a further 80 billion cubic meters by 2023**, while expanding its liquefied natural gas export terminals.

- **Regulatory restrictions by the U.S. need to be lifted.** The EU has no non-market barriers for U.S. natural gas coming to the EU. The EU is seeking similar treatment from the U.S. side, in particular as regards the removal of the requirement for prior approval of liquefied natural gas exports to the EU.

The current figures show that imports of U.S. liquefied natural gas to the EU have been increasing:

- Since the first shipment of U.S. liquefied natural gas to the EU in April 2016, today EU imports of liquefied natural gas from the United States have already reached **2.8 billion cubic meters (bcm)**.
- Since early 2016, the EU has received more than 40 liquefied natural gas cargoes from the U.S. In 2017 Europe represented **more than 10% of total U.S. liquefied natural gas exports, up from 5% in 2016.**

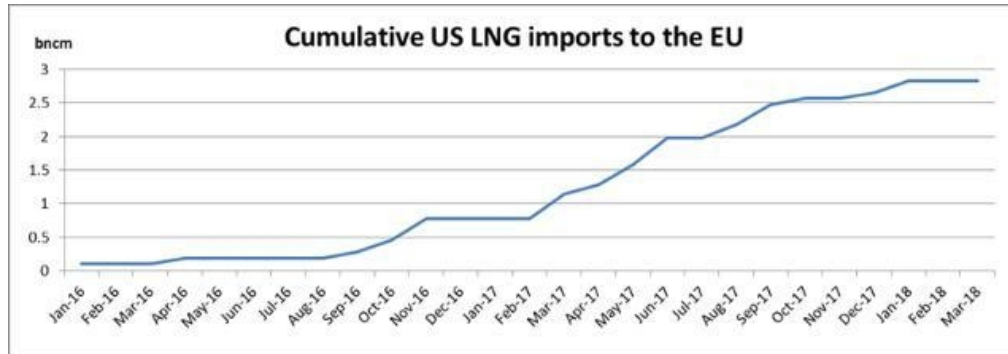
For more information

[EU-U.S. Joint Statement](#)

[Liquefied Natural Gas \(LNG\) – background](#)

ANNEX

1. EU imports of Liquefied Natural Gas from the United States



2. EU support to Liquefied Natural Gas capacities

LNG terminals built in 2013-2018				
Member State	Terminal	Year of start-up	Capacity (bcm/y)	EU co-financing
Italy	FSRU OLT Oshore LNG Toscana	2013	3.8	
Lithuania	FSRU Independence	2014	4.0	€27.4m (CEF) for connecting pipelines
France	Dunkerque LNG Terminal	2016	13.0	
Poland	Swinoujscie LNG Terminal	2016	5.0	€130m awarded (EEPR) €202m (ERDF) €332m in total
Malta	Malta Delimara LNG	2017	0.7	€0.7m for studies (CEF)

	terminal			
LNG terminals under construction				
Member State	Terminal	Year of start-up	Capacity (bcm/y)	EU co-financing
Greece	Revithoussa LNG Terminal (capacity extension)	2018	2.0 (from 5.0 to 7.0)	€50.8m (ERDF)
Spain	Tenerife (Arico-Granadilla) LNG terminal	2021	1.3	
Spain	Gran Canaria (Arinaga) LNG terminal	2022	1.3	
LNG terminals on the Projects of common Interest (PCI) list				
Member State	Terminal	Year of start-up	Capacity (bcm/y)	EU co-financing
Croatia	Krk LNG terminal	2019	2.6	€108m (CEF) for the terminal €16m (CEF) for evacuation pipeline €124m in total
Greece	LNG terminal in Northern Greece	2020	5.5	€2m (CEF) for studies
Cyprus	Cyprus LNG terminal	2020		€101.2m (CEF)
Sweden	Gothenburg LNG terminal	2021	0.5	
Poland	Świnoujście LNG terminal (capacity extension)	2022	2.5 (from 5.0 to 7.5)	
Ireland	Shannon LNG Terminal	2022	6.2	

CEF: Connecting Europe Facility

EEPR: European Energy Programme for Recovery

ERDF: European Regional Development Fund

PCI: Projects of Common Interest

[1]Source: International Energy Agency.

IP/18/4920

Press contacts:

[Mina ANDREEVA](#) (+32 2 299 13 82)

[Anna-Kaisa ITKONEN](#) (+32 2 29 56186)

[Iris PETSA](#) (+32 2 299 33 21)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)

Complaint 201801933 - Acknowledgement of receipt [CMSEO]:0034122

MBX Euro-Ombudsman <EO@ombudsman.europa.eu>

Wed 14/11/2018, 10:49

To: John McElligott <johnmcelligott@hotmail.com>



European Ombudsman

Acknowledgement of receipt

Dear Sir/Dear Madam,

Thank you for writing to the European Ombudsman. Your complaint has been registered under the following complaint number: **201801933**

We will contact you again to let you know whether your complaint can be taken forward and, if so, what the next steps will be. We would normally expect to do this within the next four weeks.

The fact that you have made this complaint to the Ombudsman does not affect the legal time limits in any related administrative or judicial proceedings.

If you have any questions, please do not hesitate to contact our Office using the contact details below.

Yours sincerely,
Complaints Handling Secretariat

T. + 33 (0)3 88 17 23 13
eo@ombudsman.europa.eu

Information note on data processing and confidentiality

Data processing

Complaints to the Ombudsman and related correspondence often contain personal data, such as names, contact details and other information relating to identifiable individuals.

There are rights and obligations under European law (Regulation 45/2001)^[1] as to how personal data is handled by EU institutions, including the European Ombudsman. These include an individual's right to obtain access to his or her own information held by this Office. To exercise these rights or to find out more, please contact our [Office](#).

If a person considers that the Ombudsman has not handled his or her personal data properly, he or she may contact the [European Data Protection Supervisor](#).

Confidentiality of your complaint and information

Complainants are requested to identify clearly any document or information that they consider to be confidential immediately on sending it to the Ombudsman.

Confidentiality can only apply if there would be some adverse effect if the information were to be disclosed. It might, for example, apply to financial information, commercially sensitive information or personal information about a private individual. Confidentiality cannot always be guaranteed. In particular, if you submit to the Ombudsman documents that contain the personal data of someone other than yourself, that person will most likely be able to obtain it from the Ombudsman, exercising their data protection rights. In any event, you should expect your complaint and any supporting documents to be shared in full with the institution or body you are complaining about, so that they can properly understand it and respond to the Ombudsman.

[1] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p.1.

[Data protection](#)

[Accessibility](#)

[Notice to users](#)

[Easy to read](#)

[Language policy](#)

[RSS](#)

[Home](#) > [My account](#) > My complaint

Complaint about maladministration

Complaint submitted on: Monday | 12 November 2018

European Ombudsman

First name: John
Surname: McElligott
On behalf of (if applicable):
Address line 1: Island View
Address line 2: 5 Convent Street
Town/City: Listowel
County/State/Province: County Kerry
Postcode: v31 pw61
Country: Ireland
Tel.: +353-87-2804474
Fax:
E-mail address: johnmcelligott@hotmail.com

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

European Commission

What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.

Complaint: that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA

What do you consider that the EU institution or body has done wrong?

The proposed Shannon LNG project in Ireland has been added to the EU list of "Projects of Common Interest" (PCI):

However, we are of the legal opinion that the EU Parliament and the EU Commission should not have approved the EU Energy Programme of Projects of Common Interest (PCI) list without any proper Strategic Environmental Assessment or consideration of reasonable alternatives. The Trans European Energy Infrastructure projects represent a clear European Energy Programme.

The PCI Directive states that All Projects on the PCI list must be "allocated the status of highest national significance possible" and that "authorisation should be given to projects which have an adverse impact on the environment for reasons of overriding public interest"

On March 14th 2018, the EU parliament took part in what we consider to be a sleight of hand which will legally force EU members to accept massive gas infrastructure projects (such as the proposed Shannon LNG project in Ireland), where all adverse impacts on climate change and impacts on the environment will have to be ignored for reasons of overriding public interest. No environmental screening report of this plan was presented to Parliament before it voted on this plan to approve the Energy Programme of Projects of Common Interest (PCI) - a clear breach of the EU SEA Directive.

We believe this took place to help the EU Commission avoid having to live up to the Global Paris Climate Agreement that the EU ratified in 2016 by not considering "reasonable alternatives" as obliged under the SEA Directive.

We assert that the commitments made in the joint European Commission-US statement of 25 July 2018 stating that the "European Union would import more liquefied natural gas from the United States to diversify and render its energy supply more secure" are incompatible with the Paris Agreement and were the real, underlying reason for voting a PCI list without an SEA.

The most up-to-date scientific knowledge is categorical on the following points: The number one climate threat in Europe is fracked gas. Cornell University's Professor Robert Howarth, a leading scientist in this area, states that this is no bridge fuel, that switching from coal to shale gas is accelerating rather than slowing global warming, that methane's impact on climate is 105 times more potent than carbon dioxide, that one half of Methane emissions in the US is coming from Shale Gas Leakage and that, to put it simply, fracked gas is the dirtiest of all fossil fuels with a bigger climate footprint than coal. This was not the thinking over 10 years ago when the Shannon LNG project initially obtained planning permission.

This up-to-date scientific knowledge should have been allowed to be assessed in an SEA and leads us to claim that this is more than maladministration, it is totally illegal behaviour on the part of the European Commission Energy Unit.

Article 2 of the SEA Directive clearly states that " 'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them".

Article 4(1) of the SEA Directive states that "The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure".

Article 5 of the SEA Directive obliges the environmental assessment to consider "reasonable alternatives" to the plan.

By not considering the overall environmental impact of the PCI plan in its totality with all the combined projects in the plan (especially the gas projects grouped together) strategic environmental assessment of individual split projects within the plan when they are going through the permitting process is meaningless - especially since the PCI Directive forces national planning authorities to ignore all these environmental concerns because the projects must be considered to be in "the public interest".

The PCI Directive (Regulation (EU) No 347/2013) Article 7(3) clearly states "projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes".

Article 7(8) goes on to state "With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled".

We believe that the first-ever approval of the PCI list by the EU parliament without any proper environmental report, strategic environmental assessment, or consideration of reasonable alternatives is therefore illegal under EU Directives and ask you to kindly inform us how you propose to address our complaint from this perspective.

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

A new PCI list to be presented to parliament with an SEA which clearly considers the most up-to-date scientific information.

The most up-to-date scientific knowledge is categorical on the following points: The number one climate threat in Europe is fracked gas. Cornell University's Professor Robert Howarth, a leading scientist in this area, states that this is no bridge fuel, that switching from coal to shale gas is accelerating rather than slowing global warming, that methane's impact on climate is 105 times more potent than carbon dioxide, that one half of Methane emissions in the US is coming from Shale Gas Leakage and that, to put it simply, fracked gas is the dirtiest of all fossil fuels with a bigger climate footprint than coal. This was not the thinking over 10 years ago when the Shannon LNG project initially obtained planning permission.

This up-to-date scientific knowledge should have been allowed to be assessed in an SEA and leads us to claim that this is more than maladministration, it is totally illegal behaviour on the part of the European Commission Energy Unit.

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

Yes (please specify and submit copies of the relevant correspondence)

This complaint was already addressed directly to the the Energy Unit of the European Commission as per the attached and the reply (which only came once I had written directly to Commissioner Miguel Arias Cañete) was to fill out a complaint form in order to have the complaint officially registered (but the link provided only deals with complaints about a Member State, not about the Commission itself) as follows:

From: Catharina.Sikow@ec.europa.eu

Sent: Monday 8 October 2018 19:50

To: safetybeforelng@hotmail.com

Cc: Oana.LANGA@ec.europa.eu; Martina.DOPPELHAMMER@ec.europa.eu; agheorghiu@fweurope.org

Subject: Re: Formal complaint on the Shannon LNG project and the 2018 PCI list voted by the EU Parliament both being approved without any proper Strategic Environmental Assessment

Dear Mr McElligott,

Thank you for your mail. I would like to ask you to fill in the complaint form, if you wish to have the complaint officially registered.

Please find here the link to the form: https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/index.html

Yours sincerely,

Catharina Sikow Magny
Head of Unit Networks & Regional Initiatives
DG energy, European Commission

From: Safety Before LNG SLNG <safetybeforelng@hotmail.com>
Sent: Monday 8 October 2018 11:59
To: cab-arias-canete-archives@ec.europa.eu
Cc: catharina.sikow@ec.europa.eu
Subject: Commissioner meeting with Shannon LNG on October 10th,2018

John McElligott,
'Safety Before LNG',
Island View,
Convent Street,
Listowel,
County Kerry,
Ireland.
Tel: +353-87-280 4474
Email: SafetyBeforeLNG@hotmail.com
www.SafetyBeforeLNG.ie
October 8th, 2018
Commissioner Miguel Arias Cañete,
Commissioner For Climate Action & Energy

cc: Ms. Sikow-Magny, head of Unit, DG Energy

By Email only

Re: Commissioner meeting with Shannon LNG on October 10th,2018

Dear Commissioner,

I note from your calendar that you are due to meet representatives of Shannon LNG on Wednesday October 10th 2018. I would be grateful if you take on board the following issues before this meeting:

1. Shannon LNG has not yet obtained full development consent to construct any LNG import terminal in Ireland due to an appeal lodged in the Irish Member State High Court. Any public comment by you on this matter at this stage may be interpreted as an attempt to interfere with ongoing court proceedings in the Irish Member State.
2. Shannon LNG has announced an agreement with New Fortress Energy/American LNG to import LNG to the proposed Shannon LNG terminal in Ireland. This represents the direct importation of Fracked US gas into an EU Member State. Fracked gas is now accepted by the most up-to-date scientific studies as being the dirtiest of all fossil fuels due to unburnt Methane leakage which has extreme Climate Change impacts. Methane is now acknowledged as a greenhouse gas 86 times worse than CO2 over a 20 year period by none other than the Intergovernmental Panel on Climate Change (IPCC). It is therefore now no longer acceptable for the European Commission to claim to be implementing its Climate Change Commitments of 2015 while at the same time signing up to importing Fracked US gas.
3. There is now the attached current formal complaint lodged by me with the EU Commission - DG Energy on the 2018 PCI list (which includes the proposed Shannon LNG project) being voted on by the European Parliament without any Strategic Environmental Assessment (SEA). I ask you to take account of the issues

raised in this complaint in your discussions with the Shannon LNG representatives on Wednesday.

4. In 2017, Ireland not only banned the fracking of gas onshore in Ireland, but also the "searching for [...] getting, raising, taking, carrying away, storing and treating" of fracked gas situated in Ireland was declared illegal. In other words it is now illegal in Ireland to store fracked gas imported by ship into the proposed Shannon LNG terminal (c.f.

<http://www.safetybeforelng.ie/pressreleases/pressrelease20180917ImportingFrackedGasToIrelandIsIllegal.html>). Furthermore, any person who searches for, stores or treats fracked gas in Ireland shall be guilty of an offence. I wonder if any members of the EU Commission searching for fracked US gas to store in Ireland would also be, by consequence, guilty of an offence under the Irish Member State law.

5. While I understand that one of your responsibilities as Commissioner on Climate Action & Energy is increasing Europe energy security by diversifying sources of energy imports, you have equal responsibility in the implementation of the 2030 Climate and Energy framework, the steering of negotiations with the European Parliament and national governments along with the development of EU policy for renewable energy. Importing high-climate-impact fracked US gas into the European Union is simply not compatible with these responsibilities. Your mission letter from President Jean-Claude Juncker clearly mandates and obliges you to "contribute to establishing a European Energy Union with a forward-looking climate change policy". Having been asked by the President to "ensure that the EU plays a leading role in international climate policy" is it not now time for the EU Commission on Climate Action & Energy to reassess its entire policy on the importation of Fracked gas?

Please do not hesitate to contact me if you require further information.

Yours sincerely,
John McElligott

Safety Before LNG,

Island View, 5 Convent Street, Listowel, County Kerry, Ireland

Tel: +353-8-2804474

Email: SafetyBeforeLNG@hotmail.com

If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

Not applicable

Has the object of your complaint already been settled by a court or is it pending before a court?

Please confirm that you have read the information below

You have read the information note on data processing and confidentiality

Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes

Attachments:

Name	Size
Formal SEA Complaint Against Shannon LNG and PCI Approval -- John McElligott.pdf	89.78 KB
Formal SEA Complaint Against Shannon LNG and PCI Approval -- John McElligott.pdf	89.78 KB

1, avenue du Président Robert Schuman

T. +33 (0)3 88 17 23 13

www.ombudsman.europa.eu

CS 30403

F. +33 (0)3 88 17 90 62

F - 67001 Strasbourg Cedex

Your complaint form has been successfully submitted

ec-fp-internet-services-do-not-reply@ec.europa.eu

Thu 01/11/2018, 23:59

To: John McElligott <johnmcelligott@hotmail.com>

Thank you for having completed the form. The European Commission will process it promptly.

Are you submitting this complaint on your own behalf?	yes
Representative Businesses or organisation	
Title	
Representative first name	
Representative last name	
Representative E-mail	
Representative street and number	
Representative postcode	
Representative town	
Representative country	-- select --
Representative telephone	
Businesses or organisation:	Safety Before LNG
Title	Mr
Firstname	John
Surname	McElligott
e-mail	johnmcelligott@hotmail.com
Language	English
Street and number	Island View, 5 Convent Street
Postcode	v31 pw61
Town	Listowel, County Kerry
Country	Ireland
Telephone	+353-87-2804474

official contact for all correspondence	
Authority complained about name	European Commission - DG ENERGY
Authority complained about contact person	Catharina SIKOW-MAGNY, Head of Unit, ENERGY
Authority complained about email	catharina.sikow@ec.europa.eu
Authority complained about	
Authority complained about telephone	+32 2 296 21 25
Authority complained about address	Unit Internal Market I: Networks & Regional Initiatives DM24 06/145
Authority complained about postcode	B-1040
Authority complained about town	Brussels
Authority complained about country	Belgium
National measures suspected to infringe Union law	<p>On July 13th 2018, Ireland approved the extension of planning for the proposed 'Shannon LNG' import terminal , which is now on the PCI list, without requiring an SEA.</p> <p>Since Shannon LNG is a Trans European Energy Infrastructure project in a clearly new European Energy Programme, an SEA would clearly have been required before giving development consent. However, we assert that maladministration by the European Commission occurred in the creation of a PCI list which included the proposed Shannon LNG project, proposed to the EU Parliament and voted on without any proper SEA.</p>
EU law you think has been breached	<p>The SEA Directive (2001/42/EC) and the Paris Climate Agreement:</p> <p>Complaint: that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA</p>

The proposed Shannon LNG project has been added to the EU list of "Projects of Common Interest" (PCI):

However, we are of the legal opinion that the EU Parliament and the EU Commission should not have approved the EU Energy Programme of Projects of Common Interest (PCI) list without any proper Strategic Environmental Assessment or consideration of reasonable alternatives. The Trans European Energy Infrastructure projects represent a clear European Energy Programme.

The PCI Directive states that All Projects on the PCI list must be "allocated the status of highest national significance possible" and that "authorisation should be given to projects which have an adverse impact on the environment for reasons of overriding public interest"

On March 14th 2018, the EU parliament took part in what we consider to be a sleight of hand which will legally force EU members to accept massive gas infrastructure projects (such as the proposed Shannon LNG project in Ireland), where all adverse impacts on climate change and impacts on the environment will have to be ignored for reasons of overriding public interest. No environmental screening report of this plan was presented to Parliament before it voted on this plan - the first time ever the EU Parliament got to approve the Energy Programme of Projects of Common Interest (PCI) - a clear breach of the EU SEA Directive.

We believe this took place to help the EU Commission avoid having to live up to the Global Paris Climate Agreement that the EU ratified in 2016 by not considering "reasonable alternatives" as obliged under the SEA Directive.

Article 2 of the SEA Directive clearly states that " 'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them".

Article 4(1) of the SEA Directive states that "The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure".

Article 5 of the SEA Directive obliges the environmental assessment to consider "reasonable alternatives" to the plan.

By not considering the overall environmental impact of the PCI plan in its totality with all the combined projects in the plan (especially the gas projects grouped together) strategic environmental assessment of individual split projects within the plan when they are going through the permitting process is meaningless - especially since the PCI Directive forces national planning authorities to ignore all these environmental concerns because the projects must be considered to be in "the public interest".

The PCI Directive (Regulation (EU) No 347/2013) Article 7(3) clearly states "projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes".

	<p>Article 7(8) goes on to state "With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled".</p> <p>We believe that the first-ever approval of the PCI list by the EU parliament without any proper environmental report, strategic environmental assessment, or consideration of reasonable alternatives is therefore illegal under EU Directives and ask you to kindly inform us how you propose to address our complaint from this perspective.</p>
Problem description	As described above: we assert that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA
Does the Member State concerned receive EU funding relating to the subject of your complaint	yes
Does your complaint relate to a breach of the EU Charter of Fundamental Rights?	no
Please explain how EU law is involved and which fundamental right has been breached	
List of documents	<p>Formal letter of complaint sent on 22nd September 2018 to Catharina SIKOW-MAGNY Head of Unit European Commission ENERGY Unit Internal Market I: Networks & Regional Initiatives DM24 06/145 B-1040 Brussels/Belgium +32 2 296 21 25 catharina.sikow@ec.europa.eu Re: Formal complaint on the Shannon LNG project and the 2018 PCI list voted</p>

	by the EU Parliament both being approved without any proper Strategic Environmental Assessment
Have you already taken action in the Member State concerned to try to solve this problem?	yes
What action have you already taken in the Member State concerned to tackle the problem?	
What type of decision(s) resulted from your action.	I formally objected to the extension of planning permission for the proposed Shannon LNG project in Ireland without a strategic environmental assessment (http://www.pleanala.ie/casenum/PM0014.htm). However, the planning authority focussed on the fact that the Shannon LNG project had already been added to the EU list of Projects of Common interest.
Has your action has been settled by a court or is pending before a court.	
Why didn't you take any action to tackle your problem in the Member State concerned?	
Indicate why you are not eligible for particular remedy	
Other reason for not taking action in the Member State concerned	<p>This complaint was already addressed directly to the the Energy Unit of the European Commission and the reply was to fill out this complaint form in order to have the complaint officially registered as follows:</p> <p>From: Catharina.Sikow@ec.europa.eu Sent: Monday 8 October 2018 19:50 To: safetybeforelng@hotmail.com Cc: Oana.LANGA@ec.europa.eu; Martina.DOPPELHAMMER@ec.europa.eu;</p>

agheorghiu@fweurope.org
 Subject: Re: Formal complaint on the Shannon LNG project and the 2018 PCI list voted by the EU Parliament both being approved without any proper Strategic Environmental Assessment

Dear Mr McElligott,

Thank you for your mail. I would like to ask you to fill in the complaint form, if you wish to have the complaint officially registered.

Please find here the link to the form: https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/index.html

Yours sincerely,
 Catharina Sikow Magny
 Head of Unit Networks & Regional Initiatives
 DG energy, European Commission

Have you already contacted EU institutions or other services dealing with problems of this nature

Petition to the European Parliament

European Ombudsman

European Commission correspondence

European Commission complaint

SOLVIT

Other (please specify)

Are you aware of any action in the Member State concerned covering the issue you raise

no

Please specify action you are aware of in the

Member State concerned	
Do you authorise the Commission to disclose your identity	yes

Submission made: 2018-11-02 12:59 AM



Safety Before LNG
Protecting the Shannon Estuary and its people

John McElligott, Telephone: +353-87-2804474
Safety Before LNG, Email: safetybeforelng@hotmail.com
Island View, Web: www.SafetyBeforeLNG.ie
5 Convent Street,
Listowel,
County Kerry

22 September 2018

Catharina SIKOW-MAGNY
Head of Unit
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ENERGY
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Adina.CRISAN@ec.europa.eu,
Oana.LANGA@ec.europa.eu,
Martina.DOPPELHAMMER@ec.europa.eu,
agheorghiu@fweurope.org

Re: Formal complaint on the Shannon LNG project and the 2018 PCI list voted by the EU Parliament both being approved without any proper Strategic Environmental Assessment

Dear Ms. Sikow-Magny,

In response to your letter dated 17 May 2018 to Andy Gheorghiu attached we are deeply concerned by the misleading information provided to you on this matter by the Irish Competent Authority ('An Bord Pleanála') on the process and steps taken. We are therefore hereby formally complaining to you at the European Commission

1. that the Irish Competent Authority ('An Bord Pleanála') allowed the extension of the PCI-listed expired Shannon LNG permission without an SEA and
2. that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA.

Complaint 1: That the Irish Competent Authority ('An Bord Pleanála') allowed the extension of the PCI-listed expired Shannon LNG permission without an SEA

1. You state that the Irish Competent Authority informed you that:

"The Kerry County Development Plan 2015-2021 has been subject to a Strategic Environmental Assessment (SEA). Further the Plan has been subject to an Habitat Directive Assessment. The Strategic Integrated Framework Plan for the Shannon Estuary 2013-2020 was also subject to SEA."

This Kerry County Development Plan 2015-2021 had nothing to do with the LNG project granted permission 7 years earlier without an SEA. Likewise, the Strategic Integrated Framework Plan for the Shannon Estuary 2013-2020 could not and did not assess in any way the proposed Shannon LNG project because the project had already been granted planning permission several years earlier.

We therefore conclude that stating that these two plans were "*subject to an SEA*" is an attempt to mislead you because the Energy Plan that was embodied by Shannon LNG, before, during or after the planning consent process was never subjected to an SEA in any shape or form whatsoever.

2. You state that the Irish Competent Authority informed you that:

"In 2012, the Competent Authority concluded that no appropriate assessment issues arose in relation to the request by the developer to provide for the option for the initial construction of one storage tank instead of two (out of a total of four) as initially planned."

This statement is another attempt by the Irish Competent Authority to imply that because no appropriate assessment issues arose in 2012 with a modification to an existing planning permission for the Shannon LNG project, the same could be concluded for this current planning application reference PM0014. However, in this current case, planning permission for the Shannon LNG project has expired and is therefore, obviously, a completely different case.

3. The response from you to the Irish Competent Authority has been:

"Against this background, we do not see any indication for a breach at this point of the process."

This reply from you has now become part of the file examined by the Irish Competent Authority (*An Bord Pleanála*) when it decided to grant Shannon LNG an extension of its planning permission which had expired.

However, the means by which your reply became part of the file PM0014 assessed for an extension of the Shannon LNG planning consent now raises the serious issue of the essential lack of transparency in the planning process.

A misleading report by *'An Bord Pleanála'* to you at the Energy Unit of the European Commission (implying that the required Strategic Environmental Assessment - SEA - was undertaken for the Shannon LNG Energy Plan when this was clearly not the case) has lead you to conclude that there is no indication for a breach at this point of the process. Your conclusion was subsequently used by that same Irish Competent Authority to decide on a planning application in which that same Irish Competent Authority provided you with misleading information.

4. We urge you to clarify this issue as soon as possible with *'An Bord Pleanála'* because the Energy Unit of the European Commission has now been dragged in to what we consider to be an essential lack of transparency of the Irish planning process as regards the proposed Shannon LNG project.

5. The European Union List of Projects of Common Interest¹ has grouped the proposed Shannon LNG project in the Priority Corridor North-South Gas Interconnections in Western Europe ('NSI West Gas') which includes:

- a) Physical reverse flow at Moffat interconnection point (IE/UK)
- b) Upgrade of the SNIP (Scotland to Northern Ireland) pipeline to accommodate physical reverse flow between Ballylumford and Twynholm
- c) Development of the Islandmagee Underground Gas Storage (UGS) facility at Larne (Northern Ireland)
- d) Shannon LNG Terminal and connecting pipeline (IE)

The proposed final maximum regasification capacity of at least 10 billion cubic meters (bcm) per year would equal the European Union's most ambitious gas project, the Southern Gas Corridor, and

¹ 5.1 and 5.3 on THE UNION LIST OF PROJECTS OF COMMON INTEREST https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.090.01.0038.01.ENG&toc=OJ:L:2018:090:TOC

supply Ireland's fossil gas needs twice over. Fracked hydrocarbons would be tankered in from the United States, processed and much of it then sent to Europe. The fracked hydrocarbons could, we fear, also be used for plastic and petrochemical production².

We argue that The Board should require an appropriate Strategic Environmental Assessment of the cumulative impacts of the joint projects of the reverse flow at Moffat, the upgrade of the Scotland to Northern Ireland pipeline to accommodate physical reverse flow along with the Shannon LNG Terminal and connecting pipeline as these projects are all intertwined and grouped by the EU Commission into the Priority Corridor North-South Gas Interconnections in Western Europe.

6. Article 19 of the PCI Directive states:

*"For projects of common interest in the permit granting process for which a project promoter has submitted an application file before 16 November 2013, the provisions of Chapter III shall not apply"*³

Chapter III deals with Permit Granting and Public Participation.

The 'An Bord Pleanála' Inspector's Report (on December 4th, 2017)⁴ asserted that Article 19 allowed the Board to forego the obligations of Chapter III of the Regulation but the *new* application PM0014 to extend the Shannon LNG planning permission was made on September 22nd 2017 which was after November 2013 so the PCI procedural steps should have been taken by the Board (and which would require an SEA, for example).

7. The Competent Authority for communicating with EU Commission Energy Unit as regards PCI-listed projects ('An Bord Pleanála') and overseeing the PCI procedural steps in the Irish Member State is the same authority that gave an extension of planning permission and we believe that this issue requires clarification as regards transparency. In other words, the same authority for overseeing the PCI procedural steps in the Irish Member State for the benefit of Shannon LNG gave development consent to Shannon LNG. Was there not a conflict of interest there?
8. With the confirmation that US fracked gas exporter, New Fortress Energy, is attempting to bring fracked US gas into Ireland via the proposed Shannon LNG project, the fact must be highlighted that it is illegal under Irish Member State law to search for, take or carry away, store or treat fracked gas that is situated in Ireland. 'An Bord Pleanála' did not consider this issue when giving development consent. On May 11th 2018, in our submission to An Bord Pleanála on PM0014 I requested the Board to confer with the owner of the land as follows:

*" Request to confer with the owner of the land
The site of the proposed Shannon LNG project is owned by Shannon Commercial Properties (formerly known as Shannon Development), a state-owned company⁵.
There are currently very persistent rumours locally of a US company about to sign a deal for a gas-related project on the site. We therefore ask that An Bord Pleanála request information on this matter from Shannon Commercial Properties under the precautionary principle in order to assess the cumulative impacts of any such deal before it reaches a decision. We cannot emphasise this point enough because it will give true visibility to An*

² 'The Trans-Atlantic Plastics Pipeline: How Pennsylvania's Fracking Boom Crosses the Atlantic' Food and Water Watch, Issue Brief May 2017, https://www.foodandwaterwatch.org/sites/default/files/ib_1705_pipelinesustoeweb.pdf.

³ PCI Directive: Regulation (EU) No 347/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

⁴ <http://www.pleanala.ie/casenum/PM0014.htm>

⁵ <https://www.shannongroup.ie/companies/shannon-commercial-properties/>

Bord Pleanála of the latest Shannon LNG business model. This assessment must also include the cumulative impacts on the proposed Gas-fired power station adjacent to the Shannon LNG site for which a related company to Shannon LNG also owns the planning permission."

'An Bord Pleanála' was therefore already informed by us that a US company was involved in the Shannon LNG project before it decided to give planning consent and this involvement was only publicly announced when planning permission was given.

However, the Irish Member State Prohibition of Onshore Hydraulic Fracturing Act 2017⁶ not only banned onshore fracking in Ireland but it also made it illegal for any person to "take" or "carry away" any fracked gas situated in the State and its internal waters.

Any LNG ship in the Shannon Estuary is allowed to bring in fracked US gas but it will be illegal for anybody in the country to "search for", "take" or "carry away" any of this fracked gas from the ship or be involved in "storing" or "treating" the Fracked Gas.

The Act states:

"Notwithstanding anything in this Act or any other enactment or rule of law it shall not be lawful for a person to search for, get, raise, take, carry away or work petroleum by means of hydraulic fracturing".

Fracked gas in the Act is referred to as "petroleum by means of hydraulic fracturing" which means that the Act can be read simply as:

"Notwithstanding anything in this Act or any other enactment or rule of law it shall not be lawful for a person to search for, get, raise, take, carry away or work Fracked Gas "

The ban and boycott:

"shall apply in respect of petroleum that is situated in the State including the internal waters"

Once LNG tankers are in the Shannon Estuary, they are in Internal Waters. If any of these ships contain fracked gas then it will be illegal to store, treat or transport this gas into the Irish network because the transportation ban makes no distinction on where that fracked gas came from originally

The fracking ban in Ireland came about due to strong scientific evidence on the pollution risk to water, the pollution risk to the atmosphere contributing to climate change and the Precautionary Principle and the rights of future generations to healthy and safe environments.

The ban on the transport of fracked gas within Ireland makes the country one of the toughest anti-fracking regimes in the world, outlawing the creation of a dependency on fracked gas bringing harm to powerless communities in America and elsewhere and sending a clear environmental message around the globe.

⁶ <http://www.irishstatutebook.ie/eli/2017/act/15/section/1/enacted/en/html>

The actual words in the Act (Prohibition of Onshore Hydraulic Fracturing Act 2017) are as follows:

Prohibition of hydraulic fracturing

5B. (1) *Notwithstanding anything in this Act or any other enactment or rule of law it shall not be lawful for a person to search for, get, raise, take, carry away or work petroleum by means of hydraulic fracturing.*

(2) *The prohibition in subsection (1) —*

(a) shall apply in respect of petroleum that is situated in the State including the internal water and

(b) shall not apply in respect of petroleum that is offshore.

Offence and penalty

5C. *A person who contravenes section 5B shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.”.*

The Principal Act (Petroleum and Other Minerals Development Act 1960) has the following relevant definitions:

petroleum” includes any mineral oil or relative hydrocarbon and natural gas and other liquid or gaseous hydrocarbons and their derivatives or constituent substances existing in its natural condition in strata (including, without limitation, distillate, condensate, casinghead gasoline and such other substances as are ordinarily produced from oil and gas wells) and includes any other mineral substance contained in oil and natural gas brought to the surface with them in the normal process of extraction, but does not include coal and bituminous shales and other stratified deposits from which oil can be extracted by distillation

“working” when used in relation to petroleum, includes digging, searching for, boring for, getting, raising, taking, carrying away, storing and treating petroleum, and cognate words shall be construed accordingly.

Since Shannon LNG, a Trans European Energy Infrastructure project in a clearly new European Energy Programme would be directly in conflict with the Irish Member State's ban on fracked gas, an SEA would clearly have been required and we ask why did 'An Bord Pleanála' not inform you of these facts?

9. Finally, on July 13th 2018, 'An Bord Pleanála' approved the extension of planning for Shannon LNG⁷, which is now on the PCI list, without even requiring an SEA on what is already a split project in the Priority Corridor North-South Gas Interconnections in Western Europe ('NSI West Gas'). Our view is very clear that on this point alone, there is a clear example of the breach of EU law by Ireland and we hereby formally ask you at the EU Commission to investigate this complaint.

⁷ <http://www.pleanala.ie/casenum/PM0014.htm>

Complaint 2: that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA

The proposed Shannon LNG project has been added to the EU list of "Projects of Common Interest" (PCI):

However, we are of the legal opinion that the EU Parliament and the EU Commission should not have approved the EU Energy Programme of Projects of Common Interest (PCI) list without any proper Strategic Environmental Assessment or consideration of reasonable alternatives. The Trans European Energy Infrastructure projects represent a clear European Energy Programme.

The PCI Directive⁸ states that All Projects on the PCI list must be "*allocated the status of highest national significance possible*" and that "*authorisation should be given to projects which have an adverse impact on the environment for reasons of overriding public interest*"

On March 14th 2018, the EU parliament took part in what we consider to be a sleight of hand which will legally force EU members to accept massive gas infrastructure projects (such as the proposed Shannon LNG project in Ireland), where all adverse impacts on climate change and impacts on the environment will have to be ignored for reasons of overriding public interest. No environmental screening report of this plan was presented to Parliament before it voted on this plan - the first time ever the EU Parliament got to approve the Energy Programme of Projects of Common Interest (PCI) - a clear breach of the EU SEA Directive.

We believe this took place to help the EU Commission avoid having to live up to the Global Paris Climate Agreement that the EU ratified in 2016 by not considering "*reasonable alternatives*" as obliged under the SEA Directive.

Article 2 of the SEA Directive⁹ clearly states that "*'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them*".

Article 4(1) of the SEA Directive states that "*The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure*".

Article 5 of the SEA Directive obliges the environmental assessment to consider "*reasonable alternatives*" to the plan.

By not considering the overall environmental impact of the PCI plan in its totality with all the combined projects in the plan (especially the gas projects grouped together) strategic environmental assessment of individual split projects within the plan when they are going through the permitting process is meaningless - especially since the PCI Directive forces national planning authorities to ignore all these environmental concerns because the projects must be considered to be in "*the public interest*".

⁸ PCI Directive: Regulation (EU) No 347/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

⁹ SEA Directive: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0042>

The PCI Directive Article 7(3)¹⁰ clearly states *"projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes"*.

Article 7(8) goes on to state *"With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled"*.

We believe that the first-ever approval of the PCI list by the EU parliament without any proper environmental report, strategic environmental assessment, or consideration of reasonable alternatives is therefore illegal under EU Directives and ask you to kindly inform us how you propose to address our complaint from this perspective.

We await your feedback

Yours sincerely,
John McElligott

¹⁰ PCI Directive: Regulation (EU) No 347/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

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An: agheorghiu@fweurope.org

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Datum: 17-May-2018 09:43:09 +0200

Betreff: RE: PCI List - Shannon LNG-T: Urgent Formal Complaint on Double Decisioning

Dear Mr Gheorghiu,

Following my below mail, we have now received the information from the Irish Competent Authority on the process and steps taken.

To summarise, the current state-of-play can be summarised as follows:

- The consent for the construction of the LNG terminal was initially granted in 2008;
- The Kerry County Development Plan 2015-2021 has been subject to a Strategic Environmental Assessment (SEA). Further the Plan has been subject to an Habitat Directive Assessment. The Strategic Integrated Framework Plan for the Shannon Estuary 2013-2020 was also subject to SEA;

In 2012, the Competent Authority concluded that no appropriate assessment issues arose in relation to the request by the developer to provide for the option for the initial construction of one storage tank instead of two (out of a total of four) as initially planned;

- In September 2017, in relation to the developer's request to extend the consent beyond the 10 years initially granted. The Competent Authority has assigned an inspector to report on this request and in January 2018 the Competent Authority decided to involve the public in the process on whether or not the request would constitute the making of a material alteration of the terms of the development. This matter is currently under consideration.

Against this background, we do not see any indication for a breach at this point of the process. We will continue to monitor the situation closely.

I would also like to encourage you to directly engage with the national authorities in the further process.

Best regards,

Catharina SIKOW-MAGNY

Head of Unit

European Commission

ENERGY

Unit Internal Market I: Networks & Regional Initiatives

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[Home](#) > [My account](#) > My complaint

Complaint about maladministration

Complaint submitted on: Monday | 01 April 2019

European Ombudsman

First name: John

Surname: McElligott

On behalf of (if applicable):

Address line 1: Island View

Address line 2: 5 Convent Street

Town/City: Listowel

County/State/Province: County Kerry

Postcode: v31 pw61

Country: Ireland

Nationality

Tel.: +353-87-2804474

Fax:

E-mail address: johnmcelligott@hotmail.com

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

European Commission

What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.

This is related to issues raised in the separate complaint 201801933.

Complaint that there was maladministration by the European Commission in the implementation of the Energy Plan to import fracked US gas announced by President Juncker in July 2018 following his visit to President Trump in the USA without any prior SEA.

The European Commission is **putting trade before climate commitments in implementing the Energy Plan to import US fracked gas**. However, it is still under the obligation to have a Strategic Environmental Assessment (SEA) to assess alternatives before implementing this Energy Plan and this lack of an SEA is the core of my complaint. This Energy Plan is being implemented via the Projects of Common Interest (PCI) which set the framework for development consent in Member States.

What do you consider that the EU institution or body has done wrong?

Clear commitments were made in the joint European Commission-US statement of 25 July 2018 following President Juncker's visit to the White House stating that "we agreed today to strengthen our strategic cooperation with respect to Energy. The European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply".

I ask, how could President Juncker be able to claim that the EU "wants" to import more liquefied natural gas (LNG) from the United States if it was not already also part of an energy plan? This energy plan is even more clear in the follow-up European Commission press release on 9 August 2018 which stated

"The EU has cofinanced or committed to co-finance LNG infrastructure projects worth over €638 million (see list of projects in Annex 2). In addition to the existing 150 billion cubic meters of spare capacity in the EU, the EU is supporting 14 liquefied natural gas infrastructure projects, which will increase capacity by another 15 billion cubic meters by 2021, which could welcome imports of liquefied natural gas from the U.S., if the market conditions are right and prices competitive". It went on to state: "Regulatory restrictions by the U.S. need to be lifted. The EU has no non-market barriers for U.S. natural gas coming to the EU. The EU is seeking similar treatment from the U.S. side, in particular as regards the removal of the requirement for prior approval of liquefied natural gas exports to the EU".

My understanding is that President Juncker is putting Trade before Climate Commitments in implementing the Energy Plan to import US fracked gas. However, he is still under the obligation to have a Strategic Environmental Assessment (SEA) to assess alternatives before implementing this Energy Plan and this lack of an SEA is the core of my complaint.

The EU Commission cannot avoid having to live up to the Global Paris Climate Agreement that the EU ratified in 2016 by not considering "reasonable alternatives" as obliged under the SEA Directive.

Article 2 of the SEA Directive clearly states that " 'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them".

Article 4(1) of the SEA Directive states that "The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure".

Article 5 of the SEA Directive obliges the environmental assessment to consider "reasonable alternatives" to the plan.

By not considering the overall environmental and climate impact of the energy plan to import fracked US gas to the EU via LNG terminals funded by the EU due to being on the PCI list in its totality, then strategic environmental assessment of individual related split projects on the PCI list when they are going through the permitting process is meaningless - especially since the PCI Directive forces national planning authorities to ignore all these environmental concerns because the projects must be considered to be in "the public interest".

The response of March 6th, 2019 from the European Commission attached is not acceptable to me for the following reasons:

1. Under the excuse of diversification of sources of Energy, no consideration is given by the European Commission to the fact that most imports of LNG from the US will be Fracked Shale Gas which the most up-to-date scientific conclusions are that this is dirtier than coal with a more detrimental climate impact coal or conventional gas.
2. The European Commission, which instigated the Energy Plan to import US shale gas, claims that "EU primary legislation does not confer any obligation or competence on the EU to carry out an SEA on

plans and programmes". However, this Energy plan is being implemented via projects on the PCI list which set the framework for development consent in each Member State. The PCI list is voted on by the EU Parliament and an SEA of individual projects on the PCI list will not give the same holistic view of the overall plan and amounts to Project Splitting. The only way to undertake an SEA of this Energy plan is at the EU level. This is not prohibited under the SEA Directive. How does European Commission explain the fact that we did not actually have this SEA in Ireland but Shannon LNG is nonetheless on the PCI list (and gets therefore fast-track EIA granted)?

3. The European Commission's statement on the issue of extracting unconventional gas does not deal with the essential issue of the importation of Fracked gas from outside of the European Union. The US pulling out of the Paris Accord means that the US can pollute as much as it wants, whereas importation of US fracked gas does not add to the EU's pollution commitments under the Paris Accord. This is not acceptable. In any case recommendations on minimum principles is NON-binding, so basically worth nothing,

4. The EU Parliament vote on Biodiversity: **The EU Parliament has adopted the following resolution**

([http://www.europarl.europa.eu/sides/getDoc.do?](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0034)

[type=TA&language=EN&reference=P8-TA-2016-0034](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0034)) of 2 February 2016 on the mid-term review of the EU's Biodiversity Strategy (2015/2137(INI))

(<http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2015/2137%28INI%29>)

"85. Stresses that the issues relating to biodiversity, climate change and scarcity of raw materials are inseparably linked; recalls that maintaining climate change well below 2° Celsius as compared with pre-industrial levels will be essential for preventing biodiversity loss; recalls, meanwhile, that a range of ecosystems act as a buffer against natural hazards, thereby contributing to climate change adaptation and mitigation strategies;

86. Calls on the Commission and the Member States to take this into account by ensuring that the EU Biodiversity Strategy for 2020 is fully integrated with the EU's position in discussions on a new international agreement on climate change, especially in the light of the fact that, according to the EU-funded ROBIN project, biodiversity

protection is part of the solution to climate change mitigation and adaptation, particularly given that tropical forests have the potential to mitigate 25 % of total greenhouse gas emissions;

87. Calls on the Commission to include matters relating to the environment and climate change in the international agreements it concludes and to carry out environmental analyses focused on the possibilities for protecting and improving biodiversity; stresses the importance of systematically identifying and evaluating potential impacts on biodiversity; calls on the Commission to follow up on the findings of the study entitled 'Identification and mitigation of the negative impacts of EU demand for certain commodities on biodiversity in third countries' by proposing possible ways to contribute to avoiding or minimising the loss of global biodiversity caused by certain production and consumption patterns in the EU;

88. Urges the Member States – on the basis of the precautionary principle and the principle that preventive action should be taken, and taking into account the risks and the negative climate, environmental and biodiversity impacts involved in hydraulic fracturing for the extraction of unconventional hydrocarbons, and the gaps identified in the EU regulatory regime for shale gas activities – not to authorise any new hydraulic fracturing operations in the EU;

89. Calls on the Commission and the Member States to ensure that the Guadeloupe roadmap adopted in October 2014 is acted on, and to put in place the necessary tools for biodiversity protection in the outermost regions and the overseas countries and territories;

90. Stresses the global role of the EU Biodiversity Strategy; calls on the Commission to integrate biodiversity provisions into ongoing trade negotiations and to integrate biodiversity objectives into EU trade policies;

Therefore, by stating "we agreed today to strengthen our strategic cooperation with respect to energy. The European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply." President Juncker is acting deliberately against the will/vote of the European Parliament. The EU Commission cannot state that that it speaks on behalf of the European Union.

5. Even the final report of the "**Trade Sustainability Impact Assessment (Trade SIA) on the negotiations on the TTIP** (http://trade.ec.europa.eu/doclib/docs/2017/april/tradoc_155464.pdf)" (published March 2017 by the EU-COM, DG TRADE) concludes that:

„...For the environment we expect that lifting the US export restriction on gas could lead to a shift away from coal in the EU with locally some environmental gains, depending on the pricing situation of each fuel. However, when placing this in a global environmental perspective we find that coal will still be exported by the US and environmental benefits from LNG over coal (which are debatable due to methane leakage during extraction and energy needed during production, conversion and transport) are perhaps even negative if a combination of LNG+coal crowded out 'greener' energy sources such as renewables in the global energy mix (i.e. due to price differences, which partly depends on pricing of climate change impacts per type of energy source).

(ft.note 494: Based on latest US EIA projections that predict that the US will keep exporting coal over the next 20 years (EIA, energy outlook 2016 (pre-release)).

...In the longer run, the removal of the LNG export licensing requirement could lead to a diversification of Europe's energy mix towards more LNG. Whether the global environmental impact of such a change is beneficial to the environment is however debatable as current LNG production methods (note we refer here to the share of shale gas in total LNG) result in, among others, methane leakages that have a negative impact on climate change and lead to local ground and water pollution. Secondly, it depends on whether the energy source it replaces is not more polluting, as also renewables could be replaced in cases where are not price competitive. ..."

Basic questions:

- a) What is the European Commission going to do to address the obvious legal gaps/inconsistencies highlighted here by me?

- b) Concerning the existing scientific knowledge concerning the negative role of gas (in particular fracked gas), the IPCC 1.5° report, the mandatory EU climate targets and the obligations under the Paris Agreement, how and why does the EU-COM still justify the import of

climate-hostile fracked gas and the construction of unneeded gas infrastructure - with the result of generating a fossil lock-in and/or stranded assets with public money?

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

The Trade Negotiations with the US to import fracked US gas should be put on hold until an assessment of the Climate Impacts of this plan is completed. The Paris Accord must have higher importance than trade considerations especially since other conventional gas alternatives already exist and are in place.

PCI projects importing Fracked Gas should not be privileged with CEF funding.

The PCI list should not be proposed to the EU Parliament without an SEA to consider reasonable alternatives.

Project Clusters on the PCI list without any SEA should be removed from the PCI list

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

Yes (please specify and submit copies of the relevant correspondence)

I submitted an official complaint to the European Commission along with contacting President Juncker directly via email. The response of March 6th, 2019 is attached along with the original letter to President Juncker.

If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

Not applicable

Has the object of your complaint already been settled by a court or is it pending before a court?

Please confirm that you have read the information below

You have read the information note on data processing and confidentiality

Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes

Attachments:

Name	Size
Energy Plan to Import fracked US gas without SEA John McElligott.pdf	500 KB

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EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate A - Energy policy
The Director

Brussels, 06 March 2019
ENER.A/MR/JP/cvc(2019) S-1495720

John McElligott
Safety before LNG
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Listowel
County Kerry,
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Subject: Meeting between Presidents Juncker and Trump on LNG of July 2018 and the Shannon LNG import terminal

Dear Mr McElligott,

On 24 January 2019 you sent a letter to President Juncker alleging “maladministration by the European Commission in the implementation of the Energy Plan to import fracked US gas announced by President Juncker in July 2018 following his visit to President Trump in the USA without any prior SEA”. I am replying on behalf of President Juncker.

The importance of diversifying the sources of energy that is imported into the European Union has been clearly identified as a priority in the EU’s Energy Union Strategy of 2015¹. In particular, on page 5, there is a clear reference to the importance of Liquefied Natural Gas (LNG) and an EU strategy for liquefied natural gas and gas storage² was adopted in February 2016, following a public consultation that took place between 8 July and 30 September 2015³. The LNG Strategy underlined that, as domestic production of natural gas in the EU will continue to decline, further diversification of the EU’s natural gas supply is a key objective for security of supply, resilience, and competitiveness reasons. It underlined the importance of ensuring that the necessary infrastructure is in place to allow Member States to benefit from access to international LNG markets, as well as taking actions to ensure completion of the EU’s internal energy market and co-operation with international partners “*to promote free, liquid and transparent global LNG markets. This means intensifying dialogues with current and future suppliers and other major LNG consumers to remove obstacles to the trading of LNG on global gas markets*”⁴.

The agreement between Presidents Juncker and Trump of 25 July 2018 should be seen in this context, namely that competitively priced US LNG should enter the EU gas market as part of a long standing strategy to diversify the sources of imported natural gas.

¹ https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC_1&format=PDF

² https://ec.europa.eu/energy/sites/ener/files/documents/1_EN_ACT_part1_v10-1.pdf

³ Reference the Commission Staff Working Document accompanying the LNG Strategy
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0023&qid=1550668071687&from=EN>

⁴ Third paragraph, page 3, of the EU Strategy for liquefied natural gas and gas storage.

Concerning your argument that the EU is obliged to carry out a strategic environmental assessment (SEA), pursuant to Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (the SEA Directive), on the “Energy Plan” to encourage the import of US LNG into the EU, EU primary legislation does not confer any obligation or competence on the EU to carry out a SEA on plans and programmes. The Directive is binding, as to the results to be achieved, on **each Member State to which it is addressed**. In accordance with the EU legal and institutional system, the Member States have transposed the SEA Directive in their national legislation. Thus, the national authorities are vested with the responsibility to ensure that the SEA procedure is put in place in their national legislation.

With respect to your concerns relating to the EU Projects of Common Interest (PCIs) that are highlighted in the Commission’s press release of 9th August 2018, this issue was addressed in a letter to you of 23rd November 2018 (reference ARES(2018)6017704) from Ms Sikow-Magny. That letter set out the objectives of the PCI Regulation as well as the process of identification of the PCIs and recalled that PCIs are carried out with full respect for the EU’s decarbonisation plans and agreed 2020 and 2030 energy and climate objectives.

With respect to your concerns relating to the Shannon LNG import terminal, this was addressed in a letter of 30 January 2019 (reference ARES(2019) 604336), which highlighted that the development consent for the extension of the Shannon LNG projects was a decision taken at national level and independently of the project’s status as a PCI. With respect to your complaint to the European Ombudsman that the Commission should not have added the Shannon LNG Terminal project in Ireland to PCI list since no Strategic Environmental Assessment was conducted the Commission will be responding to the Ombudsman's questions raised and in line with the normal procedure.

On the issue of extracting unconventional gas, I would like to draw your attention to the work that has been carried out by the Commission on this subject, which includes a Commission Recommendation of 22 January 2014 “on minimum principles for the exploration and production of hydrocarbons (such as shale gas) using high-volume hydraulic fracturing”⁵. In addition, reducing fugitive methane emissions in the energy sector is one of the priorities of the Commission as part of its efforts to move towards a carbon-neutral energy system that provides for secure, competitive and affordable energy. In this context, the Commission intends to carry out, together with the United Nations Environment Programme (UNEP), an analysis of methane emissions in the energy sector with a view to developing a strategy on how to reduce those emissions. This issue is also an integral part of our ongoing trans-Atlantic dialogue in the framework of the EU-US Energy Council.

Yours sincerely,

E-signed

Megan Richards

⁵ http://ec.europa.eu/environment/integration/energy/unconventional_en.htm



Safety Before LNG

Protecting the Shannon Estuary and its people

John McElligott,
Safety Before LNG,
Island View,
5 Convent Street,
Listowel,
County Kerry

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JohnMcElligott@hotmail.com /
safetybeforelng@hotmail.com
Web: www.SafetyBeforeLNG.ie

24 January 2019

President Jean-Claude Juncker,
Rue de la Loi / Wetstraat 200,
1049 Brussels,
Belgium,
By Email only to : president.juncker@ec.europa.eu

Re: Complaint that there was maladministration by the European Commission in the implementation of the Energy Plan to import fracked US gas announced by President Juncker in July 2018 following his visit to President Trump in the USA without any prior SEA.

Dear President Juncker,

Clear commitments were made in the joint European Commission-US statement of 25 July 2018 following your visit to the White House stating that:

"we agreed today to strengthen our strategic cooperation with respect to Energy. The European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply".

I ask, how could you, as President of the European Commission, and therefore speaking on its behalf, be able to claim that the EU "wants" to import more liquefied natural gas (LNG) from the United States if it was not already also part of an energy plan? This energy plan is even more clear in the follow-up European Commission press release on 9 August 2018 which stated:

"The EU has co-financed or committed to co-finance LNG infrastructure projects worth over €638 million (see list of projects in Annex 2). In addition to the existing 150 billion cubic meters of spare capacity in the EU, the EU is supporting 14 liquefied natural gas infrastructure projects, which will increase capacity by another 15 billion cubic meters by 2021, which could welcome imports of liquefied natural gas from the U.S., if the market conditions are right and prices competitive".

It went on to state:

"Regulatory restrictions by the U.S. need to be lifted. The EU has no non-market barriers for U.S. natural gas coming to the EU. The EU is seeking similar treatment from the U.S. side, in particular as regards the removal of the requirement for prior approval of liquefied natural gas exports to the EU".

My understanding, President Juncker, is that you are **putting trade before climate commitments in implementing the Energy Plan to import US fracked gas**. However, you are still under the obligation to have a Strategic Environmental Assessment (SEA) to assess alternatives before implementing this Energy Plan and this lack of an SEA is the core of my complaint.

The EU Commission cannot avoid having to live up to the Global Paris Climate Agreement that the EU ratified in 2016 by not considering "reasonable alternatives" as obliged under the SEA Directive.

Article 2 of the SEA Directive clearly states that " *'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them*".

Article 4(1) of the SEA Directive states that "*The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure*".

Article 5 of the SEA Directive obliges the environmental assessment to consider "*reasonable alternatives*" to the plan.

By not considering the overall environmental and climate impact of the energy plan to import fracked US gas to the EU via LNG terminals funded by the EU due to being on the PCI list in its totality, then strategic environmental assessment of individual and related split projects on the PCI list when they are going through the permitting process is meaningless - especially since the PCI Directive forces national planning authorities to ignore all these environmental concerns because the projects must be considered to be in "*the public interest*".

On July 13th 2018, Ireland approved the extension of planning for the proposed 'Shannon LNG' import terminal , which is now on the PCI list, without requiring an SEA. The Irish Planning Authority (*An Bord Pleanála*) and The European Commission were formally informed on April 4th, 2018 that 'New Fortress Energy', the US fracked-gas exporter, was the new developer of the proposed Shannon LNG terminal in Ireland. *An Bord Pleanála* never informed the public at the public participation stage in the development consent process that it knew all along that the new development was for the importation of US fracked gas contrary to the Public Participation Directive.

A new Energy Plan to import US fracked gas into an EU Member State which sets the framework for development consent for projects on the PCI list should have a Strategic Environmental Assessment (SEA) undertaken to assess alternatives.

Fracked gas is now accepted by the most up-to-date scientific studies as being the dirtiest of all fossil fuels due to unburnt Methane leakage (fugitive emissions) which has extreme Climate Change impacts. Methane is now acknowledged as a greenhouse gas 86 times worse than CO2 over a 20 year period by none other than the Inter-Governmental Panel on Climate Change (IPCC). It is therefore now no longer acceptable for the European Commission to claim to be implementing its Climate Change Commitments of 2015 while at the same time you, as President of the European Commission, are signing up to importing fracked US gas without an SEA to assess the alternatives.

I await your feedback on how you intend to rectify this situation.

Yours sincerely,

John McElligott



Joint U.S.-EU Statement following President Juncker's visit to the White House

Washington, 25 July 2018

We met today in Washington, D.C. to launch a new phase in the relationship between the United States and the European Union – a phase of close friendship, of strong trade relations in which both of us will win, of working better together for global security and prosperity, and of fighting jointly against terrorism.

The United States and the European Union together count more than 830 million citizens and more than 50 percent of global GDP. If we team up, we can make our planet a better, more secure, and more prosperous place.

Already today, the United States and the European Union have a \$1 trillion bilateral trade relationship – the largest economic relationship in the world. We want to further strengthen this trade relationship to the benefit of all American and European citizens.

This is why we agreed today, first of all, to work together toward zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto industrial goods. We will also work to reduce barriers and increase trade in services, chemicals, pharmaceuticals, medical products, as well as soybeans.

This will open markets for farmers and workers, increase investment, and lead to greater prosperity in both the United States and the European Union. It will also make trade fairer and more reciprocal.

Secondly, we agreed today to strengthen our strategic cooperation with respect to energy. The European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply.

Thirdly, we agreed today to launch a close dialogue on standards in order to ease trade, reduce bureaucratic obstacles, and slash costs.

Fourthly, we agreed today to join forces to protect American and European companies better from unfair global trade practices. We will therefore work closely together with like-minded partners to reform the WTO and to address unfair trading practices, including intellectual property theft, forced technology transfer, industrial subsidies, distortions created by state owned enterprises, and overcapacity.

We decided to set up immediately an Executive Working Group of our closest advisors to carry this joint agenda forward. In addition, it will identify short-term measures to facilitate commercial exchanges and assess existing tariff measures. While we are working on this, we will not go against the spirit of this agreement, unless either party terminates the negotiations.

We also want to resolve the steel and aluminum tariff issues and retaliatory tariffs.

STATEMENT/18/4687



EU-U.S. Joint Statement of 25 July: European Union imports of U.S. Liquefied Natural Gas (LNG) are on the rise

Brussels, 9 August 2018

Since the arrival of the first U.S. LNG carrier in the Portuguese port of Sines April 2016 and today, EU imports of liquefied natural gas from the U.S. have increased from zero to 2.8 billion cubic meters.

In their [Joint Statement](#) of 25 July in Washington D.C., President **Juncker** and President Trump agreed to strengthen EU-U.S. strategic cooperation with respect to energy. In this context, the European Union would import more liquefied natural gas from the United States to diversify and render its energy supply more secure. The EU and the U.S. will therefore work to facilitate trade in liquefied natural gas.

European Commission President Jean-Claude **Juncker** said: *"The European Union is ready to facilitate more imports of liquefied natural gas from the U.S. and this is already the case as we speak. The growing exports of U.S. liquefied natural gas, if priced competitively, could play an increasing and strategic role in EU gas supply; but the U.S. needs to play its role in doing away with red tape restrictions on liquefied natural gas exports. Both sides have much to gain by working together in the energy field."*

Commissioner for Climate Action and Energy, Miguel **Arias Cañete**, said: *"Diversification is an important element for ensuring the security of gas supply in the EU. Increasing imports of competitively priced liquefied natural gas from the U.S. is therefore to be welcomed. This is happening at a time when EU indigenous gas production is declining more rapidly than foreseen and there is an accelerated phase-out of coal power plants in the EU."*

The EU has co-financed or committed to **co-finance LNG infrastructure projects worth over €638 million** (see list of projects in Annex 2). In addition to the existing 150 billion cubic meters of spare capacity in the EU, the EU is supporting 14 liquefied natural gas infrastructure projects, which will increase capacity by another 15 billion cubic meters by 2021, which could welcome imports of liquefied natural gas from the U.S., if the market conditions are right and prices competitive.

Currently, U.S. legislation still requires prior regulatory approval for liquefied natural gas exports to Europe. These restrictions need to be addressed and U.S. rules made easier for U.S. liquefied natural gas to be exported to the EU.

Presidents **Juncker** and Trump set up an **Executive Working Group** at their meeting in Washington, D.C. on 25 July. Since then contacts have taken place between Presidents **Juncker** and Trump, between EU Trade Commissioner **Malmström** and U.S. Trade Representative Lighthizer, and between the senior advisers of President **Juncker** and President Trump (Commission Secretary-General Martin Selmayr and White House Chief Economic Adviser Larry Kudlow).

It has been agreed that on 20 August the Trade Adviser of President **Juncker** and a senior EU trade official will travel to Washington, D.C. to meet their U.S. counterparts to continue work on implementing the Joint Statement. In this context, the EU and the U.S. are working within the framework of this Executive Working Group to increase U.S. exports of liquefied natural gas to Europe.

Background

The global liquefied natural gas market is becoming increasingly fluid and competitive. Between 2017 and 2023, global liquefied natural gas trade is expected to grow by more than 100 billion cubic meters, from 391 to 505^[1]. The International Energy Agency expects liquefied natural gas imports to Europe to **increase by almost 20% by 2040** compared to 2016 levels.

The increasing gas production in the U.S. and the start of U.S. liquefied natural gas exports to the EU in 2016 have improved the security of gas supply in Europe and globally. Europe is currently importing around 70% of the gas it needs, and this share is expected to increase in the coming years. Liquefied natural gas is also an important part of the EU's diversification strategy; and as the second biggest single gas market in the world after the U.S., the EU is therefore an attractive option for the U.S.

In order to increase imports to Europe further, U.S. prices for liquefied natural gas need to be competitive on the EU market. In addition, the following actions are key to facilitating imports:

Development of liquefied natural gas capacities in the EU and in the U.S.:

- **Development of liquefied natural gas capacities** in the EU and in the U.S.:

The EU has well developed liquefied natural gas import capacities, with about 150 billion cubic meters currently spare. At the same time, given their strategic importance for diversification, **current capacities are being expanded and new capacities are being developed** in the Adriatic Sea (on the island of Krk in Croatia), in the Baltic Sea, notably in Poland, and in the Mediterranean Sea in Greece. This would allow for a significant increase of liquefied natural gas imports to the EU.

The U.S. currently has 28 billion cubic meters of liquefaction capacity and is foreseen to **add a further 80 billion cubic meters by 2023**, while expanding its liquefied natural gas export terminals.

- **Regulatory restrictions by the U.S. need to be lifted.** The EU has no non-market barriers for U.S. natural gas coming to the EU. The EU is seeking similar treatment from the U.S. side, in particular as regards the removal of the requirement for prior approval of liquefied natural gas exports to the EU.

The current figures show that imports of U.S. liquefied natural gas to the EU have been increasing:

- Since the first shipment of U.S. liquefied natural gas to the EU in April 2016, today EU imports of liquefied natural gas from the United States have already reached **2.8 billion cubic meters (bcm)**.
- Since early 2016, the EU has received more than 40 liquefied natural gas cargoes from the U.S. In 2017 Europe represented **more than 10% of total U.S. liquefied natural gas exports, up from 5% in 2016.**

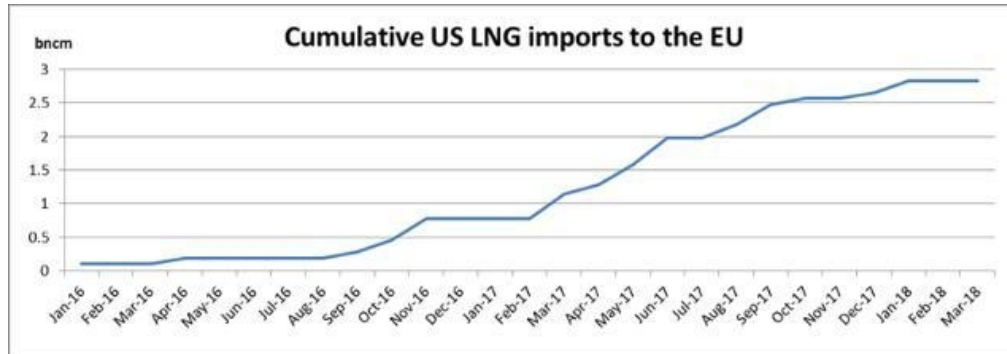
For more information

[EU-U.S. Joint Statement](#)

[Liquefied Natural Gas \(LNG\) – background](#)

ANNEX

1. EU imports of Liquefied Natural Gas from the United States



2. EU support to Liquefied Natural Gas capacities

LNG terminals built in 2013-2018				
Member State	Terminal	Year of start-up	Capacity (bcm/y)	EU co-financing
Italy	FSRU OLT Oshore LNG Toscana	2013	3.8	
Lithuania	FSRU Independence	2014	4.0	€27.4m (CEF) for connecting pipelines
France	Dunkerque LNG Terminal	2016	13.0	
Poland	Swinoujscie LNG Terminal	2016	5.0	€130m awarded (EEPR) €202m (ERDF) €332m in total
Malta	Malta Delimara LNG	2017	0.7	€0.7m for studies (CEF)

	terminal			
LNG terminals under construction				
Member State	Terminal	Year of start-up	Capacity (bcm/y)	EU co-financing
Greece	Revithoussa LNG Terminal (capacity extension)	2018	2.0 (from 5.0 to 7.0)	€50.8m (ERDF)
Spain	Tenerife (Arico-Granadilla) LNG terminal	2021	1.3	
Spain	Gran Canaria (Arinaga) LNG terminal	2022	1.3	
LNG terminals on the Projects of common Interest (PCI) list				
Member State	Terminal	Year of start-up	Capacity (bcm/y)	EU co-financing
Croatia	Krk LNG terminal	2019	2.6	€108m (CEF) for the terminal €16m (CEF) for evacuation pipeline €124m in total
Greece	LNG terminal in Northern Greece	2020	5.5	€2m (CEF) for studies
Cyprus	Cyprus LNG terminal	2020		€101.2m (CEF)
Sweden	Gothenburg LNG terminal	2021	0.5	
Poland	Świnoujście LNG terminal (capacity extension)	2022	2.5 (from 5.0 to 7.5)	
Ireland	Shannon LNG Terminal	2022	6.2	

CEF: Connecting Europe Facility

EEPR: European Energy Programme for Recovery

ERDF: European Regional Development Fund

PCI: Projects of Common Interest

[1]Source: International Energy Agency.

IP/18/4920

Press contacts:

[Mina ANDREEVA](#) (+32 2 299 13 82)
[Anna-Kaisa ITKONEN](#) (+32 2 29 56186)
[Iris PETSA](#) (+32 2 299 33 21)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)

Your complaint form has been successfully submitted

ec-fp-internet-services-do-not-reply@ec.europa.eu

Thu 24/01/2019 01:45

To: John McElligott <JohnMcElligott@hotmail.com>

Thank you for having completed the form. The European Commission will process it promptly.

Are you submitting this complaint on your own behalf?	yes
Representative Businesses or organisation	
Title	
Representative first name	
Representative last name	
Representative E-mail	
Representative street and number	
Representative postcode	
Representative town	
Representative country	Please select...
Representative telephone	
Businesses or organisation:	
Title	Mr
Firstname	John
Surname	McElligott
e-mail	JohnMcElligott@hotmail.com
Language	English
Street and number	Island View, 5 Convent Street
Postcode	v31pw61
Town	Listowel, County Kerry
Country	Ireland
Telephone	+353-872804474

official contact for all correspondence	
Authority complained about name	European Commission
Authority complained about contact person	President Jean-Claude Juncker
Authority complained about email	president.juncker@ec.europa.eu
Authority complained about	
Authority complained about telephone	
Authority complained about address	Rue de la Loi / Wetstraat 200
Authority complained about postcode	1049
Authority complained about town	Brussels
Authority complained about country	Belgium
National measures suspected to infringe Union law	<p>On July 13th 2018, Ireland approved the extension of planning for the proposed 'Shannon LNG' import terminal , which is now on the PCI list, without requiring an SEA. The Irish Planning Authority (An Bord Pleanála) and The European Commission were formally informed on April 4th, 2018 that 'New Fortress Energy', the US fracked-gas exporter, was the new developer of the proposed Shannon LNG terminal in Ireland.</p> <p>An Bord Pleanála never informed the public at the public participation stage in the development consent process that it knew all along that the new development was for the importation of US fracked gas contrary to the Public Participation Directive.</p> <p>A new Energy Plan to import US fracked gas into an EU Member State which sets the framework for development consent should have a Strategic Environmental Assessment (SEA) undertaken to assess alternatives.</p> <p>Fracked gas is now accepted by the most up-to-date scientific studies as being the dirtiest of all fossil fuels due to unburnt Methane leakage (fugitive emissions) which has extreme Climate Change impacts. Methane is now</p>

	<p>acknowledged as a greenhouse gas 86 times worse than CO2 over a 20 year period by none other than the InterGovernmental Panel on Climate Change (IPCC). It is therefore now no longer acceptable for the European Commission to claim to be implementing its Climate Change Commitments of 2015 while at the same time the President of the European Commission is signing up to importing fracked US gas without an SEA to assess the alternatives.</p> <p>This implementation of this Energy Plan to import fracked gas from the USA was first confirmed publicly in clear commitments made in the joint European Commission-US statement of 25th July 2018 following President Juncker's visit to the White House stating that "we agreed today to strengthen our strategic cooperation with respect to Energy. The European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply".</p>
<p>EU law you think has been breached</p>	<p>The SEA Directive (2001/42/EC) and the Paris Climate Agreement.</p> <p>Complaint: that there was maladministration by the European Commission in the implementation of the Energy Plan to import fracked US gas announced by President Juncker in July 2018 following his visit to President Trump in the USA without any prior SEA.</p>
<p>Problem description</p>	<p>Complaint: that there was maladministration by the European Commission in the implementation of the Energy Plan to import fracked US gas announced by President Juncker in July 2018 following his visit to President Trump in the USA without any prior SEA.</p> <p>Clear commitments were made in the joint European Commission-US statement of 25 July 2018 following President Juncker's visit to the White House stating that "we agreed today to strengthen our strategic cooperation with respect to Energy. The European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply".</p> <p>I ask, how could President Juncker be able to claim that the EU "wants" to import more liquefied natural gas (LNG) from the United States if it was not already also part of an energy plan? This energy plan is even more clear in the follow-up European Commission press release on 9 August 2018 which stated "The EU has cofinanced or committed to co-finance LNG infrastructure projects worth over €638 million (see list of projects in Annex 2). In addition to the existing 150 billion cubic meters of spare capacity in the EU, the EU is supporting 14 liquefied natural gas infrastructure projects, which will increase capacity by another 15 billion cubic meters by 2021, which could welcome imports of liquefied natural gas from the U.S., if the market conditions are right and prices competitive". It went on to state: "Regulatory restrictions by the U.S. need to be lifted. The EU has no non-market barriers for U.S. natural gas coming to the EU. The EU is seeking similar treatment from the U.S. side, in particular as regards the removal of the requirement for prior approval of liquefied natural gas exports to the EU".</p> <p>My understanding is that President Juncker is putting Trade before Climate Commitments in implementing the Energy Plan to import US fracked gas.</p>

However, he is still under the obligation to have a Strategic Environmental Assessment (SEA) to assess alternatives before implementing this Energy Plan and this lack of an SEA is the core of my complaint.

The EU Commission cannot avoid having to live up to the Global Paris Climate Agreement that the EU ratified in 2016 by not considering "reasonable alternatives" as obliged under the SEA Directive.

Article 2 of the SEA Directive clearly states that " 'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them".

Article 4(1) of the SEA Directive states that "The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure".

Article 5 of the SEA Directive obliges the environmental assessment to consider "reasonable alternatives" to the plan.

By not considering the overall environmental and climate impact of the energy plan to import fracked US gas to the EU via LNG terminals funded by the EU due to being on the PCI list in its totality, then strategic environmental assessment of individual related split projects on the PCI list when they are going through the permitting process is meaningless - especially since the PCI Directive forces national planning authorities to ignore all these environmental concerns because the projects must be considered to be in "the public interest".

Does the Member State concerned receive EU funding relating to the subject of your complaint

yes

Does your complaint relate to a breach of the EU Charter of Fundamental Rights?

no

Please explain how EU law is involved and which fundamental

right has been breached	
List of documents	1. Joint U.S. - EU Statement following President Juncker's visit to the White House (Washington, 25 July 2018 - Statement/18/4687). 2. EU - U.S. Joint Statement of 25 July: European Union imports of U.S. Liquefied Natural Gas (LNG) are on the rise (Brussels, 9 August 2018 - IP/18/4920).
Have you already taken action in the Member State concerned to try to solve this problem?	yes
What action have you already taken in the Member State concerned to tackle the problem?	
What type of decision(s) resulted from your action.	I formally objected to the extension of planning permission for the proposed Shannon LNG project in Ireland without a strategic environmental assessment (http://www.pleanala.ie/casenum/PM0014.htm). However, the planning authority focussed on the fact that the Shannon LNG project had already been added to the EU list of Projects of Common interest. I also wrote a Complaint to An Bord Pleanála for withholding from the public information it had on US fracked-gas exporter New Fortress Energy's involvement in the Shannon LNG project at the public participation stage and decision-making stage of the planning application process after I became aware of this information on January 10th, 2019 through the release of documents under the Aarhus Convention.
Has your action has been settled by a court or is pending before a court.	
Why didn't you take any action to tackle your problem in the Member State concerned?	
Indicate why you are not	

eligible for particular remedy	
Other reason for not taking action in the Member State concerned	
Have you already contacted EU institutions or other services dealing with problems of this nature	
Petition to the European Parliament	
European Ombudsman	
European Commission correspondence	
European Commission complaint	
SOLVIT	
Other (please specify)	
Are you aware of any action in the Member State concerned covering the issue you raise	no
Please specify action you are aware of in the Member State concerned	
Do you authorise the Commission to disclose your identity	yes

Submission made: 2019-01-24 2:45 AM

[Home](#) > [My account](#) > My complaint

Complaint about maladministration

Complaint submitted on: Monday | 01 April 2019

European Ombudsman

First name: John

Surname: McElligott

On behalf of (if applicable):

Address line 1: Island View

Address line 2: 5 Convent Street

Town/City: Listowel

County/State/Province: County Kerry

Postcode: v31 pw61

Country: Ireland

Nationality

Tel.: +353-87-2804474

Fax:

E-mail address: johnmcelligott@hotmail.com

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

European Commission

What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.

This complaint is related to my existing EO complaint 201801933.

Complaint that maladministration by the European Commission occurred in

allowing the Irish Competent Authority ('An Bord Pleanála') give development

consent for the extension of the PCI-listed expired Shannon LNG project without

an SEA which did not comply with Union Law.

What do you consider that the EU institution or body has done wrong?

I assert that maladministration by the European Commission occurred in allowing the Irish Competent Authority ('An Bord Pleanála') give development consent for the extension of the PCI-listed expired Shannon LNG project without an SEA which did not comply with Union Law.

On March 1st, 2018, Catharina Sikow-Magny, Head of Unit, European Commission DG Energy, wrote to the Irish Competent Authority for PCI Projects and for Planning Permission, An Bord Pleanála, with a subject matter of "Developments regarding planning decisions for PCI Shannon LNG".

DG Energy wrote requesting clarifications for the project which it noted had a "new project promoter." It stated:

"Further, we would like to know whether the Shannon LNG terminal was included or foreseen in the scope of a plan that underwent SEA, and if this is the case, when and which were the results. Whilst the Irish authorities remain responsible for ensuring the respect of all provisions falling under the EU environmental legislation, the Commission would like to insist on the importance of carrying out an open, transparent and inclusive process of consultation with relevant parties."

The Irish Member State Authorities did not provide any proof that an SEA was undertaken as requested, but sent information on 2 completely-unrelated SEAs and DG Energy did not insist any further.

Development consent to extend planning permission was subsequently given by the Irish Authorities who noted that the project was a PCI project.

In reply to my complaint, DG Energy noted:

"The development consent for the extension of the Shannon LNG project by the Irish competent authority is a decision taken at national level and independently of the project's status as PCI. The European Commission was not involved in this decision-making process".

This reply is not acceptable to be because the PCI Regulation 347/3013 states that PCI projects must be "allocated the highest national significance possible" and that "authorisation should be given to projects which have an adverse impact on the environment for reasons of overriding public interest". PCI projects, therefore, set the framework for development consent.

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

A project should not be added to the PCI list without an SEA of the PCI list of projects which have been grouped with the proposed Shannon LNG project. Doing the SEA at the development consent stage is too late.

I want the Shannon LNG and related projects to be removed from the PCI list until this issue is resolved.

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

Yes (please specify and submit copies of the relevant correspondence)

This complaint 10534 was already addressed directly to the Energy Unit of the European Commission as per the attached but the reply was not acceptable to me as described above:

If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

Not applicable

Has the object of your complaint already been settled by a court or is it pending before a court?

Please confirm that you have read the information below

You have read the information note on data processing and confidentiality

Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes

Attachments:

Name	Size
EC Complaint 10534 John McElligott.pdf	629.23 KB

1, avenue du Président Robert Schuman T. +33 (0)3 88 17 23 13 www.ombudsman.europa.eu
CS 30403 F. +33 (0)3 88 17 90 62
F - 67001 Strasbourg Cedex



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market
B.1 - Networks & Regional Initiatives
Head of Unit B1

30 JAN. 2019

Brussels,
ENER.B.1/CSM/EO/fm/Ares(2019)s604336

Mr John McElligott
Island View, 5 Convent Street
Listowel, County Kerry V31 PW61
Ireland

Subject: Shannon LNG import terminal

Dear Mr. Elligott,

I am writing to you concerning your complaint no. 10534 filed on 21 December 2018 against the European Commission for supposed maladministration in allowing the Irish Competent Authority ('An Board Pleanála) to give development consent for the extension of the Shannon LNG project, which is on the current 3rd Union list of Projects of Common Interest (PCIs), without an SEA.

I would like to refer you to my letter dated 23 November 2018 in response to your complaint no. 9481 in which I have set out the procedure, according to which the 3rd Union list of PCIs has been identified and selected. In that letter I have explained the purpose of the PCI Regulation and clarified that the inclusion of a given infrastructure project on the Union list of PCIs does not prejudice the fulfilment of EU Environmental Law.

The development consent for the extension of the Shannon LNG project by the Irish Competent Authority is a decision taken at the national level and independently of the project's status as PCI. The European Commission was not involved in this decision-making process.

I would like to take this opportunity to draw your attention to the ongoing identification and selection of projects for the 4th Union list of PCIs to be adopted in October 2019 and highlight, once again, that stakeholders' opinion is a key element in this process.

Yours sincerely,


Catharina SIKOW-MAGNY

Your complaint form has been successfully submitted

ec-fp-internet-services-do-not-reply@ec.europa.eu

Fri 21/12/2018 15:41

To: John McElligott <johnmcelligott@hotmail.com>

Thank you for having completed the form. The European Commission will process it promptly.

Are you submitting this complaint on your own behalf?	yes
Representative Businesses or organisation	
Title	
Representative first name	
Representative last name	
Representative E-mail	
Representative street and number	
Representative postcode	
Representative town	
Representative country	-- select --
Representative telephone	
Businesses or organisation:	Safety Before LNG
Title	Mr
Firstname	John
Surname	McElligott
e-mail	johnmcelligott@hotmail.com
Language	English
Street and number	Island View, 5 Convent Street
Postcode	v31 pw61
Town	Listowel, County Kerry
Country	Ireland
Telephone	+353-87-2804474

official contact for all correspondence	
Authority complained about name	European Commission - DG ENERGY
Authority complained about contact person	Catharina SIKOW-MAGNY, Head of Unit, ENERGY
Authority complained about email	catharina.sikow@ec.europa.eu
Authority complained about	
Authority complained about telephone	+32 2 296 21 25
Authority complained about address	Unit Internal Market I: Networks & Regional Initiatives DM24 06/145
Authority complained about postcode	B-1040
Authority complained about town	Brussels
Authority complained about country	Belgium
National measures suspected to infringe Union law	On July 13th 2018, Ireland approved the extension of planning for the proposed 'Shannon LNG' import terminal , which is now on the PCI list, without requiring an SEA. Since Shannon LNG is a Trans-European Energy Infrastructure project in a clearly new European Energy Programme, an SEA would clearly have been required before giving development consent. However, I assert that maladministration by the European Commission occurred in allowing the Irish Competent Authority ('An Bord Pleanála') give development consent for the extension of the PCI-listed expired Shannon LNG project without an SEA which did not comply with Union Law.
EU law you think has been breached	The SEA Directive (2001/42/EC) , the PCI Regulation (347/2013) and the Paris Climate Agreement. Complaint that maladministration by the European Commission occurred in allowing the Irish Competent Authority ('An Bord Pleanála') give development consent for the extension of the PCI-listed expired Shannon LNG project without an SEA which did not comply with Union Law.

Problem description

On July 13th 2018, Ireland approved the extension of planning for the proposed 'Shannon LNG' import terminal , which is now on the PCI list, without requiring an SEA. Since Shannon LNG is a Trans-European Energy Infrastructure project in a clearly new European Energy Programme, an SEA would clearly have been required before giving development consent. However, I assert that maladministration by the European Commission occurred in allowing the Irish Competent Authority ('An Bord Pleanála') give development consent for the extension of the PCI-listed expired Shannon LNG project without an SEA which did not comply with Union Law.

On March 1st, 2018, Catharina Sikow-Magny, Head of Unit, European Commission DG Energy, wrote to the Irish Competent Authority for PCI Projects and for Planning Permission, An Bord Pleanála, with a subject matter of "Developments regarding planning decisions for PCI Shannon LNG".

DG Energy wrote requesting clarifications for the project which it noted had a "new project promoter."

It stated:

"Further, we would like to know whether the Shannon LNG terminal was included or foreseen in the scope of a plan that underwent SEA, and if this is the case, when and which were the results.

Whilst the Irish authorities remain responsible for ensuring the respect of all provisions falling under the EU environmental legislation, the Commission would like to insist on the importance of carrying out an open, transparent and inclusive process of consultation with relevant parties."

The Irish Competent Authority reply to the Commission on the 11th April 2018 did not provide information on any SEA in which the Shannon LNG terminal was "foreseen in the scope of a plan that underwent SEA" as had been requested.

Two plans that had SEAs and that were referred to by the Irish Competent Authority on 11th April 2018 were both plans that took place after Shannon LNG had obtained planning permission for the Shannon LNG terminal and did nothing other than note that Shannon LNG had obtained planning permission for an LNG terminal.

'To note' is not 'to foresee' and to refer to both plans to the Commission in this matter was nebulous in the extreme. I assert that the Irish Competent Authority deliberately mis-lead the European Commission into claiming it had undertaken an SEA on a plan that foresaw the Shannon LNG terminal when this was clearly not the case as outlined by me in my letter to the European Commission dated 22nd September 2018.

In addition, the Irish Competent Authority, An Bord Pleanála, in its letter of 11th April to DG Energy stated:

"Whilst being a PCI, the project would have availed of the transitional provisions under Article 19 of Regulation (EU) No. 347/2013, which Article provides that where a project promoter has submitted an application file before 16 November 2013, the provisions of Chapter 111 (Permit Granting and Public Participation) shall not apply"

	<p>This information is clearly incorrect because the developer submitted the application file on September 22nd, 2017</p> <p>The Commission replied on the 17th May 2018 via email to the Irish Competent Authority: "Dear Mr Collins, Many thanks for the letter which is very clear on the issues raised. Could you please keep us informed on the final decision. Best regards, Catharina SIKOW-MAGNY Head of Unit"</p> <p>On the same date The Commission wrote to Andy Gheorghiu of 'Food and Water Europe' stating "Against this background, we do not see any indication for a breach at this point of the process." The PCI list of Projects, I assert, was an Energy Plan voted on by the European Parliament in March 2018. The Shannon LNG project does not comply with Union Law.</p>
<p>Does the Member State concerned receive EU funding relating to the subject of your complaint</p>	<p>yes</p>
<p>Does your complaint relate to a breach of the EU Charter of Fundamental Rights?</p>	<p>no</p>
<p>Please explain how EU law is involved and which fundamental right has been breached</p>	
<p>List of documents</p>	<p>1. Formal letter of complaint sent on 22nd September 2018 to Catharina SIKOW-MAGNY Head of Unit European Commission ENERGY Unit Internal Market I: Networks & Regional Initiatives DM24 06/145 B-1040 Brussels/Belgium</p>

	<p>+32 2 296 21 25 catharina.sikow@ec.europa.eu Re: Formal complaint on the Shannon LNG project and the 2018 PCI list voted by the EU Parliament both being approved without any proper Strategic Environmental Assessment.</p> <p>2. Letter from DG Energy to Andy Gheorghiu of Food and Water Europe dated 17th May, 2018. 3. Letter from An Bord Pleanala to DG Energy dated 14th August 2018. 4. Email from DG Energy to An Bord Pleanala dated 17 May 2018. 5. Letter from An Bord Pleanala to DG Energy dated 11th April 2018. 6. Letter from DG Energy to An Bord Pleanala dated 1st March 2018.</p>
<p>Have you already taken action in the Member State concerned to try to solve this problem?</p>	<p>yes</p>
<p>What action have you already taken in the Member State concerned to tackle the problem?</p>	
<p>What type of decision(s) resulted from your action.</p>	<p>I formally objected to the extension of planning permission for the proposed Shannon LNG project in Ireland without a strategic environmental assessment (http://www.pleanala.ie/casenum/PM0014.htm). However, the planning authority focussed on the fact that the Shannon LNG project had already been added to the EU list of Projects of Common interest.</p>
<p>Has your action has been settled by a court or is pending before a court.</p>	
<p>Why didn't you take any action to tackle your problem in the Member State concerned?</p>	
<p>Indicate why you are not eligible for particular remedy</p>	

Other reason for not taking action in the Member State concerned	
Have you already contacted EU institutions or other services dealing with problems of this nature	
Petition to the European Parliament	
European Ombudsman	
European Commission correspondence	
European Commission complaint	
SOLVIT	
Other (please specify)	
Are you aware of any action in the Member State concerned covering the issue you raise	yes
Please specify action you are aware of in the Member State concerned	The planning decision is currently being Challenged in the High Court of Ireland by the 'Friends of the Irish Environment' but I do not think it is being challenged on the grounds of the issues raised in this complaint.
Do you authorise the Commission to disclose your identity	yes

Submission made: 2018-12-21 4:41 PM



Safety Before LNG
Protecting the Shannon Estuary and its people

John McElligott, Telephone: +353-87-2804474
Safety Before LNG, Email: safetybeforelng@hotmail.com
Island View, Web: www.SafetyBeforeLNG.ie
5 Convent Street,
Listowel,
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22 September 2018

Catharina SIKOW-MAGNY
Head of Unit
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ENERGY
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Martina.DOPPELHAMMER@ec.europa.eu,
agheorghiu@fweurope.org

Re: Formal complaint on the Shannon LNG project and the 2018 PCI list voted by the EU Parliament both being approved without any proper Strategic Environmental Assessment

Dear Ms. Sikow-Magny,

In response to your letter dated 17 May 2018 to Andy Gheorghiu attached we are deeply concerned by the misleading information provided to you on this matter by the Irish Competent Authority ('An Bord Pleanála') on the process and steps taken. We are therefore hereby formally complaining to you at the European Commission

1. that the Irish Competent Authority ('An Bord Pleanála') allowed the extension of the PCI-listed expired Shannon LNG permission without an SEA and
2. that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA.

Complaint 1: That the Irish Competent Authority ('An Bord Pleanála') allowed the extension of the PCI-listed expired Shannon LNG permission without an SEA

1. You state that the Irish Competent Authority informed you that:

"The Kerry County Development Plan 2015-2021 has been subject to a Strategic Environmental Assessment (SEA). Further the Plan has been subject to an Habitat Directive Assessment. The Strategic Integrated Framework Plan for the Shannon Estuary 2013-2020 was also subject to SEA."

This Kerry County Development Plan 2015-2021 had nothing to do with the LNG project granted permission 7 years earlier without an SEA. Likewise, the Strategic Integrated Framework Plan for the Shannon Estuary 2013-2020 could not and did not assess in any way the proposed Shannon LNG project because the project had already been granted planning permission several years earlier.

We therefore conclude that stating that these two plans were "*subject to an SEA*" is an attempt to mislead you because the Energy Plan that was embodied by Shannon LNG, before, during or after the planning consent process was never subjected to an SEA in any shape or form whatsoever.

2. You state that the Irish Competent Authority informed you that:

"In 2012, the Competent Authority concluded that no appropriate assessment issues arose in relation to the request by the developer to provide for the option for the initial construction of one storage tank instead of two (out of a total of four) as initially planned."

This statement is another attempt by the Irish Competent Authority to imply that because no appropriate assessment issues arose in 2012 with a modification to an existing planning permission for the Shannon LNG project, the same could be concluded for this current planning application reference PM0014. However, in this current case, planning permission for the Shannon LNG project has expired and is therefore, obviously, a completely different case.

3. The response from you to the Irish Competent Authority has been:

"Against this background, we do not see any indication for a breach at this point of the process."

This reply from you has now become part of the file examined by the Irish Competent Authority (*An Bord Pleanála*) when it decided to grant Shannon LNG an extension of its planning permission which had expired.

However, the means by which your reply became part of the file PM0014 assessed for an extension of the Shannon LNG planning consent now raises the serious issue of the essential lack of transparency in the planning process.

A misleading report by *'An Bord Pleanála'* to you at the Energy Unit of the European Commission (implying that the required Strategic Environmental Assessment - SEA - was undertaken for the Shannon LNG Energy Plan when this was clearly not the case) has lead you to conclude that there is no indication for a breach at this point of the process. Your conclusion was subsequently used by that same Irish Competent Authority to decide on a planning application in which that same Irish Competent Authority provided you with misleading information.

4. We urge you to clarify this issue as soon as possible with *'An Bord Pleanála'* because the Energy Unit of the European Commission has now been dragged in to what we consider to be an essential lack of transparency of the Irish planning process as regards the proposed Shannon LNG project.

5. The European Union List of Projects of Common Interest¹ has grouped the proposed Shannon LNG project in the Priority Corridor North-South Gas Interconnections in Western Europe ('NSI West Gas') which includes:

- a) Physical reverse flow at Moffat interconnection point (IE/UK)
- b) Upgrade of the SNIP (Scotland to Northern Ireland) pipeline to accommodate physical reverse flow between Ballylumford and Twynholm
- c) Development of the Islandmagee Underground Gas Storage (UGS) facility at Larne (Northern Ireland)
- d) Shannon LNG Terminal and connecting pipeline (IE)

The proposed final maximum regasification capacity of at least 10 billion cubic meters (bcm) per year would equal the European Union's most ambitious gas project, the Southern Gas Corridor, and

¹ 5.1 and 5.3 on THE UNION LIST OF PROJECTS OF COMMON INTEREST https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.090.01.0038.01.ENG&toc=OJ:L:2018:090:TOC

supply Ireland's fossil gas needs twice over. Fracked hydrocarbons would be tankered in from the United States, processed and much of it then sent to Europe. The fracked hydrocarbons could, we fear, also be used for plastic and petrochemical production².

We argue that The Board should require an appropriate Strategic Environmental Assessment of the cumulative impacts of the joint projects of the reverse flow at Moffat, the upgrade of the Scotland to Northern Ireland pipeline to accommodate physical reverse flow along with the Shannon LNG Terminal and connecting pipeline as these projects are all intertwined and grouped by the EU Commission into the Priority Corridor North-South Gas Interconnections in Western Europe.

6. Article 19 of the PCI Directive states:

*"For projects of common interest in the permit granting process for which a project promoter has submitted an application file before 16 November 2013, the provisions of Chapter III shall not apply"*³

Chapter III deals with Permit Granting and Public Participation.

The 'An Bord Pleanála' Inspector's Report (on December 4th, 2017)⁴ asserted that Article 19 allowed the Board to forego the obligations of Chapter III of the Regulation but the *new* application PM0014 to extend the Shannon LNG planning permission was made on September 22nd 2017 which was after November 2013 so the PCI procedural steps should have been taken by the Board (and which would require an SEA, for example).

7. The Competent Authority for communicating with EU Commission Energy Unit as regards PCI-listed projects ('An Bord Pleanála') and overseeing the PCI procedural steps in the Irish Member State is the same authority that gave an extension of planning permission and we believe that this issue requires clarification as regards transparency. In other words, the same authority for overseeing the PCI procedural steps in the Irish Member State for the benefit of Shannon LNG gave development consent to Shannon LNG. Was there not a conflict of interest there?
8. With the confirmation that US fracked gas exporter, New Fortress Energy, is attempting to bring fracked US gas into Ireland via the proposed Shannon LNG project, the fact must be highlighted that it is illegal under Irish Member State law to search for, take or carry away, store or treat fracked gas that is situated in Ireland. 'An Bord Pleanála' did not consider this issue when giving development consent. On May 11th 2018, in our submission to An Bord Pleanála on PM0014 I requested the Board to confer with the owner of the land as follows:

*" Request to confer with the owner of the land
The site of the proposed Shannon LNG project is owned by Shannon Commercial Properties (formerly known as Shannon Development), a state-owned company⁵.
There are currently very persistent rumours locally of a US company about to sign a deal for a gas-related project on the site. We therefore ask that An Bord Pleanála request information on this matter from Shannon Commercial Properties under the precautionary principle in order to assess the cumulative impacts of any such deal before it reaches a decision. We cannot emphasise this point enough because it will give true visibility to An*

² 'The Trans-Atlantic Plastics Pipeline: How Pennsylvania's Fracking Boom Crosses the Atlantic' Food and Water Watch, Issue Brief May 2017, https://www.foodandwaterwatch.org/sites/default/files/ib_1705_pipelinesustoeweb.pdf.

³ PCI Directive: Regulation (EU) No 347/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

⁴ <http://www.pleanala.ie/casenum/PM0014.htm>

⁵ <https://www.shannongroup.ie/companies/shannon-commercial-properties/>

Bord Pleanála of the latest Shannon LNG business model. This assessment must also include the cumulative impacts on the proposed Gas-fired power station adjacent to the Shannon LNG site for which a related company to Shannon LNG also owns the planning permission."

'An Bord Pleanála' was therefore already informed by us that a US company was involved in the Shannon LNG project before it decided to give planning consent and this involvement was only publicly announced when planning permission was given.

However, the Irish Member State Prohibition of Onshore Hydraulic Fracturing Act 2017⁶ not only banned onshore fracking in Ireland but it also made it illegal for any person to "take" or "carry away" any fracked gas situated in the State and its internal waters.

Any LNG ship in the Shannon Estuary is allowed to bring in fracked US gas but it will be illegal for anybody in the country to "search for", "take" or "carry away" any of this fracked gas from the ship or be involved in "storing" or "treating" the Fracked Gas.

The Act states:

"Notwithstanding anything in this Act or any other enactment or rule of law it shall not be lawful for a person to search for, get, raise, take, carry away or work petroleum by means of hydraulic fracturing".

Fracked gas in the Act is referred to as "petroleum by means of hydraulic fracturing" which means that the Act can be read simply as:

"Notwithstanding anything in this Act or any other enactment or rule of law it shall not be lawful for a person to search for, get, raise, take, carry away or work Fracked Gas "

The ban and boycott:

"shall apply in respect of petroleum that is situated in the State including the internal waters"

Once LNG tankers are in the Shannon Estuary, they are in Internal Waters. If any of these ships contain fracked gas then it will be illegal to store, treat or transport this gas into the Irish network because the transportation ban makes no distinction on where that fracked gas came from originally

The fracking ban in Ireland came about due to strong scientific evidence on the pollution risk to water, the pollution risk to the atmosphere contributing to climate change and the Precautionary Principle and the rights of future generations to healthy and safe environments.

The ban on the transport of fracked gas within Ireland makes the country one of the toughest anti-fracking regimes in the world, outlawing the creation of a dependency on fracked gas bringing harm to powerless communities in America and elsewhere and sending a clear environmental message around the globe.

⁶ <http://www.irishstatutebook.ie/eli/2017/act/15/section/1/enacted/en/html>

The actual words in the Act (Prohibition of Onshore Hydraulic Fracturing Act 2017) are as follows:

Prohibition of hydraulic fracturing

5B. (1) *Notwithstanding anything in this Act or any other enactment or rule of law it shall not be lawful for a person to search for, get, raise, take, carry away or work petroleum by means of hydraulic fracturing.*

(2) *The prohibition in subsection (1) —*

(a) shall apply in respect of petroleum that is situated in the State including the internal water and

(b) shall not apply in respect of petroleum that is offshore.

Offence and penalty

5C. *A person who contravenes section 5B shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.”.*

The Principal Act (Petroleum and Other Minerals Development Act 1960) has the following relevant definitions:

petroleum” includes any mineral oil or relative hydrocarbon and natural gas and other liquid or gaseous hydrocarbons and their derivatives or constituent substances existing in its natural condition in strata (including, without limitation, distillate, condensate, casinghead gasoline and such other substances as are ordinarily produced from oil and gas wells) and includes any other mineral substance contained in oil and natural gas brought to the surface with them in the normal process of extraction, but does not include coal and bituminous shales and other stratified deposits from which oil can be extracted by distillation

“working” when used in relation to petroleum, includes digging, searching for, boring for, getting, raising, taking, carrying away, storing and treating petroleum, and cognate words shall be construed accordingly.

Since Shannon LNG, a Trans European Energy Infrastructure project in a clearly new European Energy Programme would be directly in conflict with the Irish Member State's ban on fracked gas, an SEA would clearly have been required and we ask why did 'An Bord Pleanála' not inform you of these facts?

9. Finally, on July 13th 2018, 'An Bord Pleanála' approved the extension of planning for Shannon LNG⁷, which is now on the PCI list, without even requiring an SEA on what is already a split project in the Priority Corridor North-South Gas Interconnections in Western Europe ('NSI West Gas'). Our view is very clear that on this point alone, there is a clear example of the breach of EU law by Ireland and we hereby formally ask you at the EU Commission to investigate this complaint.

⁷ <http://www.pleanala.ie/casenum/PM0014.htm>

Complaint 2: that there was maladministration by the European Commission in the creation of a PCI list which was proposed to the EU Parliament and voted on without any proper SEA

The proposed Shannon LNG project has been added to the EU list of "Projects of Common Interest" (PCI):

However, we are of the legal opinion that the EU Parliament and the EU Commission should not have approved the EU Energy Programme of Projects of Common Interest (PCI) list without any proper Strategic Environmental Assessment or consideration of reasonable alternatives. The Trans European Energy Infrastructure projects represent a clear European Energy Programme.

The PCI Directive⁸ states that All Projects on the PCI list must be "*allocated the status of highest national significance possible*" and that "*authorisation should be given to projects which have an adverse impact on the environment for reasons of overriding public interest*"

On March 14th 2018, the EU parliament took part in what we consider to be a sleight of hand which will legally force EU members to accept massive gas infrastructure projects (such as the proposed Shannon LNG project in Ireland), where all adverse impacts on climate change and impacts on the environment will have to be ignored for reasons of overriding public interest. No environmental screening report of this plan was presented to Parliament before it voted on this plan - the first time ever the EU Parliament got to approve the Energy Programme of Projects of Common Interest (PCI) - a clear breach of the EU SEA Directive.

We believe this took place to help the EU Commission avoid having to live up to the Global Paris Climate Agreement that the EU ratified in 2016 by not considering "*reasonable alternatives*" as obliged under the SEA Directive.

Article 2 of the SEA Directive⁹ clearly states that "*'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them*".

Article 4(1) of the SEA Directive states that "*The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure*".

Article 5 of the SEA Directive obliges the environmental assessment to consider "*reasonable alternatives*" to the plan.

By not considering the overall environmental impact of the PCI plan in its totality with all the combined projects in the plan (especially the gas projects grouped together) strategic environmental assessment of individual split projects within the plan when they are going through the permitting process is meaningless - especially since the PCI Directive forces national planning authorities to ignore all these environmental concerns because the projects must be considered to be in "*the public interest*".

⁸ PCI Directive: Regulation (EU) No 347/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

⁹ SEA Directive: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0042>

The PCI Directive Article 7(3)¹⁰ clearly states *"projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes"*.

Article 7(8) goes on to state *"With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest from an energy policy perspective and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled"*.

We believe that the first-ever approval of the PCI list by the EU parliament without any proper environmental report, strategic environmental assessment, or consideration of reasonable alternatives is therefore illegal under EU Directives and ask you to kindly inform us how you propose to address our complaint from this perspective.

We await your feedback

Yours sincerely,
John McElligott

¹⁰ PCI Directive: Regulation (EU) No 347/2013 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0039:0075:en:PDF>

Von: Catharina.Sikow@ec.europa.eu

An: agheorghiu@fweurope.org

Kopie: Adam.ROMANOWSKI@ec.europa.eu, Adina.CRISAN@ec.europa.eu, Oana.LANGA@ec.europa.eu, Martina.DOPPELHAMMER@ec.europa.eu

Datum: 17-May-2018 09:43:09 +0200

Betreff: RE: PCI List - Shannon LNG-T: Urgent Formal Complaint on Double Decisioning

Dear Mr Gheorghiu,

Following my below mail, we have now received the information from the Irish Competent Authority on the process and steps taken.

To summarise, the current state-of-play can be summarised as follows:

- The consent for the construction of the LNG terminal was initially granted in 2008;
- The Kerry County Development Plan 2015-2021 has been subject to a Strategic Environmental Assessment (SEA). Further the Plan has been subject to an Habitat Directive Assessment. The Strategic Integrated Framework Plan for the Shannon Estuary 2013-2020 was also subject to SEA;

In 2012, the Competent Authority concluded that no appropriate assessment issues arose in relation to the request by the developer to provide for the option for the initial construction of one storage tank instead of two (out of a total of four) as initially planned;

- In September 2017, in relation to the developer's request to extend the consent beyond the 10 years initially granted. The Competent Authority has assigned an inspector to report on this request and in January 2018 the Competent Authority decided to involve the public in the process on whether or not the request would constitute the making of a material alteration of the terms of the development. This matter is currently under consideration.

Against this background, we do not see any indication for a breach at this point of the process. We will continue to monitor the situation closely.

I would also like to encourage you to directly engage with the national authorities in the further process.

Best regards,

Catharina SIKOW-MAGNY

Head of Unit

European Commission

ENERGY

Unit Internal Market I: Networks & Regional Initiatives

DM24 06/145

B-1040 Brussels/Belgium

+32 2 296 21 25

catharina.sikow@ec.europa.eu

Our Ref: PM0014

Ms. Catharina Sikow-Magny,
European Commission,
Directorate-General for Energy,
Directorate B – Internal Energy Market,
B1 – Networks & Regional Initiatives,
1049 Bruxelles,
Belgium.

14th August, 2018.

Re: PCI Shannon LNG

Dear Ms. Sikow-Magny,

I refer to your letter of 1st March, 2018 concerning the above-mentioned matter and to our reply dated 11th April, 2018 in relation to the proposed Shannon LNG regasification terminal in County Kerry, Ireland (PCI Union List 5.3).

In the letter of 11th April, I stated that An Bord Pleanála arranged for newspaper notices to be published informing the public of the case and inviting public participation. Twenty-two submissions were received as part of that public participation. Also, as An Bord Pleanála accepted that administrative errors had been made in the processing of the case additional time for comment was given to those involved in the case.

Following the receipt of all submissions, the Senior Planning Inspector assigned to the case prepared a summary of submissions and then in June 2018 prepared an Addendum Report to his original report of December, 2017. The Senior Inspector's original report addressed the issues of Environmental Impact Assessment and Appropriate Assessment as did his Addendum Report.

The two reports of the Senior Planning Inspector and his summary of submissions were considered by the Board members of An Bord Pleanála. As part of the assessment process for the alteration sought, the Board of An Bord Pleanála conducted a screening for appropriate assessment and concluded that the proposed alteration sought would not be likely to have any significant effects on any European sites in view of their conservation objectives and that a Stage 2 Appropriate Assessment was not required. It also concluded that an environmental impact assessment report was not required. Following its deliberations, the decision of An Bord Pleanála made on 13 July, 2018 was to allow the alteration sought which was to provide an additional 5 years for the completion of the development.

Our Ref: PM0014

The two reports of the Senior Inspector, his summary of submissions, the decision of An Bord Pleanála and other records are available on our website www.pleanala.ie [here](#) Additionally, the entire file is available to the public for inspection and purchase at our offices.

Yours sincerely,

D.C.

Diarmuid Collins,
Senior Administrative Officer.

Diarmuid Collins

From: Diarmuid Collins
Sent: Tuesday 22 May 2018 11:15
To: 'Catharina.Sikow@ec.europa.eu'
Subject: RE: Development Regarding PCI Shannon LNG

Good Morning Ms Sikow-Magny,

Thank you for your email. An Bord Pleanála will inform you of the decision.
Regards,
Diarmuid Collins,
Senior Administrative Officer.

From: Catharina.Sikow@ec.europa.eu [mailto:Catharina.Sikow@ec.europa.eu]
Sent: Thursday 17 May 2018 08:18
To: Diarmuid Collins <D.Collins@pleanala.ie>
Cc: Noirin Finnegan <N.Finnegan@pleanala.ie>
Subject: RE: Development Regarding PCI Shannon LNG

Dear Mr Collins,

Many thanks for the letter which is very clear on the issues raised.
Could you please keep us informed on the final decision.

Best regards,

Catharina SIKOW-MAGNY
Head of Unit



European Commission
ENERGY

Unit Internal Market I: Networks & Regional Initiatives
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catharina.sikow@ec.europa.eu

From: Diarmuid Collins [mailto:D.Collins@pleanala.ie]
Sent: Wednesday, April 11, 2018 5:49 PM
To: SIKOW-MAGNY Catharina (ENER)
Cc: Noirin Finnegan
Subject: Development Regarding PCI Shannon LNG

Good Afternoon Ms. Sikow-Magny,

I attach a letter on behalf of Dr. Mary Kelly, Chairperson of An Bord Pleanála, in response to your letter (copy attached) of 1 March, 2018.

Regards,
Diarmuid Collins.

Diarmuid Collins
Senior Administrative Officer
LAPs-SIDs, PCI Section & Strategic Housing Unit
An Bord Pleanála
64 Marlborough Street
Dublin 1
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FÓGRA RÚIN: Tá an ríomhphost seo agus aon chomhaid atá nasctha leis faoi rún agus dírithe amháin don seolaí. Má bhfuair tú an ríomhphost seo trí earráid, déan teagmháil le bainisteoir an chórais.

Tabhair faoi deara le do thoil: aon tuairimí nochtaithe san ríomhphost seo is iad tuairimí an tseoltóra féin agus níl sé intuigthe gurb iad tuairimí An Bhoird Pleanála nó go gcloíonn siad le polasaithe ráite an Bhoird.

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Diarmuid Collins

From: Catharina.Sikow@ec.europa.eu
Sent: Thursday 17 May 2018 08:18
To: Diarmuid Collins
Cc: Noirín Finnegan
Subject: RE: Development Regarding PCI Shannon LNG

Dear Mr Collins,

Many thanks for the letter which is very clear on the issues raised.
Could you please keep us informed on the final decision.

Best regards,

Catharina SIKOW-MAGNY
Head of Unit



European Commission
ENERGY

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Our Ref: PM0014

Ms. Catharina Sikow-Magny,
European Commission,
Directorate-General for Energy,
Directorate B – Internal Energy Market,
B1 – Networks & Regional Initiatives,
1049 Bruxelles,
Belgium.

11th April, 2018

Re: PCI Shannon LNG

Dear Ms. Sikow-Magny,

I refer to your letter of 1st March, 2018 concerning the above-mentioned matter. Dr. Mary Kelly, Chairperson of An Bord Pleanála, has asked me to reply on her behalf.

To set the matter in context, the relevant details of planning consents for Shannon LNG are as follows:

PA0002 – Consent granted for the construction of a Liquefied Natural Gas (LNG) Regasification Terminal in County Kerry on 31st March, 2008. The consent was for a period of 10 years. An environmental impact assessment was carried out for the development with an environmental impact statement having accompanied the application. Public participation was provided for in the application process and a public oral hearing was held.

The Kerry County Development Plan 2015-2021 within which document the Shannon LNG site is zoned for industrial use, has been subject to strategic environmental assessment (SEA) and the SEA is contained in Part 1 of Volume 4 of the Kerry County Development Plan suite of documents. Further, the Kerry County Development Plan 2015-2021 has been subject to an Habitat Directive Assessment, in accordance with the requirements of Article 6 of the EU Habitats Directive 92/43/EEC, refer to Part 2 of Volume 4 of the Kerry County Development Plan suite of documents. The Strategic Integrated Framework Plan for the Shannon Estuary 2013-2020 was also subject to SEA.

The operation of the terminal requires a licence from the Environmental Protection Agency. The project is included on the Projects of Common Interest Union List [5.3 Shannon LNG Terminal and connecting pipeline (IE)].

Whilst being a PCI, the project would have availed of the transitional provisions under Article 19 of Regulation (EU) No. 347/2013, which Article provides that where a project promoter has submitted an application file before 16 November 2013, the provisions of Chapter 111 (Permit Granting and Public Participation) shall not apply.

Following a public oral hearing of the application (PA0002), the inspector prepared a report and recommendation which addressed the environmental concerns raised which included the European Water Framework Directive. An Bord Pleanála when granting consent for the development attached 40 conditions. Condition number 2 provided that the consent period was for 10 years. Condition number 3 provided, inter alia, that the first phase of the development should relate to the construction of two of the storage tanks (out of a total of four).

In 2012, a request was made, as is legally provided for in Irish legislation, by the developer to alter condition number 3 to provide for the option for the initial construction of one storage tank. An Bord Pleanála assigned an inspector to prepare a report and recommendation in relation to this request. The inspector's recommendation concluded that no appropriate assessment issues arose in relation to the request and neither was it necessary for public consultation given the nature of the request. An Bord Pleanála, in generally allowing the request, carried out a screening for appropriate assessment and was satisfied that the proposed alteration would not be likely to have any significant effects of any European site. Neither was it considered necessary, as the request was not considered to be a material alteration of the proposed development, to seek an environmental impact statement in relation to the request.

In September 2017, a further request (PM0014) was made by the developer to alter condition number 2 of the original consent (PA0002), which condition limited the period of the consent to 10 years. An Bord Pleanála has assigned an inspector to report on this request. In January 2018, An Bord Pleanála decided to involve the public in the process and arranged for newspaper notices to be published inviting the public to make submissions on whether or not the request would constitute the making of a material alteration of the terms of the development. Over 20 submissions have been received. This matter is currently under consideration. It is not possible at this stage to reply to any issues concerning environmental considerations or options as to do so might be seen as prejudicing the decision making process. However, Irish legislation does provide, in certain circumstances, for seeking an environmental impact assessment report and/or natura impact statement on requests such as this one should An Bord Pleanála so decide.

A referral which is a separate legislative process (Reference 300417-17) has also been submitted to An Bord Pleanála in relation to the project and is also current.

I will keep you informed on this matter.

Yours sincerely,

Diarmuid Collins,
Senior Administrative Officer.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market
B.1 - Networks & Regional Initiatives
Head of Unit

Brussels, 01 MARS 2018

Mary Kelly
Chairperson of the Board
An Bord Pleanála
64 Marlborough Street,
Dublin 1, Ireland

Subject: Developments regarding planning decisions for PCI Shannon LNG

Dear Ms. Kelly,

With the present letter, the Commission would like to request a series of clarifications with regards to the latest developments leading to decisions taken by An Bord Pleanála in relation to the planning of Shannon LNG terminal, a Project of Common Interest under Regulation 347/2013.

The Commission understands that An Bord Pleanála granted a 10 year planning permission to Hess Corporation, which is due to expire in March 2018. To date, the construction of the LNG has not yet been implemented and the new project promoter has requested an extension of the planning permission. A public consultation process is currently ongoing, ending with a planning decision on behalf of An Bord Pleanála.

Since 2008, the lower Shannon Estuary has been added to the River Shannon and River Fergus Estuaries Special Protection Area (SPA) triggering the obligation to fulfil all the relevant provisions of EU Environmental Law, in particular the provisions of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (EIA Directive), Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive), Directive 2009/147/EC on the conservation of wild birds, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Directive 2000/60/EC establishing a framework for community policy in the field of water.

In this context, the Commission would like clarifications over which type of assessments An Bord Pleanála has undertaken in line with the requirements of the revised EIA directive, Article 6(3) and (4) of the Habitats Directive 92/43/EEC and/or Article 4(7) of the Water Framework Directive in order to reach the decisions taken on granting planning permission. Furthermore, we would like to know whether the Shannon LNG terminal was included or foreseen in the scope of a plan that underwent SEA, and if this is the case, when and which were the results.

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Whilst the Irish authorities remain responsible for ensuring the respect of all provisions falling under the EU environmental legislation, the Commission would like to insist on the importance of carrying out an open, transparent and inclusive process of consultation with relevant parties.

Yours,

A handwritten signature in black ink, appearing to read 'Catharina Sikow-Magny', with a long horizontal flourish extending to the right.

Catharina Sikow-Magny