

## Projects of *common* interest?

### Case studies of environmentally damaging and controversial EU energy infrastructure 'projects of common interest' (PCIs)

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#### Introduction

The European Commission has proposed hundreds of electricity, gas and oil infrastructure projects to be promoted in Europe's 'common interest'. The finalised list was released on 14 October 2013<sup>1</sup>. A number of proposed 'projects of common interest' (PCIs) have the potential to be highly environmentally damaging. The need for many of the gas infrastructure PCIs is also questionable, as is their compatibility with Europe's energy and climate goals (see attached press release).

The TEN-E Regulation<sup>2</sup>, which is the legal basis of the PCI designation procedure, strongly emphasises public participation and transparency. Yet there have been significant procedural weaknesses involving lack of transparency and limited stakeholder consultation during the preparation of the first EU list of energy infrastructure projects of common interest. This has made it very difficult for environmental or other stakeholders to have a say. It also makes it difficult if not impossible to see whether and how these projects fulfil all of the legally required criteria.

The PCI list will be renewed every two years. Lessons must be learned from the current process so that these problems are not repeated. In particular, it is essential that in future rounds all projects are openly scrutinised to ensure PCIs genuinely serve European citizens' broad interests.

We are highlighting some of the most environmentally damaging and controversial projects included in the current list to demonstrate the risks posed to environment and people when short cuts are taken with regard to transparency, public participation and objectivity, and when environmental considerations are sidelined.

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<sup>1</sup> [http://europa.eu/rapid/press-release\\_IP-13-932\\_en.htm](http://europa.eu/rapid/press-release_IP-13-932_en.htm)

<sup>2</sup> TEN-E stands for Trans-European Network – Energy and the Regulation lays down provisions for timely development of projects of common interest (PCIs). It was adopted on 17 April 2013, came into force on 15 May 2013 and applies from 1 June 2013.

## **Case study 1: On-shore LNG terminal<sup>3</sup> in Northern Adriatic (formerly known as Zaule LNG terminal), Italy (PCI 6.19)**

**MAIN ISSUE** This project, if built as originally proposed in Zaule, Italy, risks causing pollution in the Gulf of Trieste. As such, it is strongly opposed not only by environmental groups but also by several local Italian authorities and by the government of neighbouring Slovenia. It has a long history of legal challenges.

**SUMMARY** Until recently, this PCI has been known as the ‘Zaule’ regasification plant at the port of Trieste. This project is being promoted to receive PCI status by the Italian Government despite a history of legal problems. The terminal was planned to be located just two km from Slovenia, which strongly opposes the project due to safety, environmental and health concerns. The proposed location was recently found to be incompatible with existing shipping routes and port development. As a consequence the Italian Environment Minister at that time ordered in April 2013 a 6-month suspension of the environmental licence. A new location is now under consideration although it is unclear whether or not the change of location will make it any less environmentally damaging.

**BACKGROUND** The so-called “On-shore LNG terminal in Northern Adriatic” was originally proposed to be included on the PCI list by Italy as Zaule LNG terminal (G142). The project was included as such on the draft PCI gas list prepared by the relevant Regional Group. The name change appeared only shortly before the Decision Making Body meeting, in July 2013, where the final decision of Member States on the draft PCI list was supposed to be taken, and when it became more and more evident that Slovenia would not support the PCI list if the above mentioned project was to be kept on the list. At the Decision Making Body meeting Slovenia objected to the inclusion of the Onshore LNG Terminal in the Northern Adriatic under the assumption that it relates to the location of Zaule, as the project will have a negative cross-border environmental impact on Slovenia. The Italian and Slovenian authorities were invited to resolve the problem by 20 September. It was also stated by the Commission that if it should turn out that the project violates the EU environmental acquis, it would not be included in the first Union list of PCIs. On-shore LNG terminal in Northern Adriatic has finally been included on the first PCI list, however, with a clarification that a decision on location of this LNG terminal will be decided by Italy in agreement with Slovenia. However, moving the project from Zaule does not yet guarantee that the project would be any less environmentally damaging.

**OPPOSITION** The original proposal was heavily contested by local stakeholders as well as the relevant Italian local authorities and the Slovenian government due to potential cross border environmental impacts. There are also judicial proceedings before the Italian national court brought by the NGOs WWF Italia and Legambiente. WWF argues that the 2009 Environmental Impact Assessment (EIA) was wholly inadequate, based on false information, and disregarded a fundamental part of the project (a connecting pipeline) in the assessment. In addition, there has never been a Strategic Environmental Assessment (SEA) done for development of the northern part of Gulf of Trieste, so numerous projects are being assessed separately without regard to cumulative impacts.

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<sup>3</sup> An [LNG Terminal](#) is a facility at which liquefied natural gas is “regasified” (turned back into a gaseous state) after shipment by sea from the area of production.

The European Parliament addressed a question to the European Commission on March 26 2013<sup>4</sup> regarding possible infringements of EC law if the project was built, highlighting the use of the PCI status as a means to overcome opposition in Italy and Slovenia.

**ENVIRONMENTAL AND OTHER CONCERNS** Some of the issues raised with regard to this project include environmental and health risks, safety risks, maritime traffic concerns in the gulf of Trieste, and a lack of assessment of potential impacts on Natura 2000 sites in Slovenia. The environmental effects are potentially significant and long-term, and relate to discharges of chlorate, dredging works and mercury pollution. There are also concerns relating to industrial accidents and shipping risks.<sup>5</sup>

In December 2012 the Italian Minister for the Environment re-opened the EIA procedure for the on-shore LNG Zaule in order to take account of the port development and maritime traffic. He also asked that EIA from 2009 must take account of the on-going SEA on the Regulatory Port Plan for Trieste. Consequently, the Italian Minister for the Environment has suspended the earlier environmental licence for 180 days in April 2013 and asked the promoter Gas Natural to consider an alternative location<sup>6</sup>. The main reason behind the suspension was the need to find alternative location as the current one was not compatible with the port development and maritime traffic in the area.<sup>7</sup>

#### Contacts

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<sup>4</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2013-003411&language=EN>.

<sup>5</sup> <https://www.openpetition.de/petition/online/peticija-proti-potrditvi-umestitve-projekta-plinski-terminali-avlje-na-evropsko-listo-prioritet-sku>

<sup>6</sup> <http://ru.reuters.com/article/idUKL5N0CS3JD20130405>,

<sup>7</sup> Ibid. 2

## **Case study 2: Capacity increase of hydro-pumped storage in Austria – Kaunertal, Tyrol, Austria (PCI 2.18)**

**MAIN ISSUE** Creation of reservoirs and diversion of rivers in one of the last remaining pristine areas in the Alps, which may not be reconcilable with legislation protecting Europe’s most important wildlife and rivers. WWF identified this project as an example of “seven sins of dam building” in its global report in 2013<sup>8</sup>. The ‘seven sins’ outlined in the report include issues with dam location, neglecting biodiversity, environmental flows, social and economic factors, and risk analysis.

**SUMMARY** In constructing an extension of the Kaunertal hydropower plant, the Tyrolean Energy Provider (TIWAG) intends to divert the waters from two rivers – Venter and Gurgler Ache – via a 25 km long pipe through Natura 2000 areas. The affected rivers are of high ecological value and have been classified as “river jewels” of Austria since 1998. The project can be expected to have significant adverse effects also on the tourism industry of the region, which is the most important economic sector in the affected area. More than two million tourists per year spend their holidays in the Ötztal valley because of its pristine nature and yet unmodified glacial rivers.

**OPPOSITION** A group of NGOs represented in Austria (WWF, Global2000, Greenpeace and BirdLife Austria) wrote to DG Environment in June 2013 stating that this project, if built, will be in breach of the Water Framework Directive (WFD) and Habitats and Birds Directives. The NGOs doubted that the project fully satisfies the criteria for PCI as stated in TEN-E regulation. Putting such a controversial project on a PCI list would effectively provide authorities and planners with an important argument to press ahead with such a project despite the outcome of the impact assessments and the opposition of locals.

**ENVIRONMENT CONCERNS** The project is currently at the permitting stage. The environmental impact assessment process started in July 2012. The first report of the local Austrian authorities to the applicants in the framework of the Environmental Impact Assessment (EIA or "Umweltverträglichkeitsprüfung" in German) concluded that conflicts with environmental protection requirements in particular for nature and water, noise and air were expected, and that there were serious doubts that the project could be approved at all.<sup>9</sup>

**FURTHER INFORMATION** Austria is one of the few EU countries that have failed to designate a full set of protected areas under Natura 2000 network. As such, major infrastructure projects risk damaging some of Europe’s most important wildlife sites without proper consideration being given to their protection. The Commission started an infringement procedure concerning substantial deficiencies in the designation of the Austrian Natura 2000 network<sup>10</sup>.

### **Contacts:**

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<sup>8</sup> [http://awsassets.panda.org/downloads/wwf\\_seven\\_sins\\_of\\_dam\\_building.pdf](http://awsassets.panda.org/downloads/wwf_seven_sins_of_dam_building.pdf),

<sup>9</sup> <http://www.eeb.org/index.cfm/news-events/news/selection-of-energy-projects-of-common-interest/>,

<sup>10</sup> The EC sent a Letter of Formal Notice (LFN) - the first formal stage of the infringement procedure under Article 258 TFEU - on 30 of May 2013 to the Austrian Government. An indicative list of 180 sites potentially to be added to the Austrian network was annexed to the LFN.

Umweltdachverband Austria - (<http://www.umweltdachverband.at/kontakt/>, tel:0043/1/40113), contact person: [roland.joebstl@umweltdachverband.at](mailto:roland.joebstl@umweltdachverband.at).

### Case study 3: Shannon LNG PCI at County Kerry, Ireland (PCI 5.3)

**MAIN ISSUE:** The European Parliament will decide on the 18<sup>th</sup> of October whether to undertake a fact finding mission to Ireland to investigate potential impacts and alleged bending of planning rules in favour of a liquefied natural gas (LNG) storage facility.

**SUMMARY:** Planning procedures for this LNG facility have been strongly criticised by Irish NGOs, and have even been questioned by the European Commission and the European Parliament<sup>11</sup>. If it goes ahead, important sites for bottle-nosed dolphins and wintering water fowl may be damaged. Changes to land use zoning and to thresholds that would trigger ‘strategic environmental assessment’ were made to enable the project to go ahead. The legality of these moves is under challenge in the Irish courts, and have been questioned by the Commission.

**BACKGROUND** The project was originally proposed in 2006 by the Shannon LNG Limited – a company registered in the Cayman Islands which paid over half a million Euros for the land acquisition at the time.<sup>12</sup> In order to start the permitting procedure, the land in question had to be re-zoned from ‘rural general’ to ‘industrial’. This was done, however, without mentioning the LNG terminal in the re-zoning plan. There was no environmental assessment undertaken on the re-zoning and therefore no significant environmental effects were detected. During the process of PCI list drafting the Commission maintained its concerns that the Strategic Environmental Assessment (SEA) ‘screening decision’ should probably not have resulted in a determination that the development plan variation is not likely to have significant environmental effects<sup>13</sup>.

**OPPOSITION** A petition was first lodged in 2008 by John McElligott (Safety Before LNG) for alleged breaches of the Seveso and the SEA Directives<sup>14</sup>. An extensive dialogue between the Commission and the Irish authorities followed. An EU pilot procedure (a pre-infringement procedure) was opened in 2011 to request more information on the application of the SEA Directive. Irish authorities, in order to avoid an infringement case, changed national legislation to lower the thresholds applying to exemption under article 3(3) of the SEA Directive.

**ENVIRONMENT CONCERNS** Onshore and offshore Natura 2000 areas that may be affected by the project support not only the greatest number of wintering waterfowl in Ireland, but also the only known resident population of bottle-nosed dolphins. Concerns remain about potential adverse impacts on these protected areas and species. In addition, numerous other issues regarding this project were raised during

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<sup>11</sup> <http://www.safetybeforelng.ie/pressreleases/pressrelease20130128EUFactFindingVisitAnnounced.htm>,

<sup>12</sup> [Click here to download a video of the EU Petitions Committee meeting discussing the Shannon LNG project on January 22nd 2013](#)

<sup>13</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-415.090%2b06%2bDOC%2bPDF%2bV0%2f%2fEN>, p. 10.

<sup>14</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-415.090%2b06%2bDOC%2bPDF%2bV0%2f%2fEN>

its permitting process by environmental stakeholders, such as the visual impact, possible pollution and health and safety issues.

The European Parliament is currently deciding whether to undertake a fact-finding visit to Ireland in the coming months to investigate the project and issues with application of European environmental law<sup>15</sup>. Given this level of controversy, it is at best surprising that the Shannon LNG was put on the draft regional PCI list and will most likely appear on the Union wide list in early October 2013.

**Contacts:**

Safety before LNG (<http://www.safetybeforelng.ie/>, tel: 353-87 2804474), Contact person: John McElligott, [safetybeforelng@hotmail.com](mailto:safetybeforelng@hotmail.com).

**Case study 4: Czech Republic internal lines to increase capacity at North-Western and Southern borders, including the PCI internal line between Kocin – Mirovka in the Czech Republic (PCI 3.11.4)**

**MAIN ISSUE** This project appears to bring benefits for the Czech domestic electricity market, but the significant cross-border energy impact (which is a main criterion for PCI status) is not clear and has been questioned by a Czech NGO. The need for the investment in this project depends on the decision about the construction of additional nuclear power capacity, which is highly uncertain.

**SUMMARY** This proposed PCI is part of a wider Czech cluster of internal domestic power lines. Their contribution to cross-border electricity trade, which is the main purpose of the PCI legislation, is challenged by a Czech NGO Justice and the Environment. The projects will connect to the nuclear power plant at Temelin. However, they will only ever be needed if blocks 3 and 4 of the power plant are built. The Czech government supports new nuclear power, but this faces strong public opposition.

According to Justice and Environment, this project will only be beneficial for increasing Czech domestic capacity. This is indirectly inferred from the fact that current cross-border capacity exceeds demand<sup>16</sup> as well as the fact that CEPS (the Czech grid operator) did not mark this project as relevant for increasing cross-border grid capacity in its Ten Year Development Plan<sup>17</sup>.

**OPPOSITION** During the planning procedure for the Kocin – Mirovka power line, more than fifteen affected local authorities expressed objections. In addition, five petitions against the project were organized in affected localities, five NGOs (either grassroots initiatives or environmental NGOs monitoring the project) submitted negative opinions on the project, and more than seventy individuals expressed their disagreement with the project.

**Contacts:**

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<sup>15</sup> <http://www.thejournal.ie/shannon-lng-european-fact-finding-tarbert-kerry-aughinish-limerick-772845-Jan2013/>,

<sup>16</sup> Date can be found on <http://www.ceps.cz/ENG/Data/Vsechna-data/Pages/Preshranicni-prenosove-kapacity.aspx>,

<sup>17</sup> See the Plan of transmission network development in the Czech Republic 2013 – 2022, p. 15 – 16 where other projects are identified as projects increasing the EU market integration.

Justice and Environment (<http://www.justiceandenvironment.org/>, tel: 420 545 575 229), contact person: Jan Srytr, [info@justiceandenvironment.org](mailto:info@justiceandenvironment.org).

#### **Case study 5: BEMIP Gas, Paldiski LNG, Estonia (PCI 8.1.2.2)**

**MAIN ISSUE** This proposed gas terminal in the Baltic Sea is under challenge in the Estonian courts for alleged failure to undertake scientifically robust environmental assessment studies.

**SUMMARY** This project risks potential damage to protected birds habitats, and it is already being challenged before the Estonian national court. The adequacy of the environmental assessments undertaken in planning for the project is disputed by the Estonian Ornithological Society (a BirdLife Partner) and the Estonian Fund for Nature (a partner of WWF). They are represented in Court by lawyers from Estonian Environmental Law Centre. Judgement from the national Court of First Instance is scheduled to be delivered on October 16<sup>th</sup> 2013.

**ENVIRONMENT CONCERNS** The environmental problems identified are mainly related to the failure to fulfil Estonia's obligations under the Birds and Habitats Directives. The terminal/port in Paldiski would lie in a bay that is a designated Natura 2000 area. NGOs argue that on this basis it was not adequately proven that the project would not harm the only habitat of Black Guillemots (*Cepphus grylle*) in Estonia, nor large numbers of Long-tailed Ducks (*Clangula hyemalis*) wintering in the area. For Long-tailed Ducks this habitat is important as their number in the Baltic Sea area has fallen rapidly over past decades.

**OPPOSITION** The NGOs challenging the project allege that assessment of impacts required under the Habitats Directive was not adequate since the best scientific knowledge was not used (for example the baseline data was not up to date nor accurate). The NGOs listed above have also sent a letter to the Estonian Government (Ministry of Economic Affairs). However, there is no clear signal from the government that they support Paldiski as the location for LNG terminal. Estonian and Finnish governments are apparently in negotiations about the location to be supported by the European Commission.

**Contact:**

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**ENDS**