

Designation of Energy Infrastructure Projects of Common Interest

Recommendations by Justice & Environment and the European Environmental Bureau

The European Commission has started the preliminary process for the third Union list of Projects of Common Interest (PCI) which is to be published in autumn 2017. We welcome that the Commission has decided to engage stakeholders early in the process, thereby building on the experience of the previous lists.¹

Justice and Environment and the European Environmental Bureau (EEB) have been following the processes for the publication of the first and second list of PCIs at the EU level and via our national members who, in many cases, are directly involved with project promoters on specific PCI candidates and PCIs.

As organisations involved in nature conservation as well as energy and climate policy, we share the understanding that interconnected and modernized energy grids are needed to renew the aging existing grid structures and to facilitate the transformation from a centralised, top-down system, driven by a few fossil fuel powered generation units, to a system based on increasingly decentralised renewable energy sources while minimising risks of system failures. The successful acceleration of new renewable generation in the electricity mix in recent years has increased the need for better and more integrated grids. The adoption of the TEN-E Regulation² is intended to improve this by providing a selection of highly important energy infrastructure projects and their preferential treatment in administrative authorization procedures. Until now, the PCI list and the process for establishing it have not delivered on their promises. The following challenges have to be tackled to ensure delivery:

- A. Ensure that the PCI Union list is consistent with the Paris Agreement;
- B. Include nature and environmental aspects in the assessment of impacts and costs;
- C. Re-focus the Union List on high-priority projects;
- D. Open up grid development to new methods, innovation, and new energy systems; and
- E. Improve and refine the compilation process for the PCI Union list.

We also want to highlight various issues that should be addressed as part of the upcoming review of the Regulation in 2017. Overall, we see the aforementioned challenges as an indication that the

¹ Cp. J&E and BWN PCI Process Recommendations 2014 and 2015: <http://goo.gl/pK07qv> , EEB and BirdLife Briefing 2014 – Connecting Energy, Protecting Nature: <http://goo.gl/R1Bj7D> .

² Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure.

current PCI list does not deliver as it should to identify, legitimise and deliver high-priority infrastructure projects to adapt the EU's transmission system to meet new demands and to help achieve EU energy policy aims.

Experience from the last two lists and recommendations for the process of compiling the third list

A) Ensure compatibility of PCI Union list with results of the Paris Agreement

The European energy sector is responsible for 29.3 % of the total European greenhouse gas emissions (GHG)³. With the adoption of the Paris Agreement, a global action plan is set out to limit global warming to well below 2°C and pursue efforts towards 1.5°C. This should be achieved by rapidly reducing our GHG emissions in accordance with the best available science. The EU needs to intensify further its efforts to increase energy efficiency and shift towards renewable energy sources when implementing its energy policy.⁴ Accelerating the refurbishment of existing energy infrastructure and the deployment of new energy infrastructure is vital in this respect.⁵ If an infrastructure project's main purpose is to integrate coal-fired power into the transmission grid⁶, compatibility with the Union's energy and climate policy objectives is not given. Further, the compatibility of electricity transmission lines serving for the connection of nuclear power⁷ with the objective to integrate renewable energy sources seems questionable.

In order to tackle these problems we recommend:

³ EEA Emissions share per main sectors in 2014 — Sectoral greenhouse gas emissions by IPCC sector; <http://www.eea.europa.eu/data-and-maps/indicators/greenhouse-gas-emission-trends-6/assessment>

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Energy 2020 A strategy for competitive, sustainable and secure energy, 10.11.2010, /* COM/2010/0639 final*/; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Energy Roadmap 2050, 15.12.2011, COM(2011) 885 final.

⁵ Regulation 347/2013, recital 7.

⁶ **Substation Gubin in Poland (part of PCI 3.14.1):** The project is related to the planned construction of a new open-pit lignite mine and a new 2.7 to 3 GW power plant in the Łużyce region, as a major element of the transmission system.

⁷ Internal line between Kočín and Mírovka (No. 3.11.4. in the list): The planned internal power line would connect 2 existing 400 kV substations of Kočín and Mírovka with a double circuit of 120.5 km of overhead line. The cost of this project is estimated at about 450 mil. EUR. The power line is according to EIA documentation closely related to the planned construction of a new nuclear power source in Temelin (already existing nuclear power plant) as strengthening of the transmission system.

- PCI candidate infrastructure projects should be tested for their long-term viability and compatibility with EU commitments, particularly the Paris Agreement. This should be done prior to the cost-benefit analysis in the establishment of the TYNDP and the ranking carried out as part of the PCI designation process.
- Energy Efficiency shall be approached as an infrastructure investment, and Energy Efficiency must be put first also when assessing energy infrastructure investments.
- The purpose of a network project considered as a PCI candidate (= e.g. power line for distributing coal-fired power) should feed into the assessment under Art 4 TEN-E Regulation.⁸ Infrastructures that are meant to integrate fossil or nuclear energy into the grid should be evaluated accordingly (low) under the sustainability criteria.

B) Include nature and environmental aspects in the assessment of impacts and costs

The infrastructure choices we make have an impact for many decades. Infrastructure projects that constitute the backbone of the energy infrastructure must be fully in line with nature conservation, environmental and social requirements. The European Commission must ensure that all social and environmental legislation – especially those on nature protection⁹ - is fully obeyed.

To facilitate the timely development of interconnectors, the PCI are awarded special procedures and legal status. Art 7 para 8 TEN-E Regulation declares that a PCI shall be considered as being of public interest from an energy policy perspective. This is an important declaration, and national authorities take this public interest for granted when permitting procedures. As such, projects in the PCI list are likely to be considered as being in the public interest also in the context of Art 6 para 4 Habitats Directive and Art 4 para 7 Water Framework Directive, which also require a public interest test for derogations from nature and water protection rules (although additional criteria should be applied according to the latter Directives).

Awarding the PCI status thus demands special scrutiny when it concerns social and environmental legislation. During the compilation of the first and second Union list, the assessment of the candidates suffered from incomplete and insufficient data for the projects provided for the regional draft-list. This

⁸ „the project is to contribute significantly to (...) (ii) sustainability, inter alia through the integration of renewable energy into the grid and the transmission of renewable generation to major consumption centres and storage sites;“

⁹ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats – Directive), Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive);

was the case for the specific characteristics of the project and for the expected social and environmental impacts of the projects.

We have observed that controversial projects often entail severe environmental and social impacts. This very much hurts the credibility of the PCI list and leads to major delays in the implementation of the listed projects. Thus it is only reasonable to have this information provided by project promoters and to be available for assessment and the Regional Groups. Furthermore, it is necessary for the cost-benefit-analysis (CBA) as part of the Ten-Year-Network-Development-Plans (TYNDP) to fully include the assessment of environmental and social impacts of projects.

Apart from this, the SEA Protocol to the ESPOO Convention, the Aarhus Convention and, for parts of Europe, the Energy Protocol to the Alpine Convention, where the EU is a contracting party, indicate the obligation to have environmental impacts of both individual candidate PCIs and of the whole Union List assessed and evaluated.

PCIs are flagship projects and must live up to the full scrutiny of the EU law. **That's why we recommend:**

- Complete and quality checked data for all project must be submitted as part of the application process to be a PCI candidate. Data requirements should encompass the environmental and social impacts of a project.
- Project promoters must provide the Commission with up-to-date information on the project through the transparency platform.
- The Commission and DG Energy should monitor compliance with environmental acquis when it comes to the implementation of PCI and the TEN-E Regulation in permitting procedures. Special attention should be paid to the quality of public interest tests (cp. Art 6 para 4 Habitats Directive and Art 4 para 7 WFD) carried out by the authorities or courts in the application of permitting procedures.

Case study hydropower as PCIs: the Austrian Kaunertal

The PCI project in the Austrian Kaunertal, an extension of an existing pumped-hydro storage facility with additional natural inflows and significant environmental implementations, has from various stakeholders been named as an emblematic example of a PCI that is struggling with insufficient data and questioned legitimacy. On a formal basis, the project included outdated or incomplete information and an insufficient implementation plan. The environmental concerns of the stakeholders on the ground include major environmental implications for the additional natural inflows (from the rivers Gurgler and Venter Ache) to be discharged into the Gepatsch reservoir. Even the permitting authority

has acknowledged major environmental impacts of the project. The expected social impacts has pushed many stakeholders (municipalities, sports associations, fisheries, etc.) to oppose the project that has been listed as PCI on the first and second Union list.

C) Re-focus the Union list on high-priority projects

The TEN-E Regulation states that the designation process shall ensure that the Union list of projects of common interest is limited to projects which contribute the most to the implementation of the strategic energy infrastructure priority corridors and areas.¹⁰ The first Union list consisted of 245 projects. The current Union list consists of 195 projects. The number of projects awarded a PCI label makes it hard to justify and explain the urgency and relevance of each of the projects to communities that are concerned by them.

We see possibilities to reduce the number of projects on the Union list. Under the current 195 projects, clusters of alternative projects are included (e.g. the cluster for diversifying supply in the Eastern Baltic Sea Region - 8.1¹¹), where only one LNG Terminal is expected to fulfill the need but all alternatives have been awarded PCI status. Projects that were already awarded a valid permit in 2013 (like PCI 2.19 Obervermuntwerk II in Austria) were included on the 2013 first Union list. Furthermore, projects that are clearly not in line with the environmental acquis and projects where investment is very likely to fail (as it was the case with certain gas pipelines and is the case with several pumped-storage projects) should not be considered. Unless the number of projects on the Union list is limited to a manageable amount, the quality of the assessment, the implementation and the monitoring of projects suffers.

The EC communication on the 10% electricity interconnection target or the European Energy Security Strategy¹² additionally outlines high importance energy infrastructure projects. This additional policy paper outlining high priority infrastructure projects questions the added value of the PCI list. To achieve the 10% electricity interconnection target by 2020,¹³ we need to set quality before quantity.

¹⁰TEN-E Regulation, recital 23. The regulation states the total number of projects of common interest should remain manageable, and therefore should not significantly exceed 220.

¹¹ "8.1.2 One of the following LNG terminals: PCI 8.1.2.2 Paldiski LNG (EE) 8.1.2.3 Tallinn LNG (EE)"

¹² COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL European Energy Security Strategy {SWD(2014) 330 final}

¹³ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, Achieving the 10% electricity interconnection target Making Europe's electricity grid fit for 2020, Brussels, 25.2.2015; COM(2015) 82 final.

To tackle these challenges we recommend:

- The Commission should – together with Member States - ensure a manageable number of projects on the Union list and a close monitoring of the progress of the designated PCIs.
- The Commission and the Regional Groups should not hesitate to make use of the right to remove projects from the Union list (cp. Art /8 TEN-E Regulation¹⁴).
- The Commission and the Regional Groups should closely scrutinize candidate projects, carry out strict eligibility checks for candidate projects and carry out a thorough evaluation of the projects under Art 4 TEN-E Regulation.
- The Commission and the Regional Groups should urge promoters to provide comprehensive and high-quality information on the content and status of a project. This is both required for a correct assessment of PCI candidates and an effective monitoring of existing PCIs.

D) Open up grid development to new methods, innovation, and new energy systems

The energy sector is fundamentally transforming. The system is evolving towards increasingly sustainable, decentralised and consumer focused solutions, affecting the nature and use of our future transmission grid. Given the increasing number of land or resource use conflicts which are partly also caused by this envisioned future we need to invest in a thorough planning of our energy future. Environmental impacts of energy infrastructure and RES deployment should not be negated – the impacts on biodiversity, protected species, habitats and humans are real. Discussions on the necessity of a wind park or power line, deployed techniques, alternatives, etc. are shifted to the permitting procedures instead of being decided upon on a strategic planning level.

We recommend:

- Carrying out strategic energy infrastructure planning on a national level accompanied by Environmental Assessments (EA) and stakeholder participation. The planning of grids and energy systems needs to be consistent with other related national plans.
- Using spatial planning and zoning to plan the EU energy system and green infrastructure¹⁵ together to create environmentally sound systems.

¹⁴ "A project of common interest may be removed from the Union list according to the procedure set out in Article 3(4) if its inclusion in that list was based on incorrect information which was a determining factor for that inclusion, or the project does not comply with Union law."

- Putting software before hardware and harnessing the new opportunities coming from increased digitalization, new sources of data and new software to plan and control this new integrated energy system.
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E) Improve and refine compilation process of PCI Union list

The European Commission took a considerable step towards a more transparent and participative PCI selection process, and we very much appreciate the Commission's efforts in this respect. Nevertheless, we believe that it needs to go further and improve and refine the process to ensure the quality of the projects on the Union list.

We recommend:

- Continuing to use indicators to rank projects, but improving them to take into consideration, for example, that projects must be ranked down when completeness and evaluation is not ensured or data is not provided. Data that is not provided should be considered as incorrect and the candidate hence removed;
- To tackle differences in data quality concerning the PCI candidates assess the option to differentiate between mature projects and projects in early planning stages;
- Ensuring that EU commitments are fully reflected in CEF funding and a bias towards gas is avoided;
- Full compliance with the TEN-E regulation must be ensured. The issue of the generic project listed under PCI 2.27 (Interconnector between Spain and France) raised the question of political intervention of the Regional Groups in the designation process.

Issues to address as part of the upcoming review of the Regulation in 2017

In accordance with Art 17 TEN-E Regulation in 2017, the Commission will publish a report on the implementation of projects of common interest and submit it to the European Parliament and the Council. Based on the above-mentioned experiences with the PCI selection process we find that the following issues should be addressed in the Commission's midterm review of the TEN-E Regulation:

¹⁵ Green Infrastructure (GI) (COM(2013) 249 final)
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013DC0249>

- The review should assess if a mechanism should be established to remove PCIs from the list that are no longer pursued by the project promoters or supported by the national authority.
- The review should include a study assessing ex-post the impacts of PCIs in comparison to the ex-ante evaluations.
- Assess the possibility of requiring an Environmental and Climate Impact Assessment parallel with the elaboration of the PCI list.
- Art 3 para 6 TEN-E Regulation outlines that a PCI should become an integral part of the relevant regional investment plans and of the relevant national 10-year network development plans and other national infrastructure plans concerned. The planning processes should be accompanied by Environmental Assessments (EA) and effective stakeholder participation. These must be obligatory prerequisites for PCI candidates.
- To guarantee that Member States take more responsibility in ensuring effective public participation in the identification of PCIs and after the adoption of the PCI List the competent authority (one-stop-shop) should be responsible for responding to stakeholder inquiries and information requests on the status of the projects (similar to the reports to the regional groups in Art 5 para 6 TEN-E Regulation).
- A better integration of the TYNDP and PCI process should be explored to utilize synergies concerning data quality, monitoring and reporting.
- Projects that are put forward purely on the basis of political rhetoric and that lack economic benefits should not be part of the list as they will most probably fail to deliver progress.¹⁶
- Establish legal requirements to further refine and improve the quality of data used by applicants and oblige project promoters to provide this information ahead of being listed, which makes it easier to subject project promoters to full scrutiny.
- Assess options to have a peer review of the projects by the Regional Groups.

Brussels, 20st July 2016

¹⁶ It is an unresolved issue how at the last RG meeting about 20 gas projects were added to the final list.