



Transparency and public participation in the PCI selection process on national level

PCI

Comparative study

Justice and Environment 2017

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Introduction

Regulation (EU) Number 347/2013 (hereinafter: TEN-E Regulation) aims at the timely development of trans-European energy infrastructure while, at the same time, enhancing transparency and public participation. Participation is not only required by the TEN-E Regulation at the permitting stage of individual projects, but also when it comes to determining the need for and the planning of trans-European energy infrastructures. An inclusive and transparent selection process on the national, regional and EU level shall be carried out in an effective manner in order to increase the acceptance of the list and help to achieve a common European consensus on the necessity of those projects.

Although the TEN-E Regulation sets certain rules for the process and the participation therein, we believe that in addition to the formal participation (defined by law as minimum) the application of additional informal participation at an early stage is a necessary extra effort in order to give the most interested relevant stakeholders a chance for connecting to the process.

Furthermore, in accordance with the principles of the Aarhus Convention, accepted and sound decisions can only be taken when the public is allowed to participate “within a transparent and fair framework, having provided the necessary information” and “when due account is taken of the outcome of the public participation”.

The selection of the first PCI list was criticized because the process lacked transparency. In order to promote accepted and sound decisions in the midst of the PCI selection process Justice and Environment turned to the competent national Ministries and/or designated national authorities with a questionnaire.

It was created to present the taken efforts regarding information sharing and guiding public by Ministries/competent authorities and/or project promoters in frame of the PCI designation process in 2014/2015 (second PCI List). Beyond doubt any forms of public participation provide transparency in decision making. Justice and Environment raised questions concerning applied forms of public participation on national level in the selection process of the second PCI list.

Lawyers from the following Organizations have participated in the research:

Bluelink (BL), Bulgaria

Environmental Management and Law Association (EMLA), Hungary

Estonian Environmental Law Center (EELC), Estonia

International Institute for Law and Environment (IIDMA), Spain

ÖKOBÜRO – Alliance of the Austrian Environmental Movement (ÖKOBÜRO), Austria

Information dissemination in the midst of PCI designation process on national level

Informing the public by providing information to help them understand the issues, namely projects, their background, options, etc. is crucial if EC aims enhancing transparency and public participation regarding TEN-E energy infrastructure projects. J&E asked the competent national Ministries and designated national authorities in PCI issues if and how they made public information pending the PCI designation process towards national stakeholders and NGOs.

Austria

During the 2nd PCI designation process in 2015, Austrian stakeholders attended some meetings of the Regional Groups in Brussels. A targeted survey was carried out also with a specific Austrian project (= PCI Kaunertal).

The Austrian Energy Infrastructure Act (E-InfrastrukturG) which entered into force in 2016 requires the energy infrastructure authority to share information on PCI candidates with the public. National projects that have been suggested to a regional group as a candidate project for the list of PCIs have to be published on the website of the infrastructure authority in order to allow comments. On the basis of this provision, national candidate projects for the 3rd PCI Unionlist have been linked to the website of the energy infrastructure authority (i.e. the Ministry of Economy).

Bulgaria

The information dissemination in the midst of PCI designation process was very restricted from Ministry of Energy's side in Bulgaria. The website of the Ministry of Energy made available in national language solely the following documents: TEN-E Regulation and Manual of procedures.

Hungary

The Ministry of National Development published a call on its website informing the public that the European Commission initiated the review procedure of PCI list adopted in 2013, in addition the Ministry made available all relevant information about Public Consultations of the European Commission and project promoters both English and Hungarian.

Estonia

In order to improve information sharing there is a working group of stakeholders (from Estonia, Latvia and Lithuania) involved. This working group was created on EU level in order to help facilitate and coordinate the planning and licensing of PCIs and brings together project developers, the European Commission and the public. Regarding sharing information in Estonia, the Ministry of Economic Affairs and Communications shared information on their homepage and made press releases about the development of the process.

Spain

The competent DG Directorate (Directorate General of Energy Policy and Mines as the national competent authority) did not share information pending the PCI designation process. The Ministry of Industry and Energy published the "Handbook on PCI procedures" on its website.

Conclusion

Apart from the positive example of Estonia it can be concluded that Ministries and competent authorities did not disseminate relevant information regarding pending PCI projects based on the TEN-E Regulation.

Hungarian Energy and Public Utility Regulatory Authority as the designated national competent authority pointed out that the TEN-E Regulation did NOT lay obligation on Member States regarding public participation in the selection of projects, project promoters were obliged to involve public solely in permit granting processes. Hungarian competent Ministry lined up with the Authority, accordingly the selection process of the candidate projects on national level was entirely unrevealed.

In Austria public participation occurred only after adoption of the national Energy Infrastructure Act.

Having assessed the answers of the involved Member States it can be laid down that transparency and early and effective involvement of the public is not ensured based on the TEN-E Regulation. The current practice of the involved Member States does not enhance effective public participation. The affected stakeholders, organizations for environmental protection have no information on PCI projects in their early phase.

In order to speed up the procedures, foster acceptance, achieve an overall understanding of the final decision, efficiently promote the goals of the Regulation, it is necessary already in this preparatory stage of PCI designation to carry out adequate public consultations guided by the principles of the Aarhus Conventions.

Justice and Environment recommends to

Urge respective ministries of Member States to take an active role in information-sharing in addition to the efforts undertaken by the European Commission. This could at a minimum level include adding designated pages to their web sites with key data on the designation process as well as information of proposed projects that concern a given Member State.

Urge respective ministries of Member States to make efforts to achieve the affected stakeholders and environmental organizations in order to raise their awareness of the rationale and meaning of the PCI designation process as well as participation opportunities.

Content-wise Regional Groups should systematically and transparently engage local stakeholders to discussions about the need of projects as well as about the projects' potential environmental impacts. The regional groups should seek for and make use of relevant stakeholders' knowledge about avoiding harmful impacts.

Access to information on the merits of the candidate projects and their designation procedures

J&E asked the competent national Ministries and designated national authorities if there was any public information available on the national level (in the national language)

on the substantive parts of the PCI candidate projects proposed to be put on the PCI List;

on their background, the rationale, pros and cons and

on the procedural steps of PCI selection process.

Austria

In accordance with § 8 Energy Infrastructure Act and Annex III TEN-E Regulation project promoters have to make available information on the assessment of the project with regard to its contribution to the establishment of one of the energy infrastructure priority corridors and areas (see Annex I TEN-E Regulation), an analysis of the fulfilment of the relevant criteria defined in Article 4 (e.g. necessity for infrastructure priority corridor, benefits outweigh the costs, cross-boarder impact, contributes to security of supply, sustainability, market integration etc.), for projects having reached a sufficient degree of maturity, a project-specific cost-benefit analysis, any other relevant information for the evaluation of the project.

On the project promoter's website there is either no such information available or there is only a global reference to this requirement and the Websites of ENTSOs and EC:

„PCI-Status: Projekt für 3. PCI-Liste eingereicht

Informationen gemäß § 8 Energie-Infrastrukturgesetz sind den folgenden Quellen zu entnehmen:

<http://www.apg.at/de/netz/netzausbau/Netzentwicklungsplan>

<http://tyndp.entsoe.eu/>

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

The Ministry shared information on its website. There were no further announcements (newspaper, mailing lists etc.) in order to inform public on the possibility to get informed and to submit comments.

The Austrian Manual of Procedure only refers to PCI permitting and not to the designation process on EU level and possibilities to get involved therein.

Bulgaria

The main information about the project, candidate for the PCI list, is published and updated regularly at the website of the company as well as on the transparency platform maintained by the EC with options for feedback and comments to the EC.

One of the project promoters, Bulgartransgaz communicated mainly by the following documents: Ten-year Network Development Plan of Bulgartransgaz, the Community Ten-year Development Plan of the European Network of Transmission System Operators for Gas and the Gas Regional Investment Plans (GRIP) for regions “Central and Eastern Europe” and “South Corridor”.

Hungary

The Ministry published links to the respective project websites on the Ministry website.

<https://fgsz.hu/hu-hu/javasolt-pci-projektek-publikalasa>

<http://www.agrilng.com/Home/EUProjectOfCommonInterest>

<http://www.mavir.hu/web/mavir/pci-jeloltek>

However the project promoters published scarce information, namely the sole core data of the candidate projects.

Regarding the procedural steps of the PCI designation process the Ministry refers to its website showing the link to EC website, which published the text of the TEN-E Regulation and further information in the European level public consultation documentation in Hungarian.

Similarly to the Austrian one, the Hungarian Manual of Procedure only refers to PCI permitting and not to the designation process on EU level and possibilities to get involved therein.

Estonia

Due to the fact that no new projects were considered to be added to the second list in Estonia, no information about projects proposed was published. Information was mainly shared in the previously mentioned working group.

There is a guidance document on permitting of the PCIs available on the homepage of the Estonian Ministry of Economic Affairs and Communications. No specific information (except the explanation what requirements need to be met in order to add a project to the PCI list) on the procedural steps of PCI selection process is available.

Spain

The Ministry of Energy website has a section on open and closed public consultations. It seems no information has been shared on the selection of the PCI .

Project promoters (Enagas, REE) have some amount of information available on their websites . The information is quite limited and only concerns the definition of the respective project and the stage of the process .

The Ministry did not make the documents publicly available, aside from the Handbook of PCI procedures.

Conclusion

Based on the assessments from the involved Member States it can be concluded that the rationale, pros and cons of the candidate projects proposed to add to the PCI list are not published in the midst of the process for identification of PCIs. In most cases Ministries websites show links to the project websites and the information shared by project promoters is quite limited, usually concerns only the definition of the project.

There are not any information available on the procedural steps of PCI selection on national level. The published Manuals of procedures refer only to PCI permit granting and not to the designation process on national and EU level, accordingly public participation possibilities therein are not either presented.

Justice and Environment recommends to

Present information on sustainability, cost-benefit, security of supply, market integration, environmental and social impacts of PCI candidate projects in a comprehensible format (prior to the public consultation). This will equally foster acceptance: If stakeholders cannot grasp the rationale of a decision taken – the need for this decision will be questioned over and over again by the affected stakeholders. This conclusion we derive from our own experiences in national planning and permitting procedures of energy projects in general.

Promote that project promoters present their candidate projects also in a comprehensible format for the wide public.

Consultative forms of public participation

Consulting with the public to obtain their feedback on alternatives or decisions is an essential element of public participation. J&E raised a question on the forms of consultations in its questionnaire.

Austria

Not any personal consultations have been organized. On its website the Ministry mentions the possibility to submit statements on the proposed candidate PCIs.

Bulgaria

Public hearings and consultations were carried out regarding the Ten Year Network Development Plans. Project promoters included the respective PCI candidate projects into the TYNDP.

Estonia

The form of consultations is the above mentioned working group of stakeholders.

Hungary

The European level public consultation was carried out in an electronic way. The Ministry did not organize any (personal) consultations.

Spain

Information regarding meetings and consultations organized by the competent authority is not available. NGO's claim that consultations never took place. Public participation consultations have only occurred during the statutory permit granting procedure, once the promoters have submitted their application for authorization. Public participation during the pre-application procedure has never happened.

Conclusions

Based on our questionnaires it can be concluded that public consultations on the national level basically were not carried out (even or adequately) in the designation processes apart from the Estonian example.

Having in mind that projects labelled as PCIs will benefit from improved regulatory treatment, more efficient permitting procedures and European as well as national financial support, the early public involvement shall be carried out in accordance with the Aarhus Convention principles.

Consultations are an opportunity for the public to give input during the decision-making process. If the European Commission, the Regional Groups and the Member States don't deal with these inputs and don't feedback on how exactly they have been treated or taken into account frustration levels among stakeholders will rise and the goal to achieve high social acceptance would be undermined.

Justice and Environment recommends to

Thorough public consultations on the regional and national level should be carried out (eg. stakeholder workshops, online/written consultations etc.) so the known and affected public can be directly invited and they can raise comments and concerns on the respective projects in their early phase, when all options are still open.

Urge respective Ministries and/or competent authorities of Member States to enhance consultative forms of public participation according to the above mentioned conditions.

Justice & Environment (J&E) is a European Network of Environmental Law Organizations. J&E works in Europe and consists of NGOs from twelve different countries dealing with environmental law solely or as one of their activities. J&E aims for a better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature. J&E does this by enhancing the enforcement of EU legislation through the use of European law and exchange of information on the national, cross-border and wider European level. All J&E activities are based on the expertise, knowledge and experience of its member organizations. The members contribute with their legal know-how to and are instrumental in the initiation, design and implementation of the J&E work program.

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