



European Ombudsman

Directorate A
Complaints and Inquiries Unit 2

Mr Joseph CAULFIELD
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Strasbourg, 03/07/2014

Complaint 240/2014/SID

Dear Mr Caulfield,

Please find enclosed the opinion that the European Ombudsman received from the European Commission concerning your above complaint.

If you wish to make any observations on the opinion, please send them to us before 31 August 2014.

Please note that, if we do not receive any observations from you, the Ombudsman may close the case with a decision, based on the information you have already provided and the Commission's opinion.

Yours sincerely,

Fergal O'Regan
Head of Complaints and Inquiries Unit 2

Enclosure:

- Copy of the opinion submitted by the European Commission

Brussels, 30 JUIN 2014

Subject: *Complaint by Mr Joseph CAULFIELD,
ref. 240/2014/SID*

Dear Ms O'Reilly,

Thank you for your letter of 27 February 2014 regarding the above case.

I am pleased to enclose the comments of the Commission on the above-mentioned complaint.

Naturally, the Commission remains at your disposal for any further information you may require.


Günther OETTINGER

Enclosures

*Ms Emily O'REILLY
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Comments of the Commission on a request for information from the European Ombudsman
- Complaint by Mr Joseph CAULFIELD, ref. 240/2014/SID

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

On 2 February 2014, the complainant submitted (on behalf of "Turn 180") a complaint to the European Ombudsman concerning the public consultation carried out by the Commission with regard to Commission Delegated Regulation (EU) No 1391/2013 laying down the Union list of projects of common interest (the "PCI Regulation")¹ as deemed to be inconsistent with European legislation, including the Aarhus Regulation (EU) No 1367/2006² and the Communication on public consultation³.

On 27 February 2014, the European Ombudsman informed the Commission about the present complaint and that she identified the allegations and claims, on which she decided to open an inquiry.

The present complaint is related to the earlier complaint (ref. 1411/2013/RT) submitted by the same complainant.

II. THE COMPLAINT

The European Ombudsman decided to open an inquiry into the following allegations and claims:

➤ Allegation 1

"The Commission failed to comply with its own Communication on public consultation (page 12 and page 20) in respect of energy infrastructure projects.

In support of this allegation, the complainant argued that:

The Commission failed to use all possible means of publication/information of the List.

The Commission failed to ensure that the relevant interested parties in Ireland had access to the consultation process on the following electricity projects in the List: E149- E156 and E291."

¹ Commission Delegated Regulation of 14 October 2013 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure as regards the Union list of projects of common interest; OJ L349, 21.12.2013, p.28

² Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters to Community Institutions and bodies; OJ L 264, 25.09.2006, p.13

³ Communication from the Commission: Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission, COM(2002) 704 final, Brussels, 11.12.2002

➤ **Allegation 2**

"By restricting the language of its website on the public consultation to English only, the Commission disenfranchised many citizens in countries where the energy infrastructure projects may be built.

In support of this allegation, the complainant argued that:

The Commission restricted the language of its website on the public consultation to English only, which is the native tongue of only some 65 million of the 500 million in the (then) EU-27. However, the projects have a pan-European reach."

➤ **Claim 1:**

"Ensure that all environmental information is available to the communities affected by the projects in question to the extent that this is possible and only in respect of that environmental information related to the current stage of the process and the future stage, if known."

➤ **Claim 2:**

"Consider publishing its websites on public consultations in all the official languages of the European Union, or, at the least, in the official languages of those Member States which would be affected by the schemes contemplated by the public consultations."

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

Before providing its opinion on the "allegations" and "claims" made by the complainant, the Commission would like to explain that the inclusion of a given project on the list laid down by the PCI Regulation is the result of **an extensive consultation process which takes place "en amont" and it is required by EU legislation**. In this context, point 5 of Annex III of Regulation (EU) No 347/2013⁴ (the "*TEN-E Regulation*") requires each regional group (see Article 3), in their composition as provided in point 1 of Annex III, to consult the organisations representing stakeholders - and if deemed appropriate stakeholders directly - including producers, distribution system operators, suppliers, consumers and organisation for environmental protection.

In addition, the insertion of a given project in the list of Projects of Common Interest (PCIs) does not prejudice the outcome of the implementation process of that project. Following Article 9 of the TEN-E Regulation and its Annex VI, **each PCI will have to undergo a complete permit granting process and it will have to be subject to a project-specific public consultation** aimed at stakeholders likely to be directly affected by it, including landowners, citizens living in the vicinity of the project, and general public. These requirements constitute the safeguard that local communities and citizens will be involved in the implementation process and will be able to make their views heard by project promoters and national authorities. The outcome of the permit granting process, including public consultations, and of the environmental assessments will have to be taken into account by national authorities when issuing comprehensive decisions determining whether a project promoter is (or is not) to be granted an authorisation to build the PCI infrastructure.

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 and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009; OJ L 115, 25.4.2013, p.39

The Commission's opinion regarding "*Allegation 1*"

(i) Regarding the allegation that "*the Commission failed to use all possible means of publication/information of the List*", the Commission contests such an allegation by simply referring to the circumstance that **extensive consultation is to take place according to point 5 of Annex III of the TEN-E Regulation prior to the insertion of the project in the list**. Thus, given that the EU legislation provides for this consultation it cannot be maintained, as the complainant does, that the Commission is in breach of the Aarhus Regulation.

The Commission launched the open consultation on the PCI Regulation on the '*Your Voice in Europe*' website⁵ that is the single access point for all public consultations launched by the Commission. Further events held within the consultation process were communicated to the public through different webpages of DG Energy, including "*Public consultations*"^{6,7} "*Events*"^{8,9,10} and "*News; What's new in Energy Policy*"^{11,12}.

Furthermore, the website of the Irish Ministry for Communications, Energy and Natural Resources contained information about the consultation process on potential PCIs¹³ that provided a hyperlink to the relevant DG Energy website.¹⁴

The Commission also used "*more traditional alternatives to the internet*", such as press releases¹⁵ and memos¹⁶ with frequently asked questions, to announce the adoption of the PCI Regulation.¹⁷

Finally, the Commission did not consider publishing the PCI Regulation on Facebook and Twitter because all relevant information was published on the "*Your voice in Europe*" website as well as on "*Events*" and/or "*News; What's new in Energy Policy*" webpages of DG Energy that are followed by stakeholders interested in the energy policy.¹⁸

(ii) Regarding the allegation that the "*Commission failed to ensure that the relevant interested parties in Ireland had access to the consultation process on the following electricity projects in the List: E149-E156 and E291*", the Commission would like to point out that the complainant claims (in Part 5 of his complaint) that the Commission had (allegedly) failed "*to conduct the public participation for Projects of Common Interest*" without, however, specifying any concrete projects. The complainant lists (in Part 3 of the complaint) projects E149-E156 and E291 but only to inform the Ombudsman that he "*sought on the 20th August*" "*environmental information*" for these projects. Furthermore, the complainant neither claims

⁵ http://ec.europa.eu/yourvoice/consultations/links/index_en.htm

⁶ http://ec.europa.eu/energy/consultations/index_en.htm

⁷ http://ec.europa.eu/energy/infrastructure/consultations/20120607_non_tyndp_projects_en.htm

⁸ http://ec.europa.eu/energy/events/index_en.htm

⁹ http://ec.europa.eu/energy/events/20130529_stakeholder_regional_pci_lists_en.htm

¹⁰ http://ec.europa.eu/energy/infrastructure/events/20120717_energy_infrastructure_infoday_en.htm

¹¹ http://ec.europa.eu/energy/whatsnew/index_en.htm

¹² http://ec.europa.eu/energy/infrastructure/consultations/20120607_non_tyndp_projects_en.htm

¹³ <http://www.dcenr.gov.ie/Energy/Latest+News/Latest+News.htm>

¹⁴ Reply to question "iii" of the Ombudsman

¹⁵ http://europa.eu/rapid/press-release_IP-13-932_en.htm

¹⁶ http://europa.eu/rapid/press-release_MEMO-13-880_en.htm

¹⁷ Reply to question "iv" of the European Ombudsman

¹⁸ Reply to question "v" of the European Ombudsman

that the requested information for the specific projects E149-E156 and E291 had not been provided nor that the public consultation for the specific projects E149-E156 and E291 had been organised incorrectly.

(iii) Regarding the complainant's allegation that the Commission allegedly failed to "*conduct the public participation for Projects of Common Interest in accordance with European legislation*" the Commission would like to explain that the consultation process consisted of seven events intended for stakeholders:

- 23 May 2012 – 7 June 2012: open public consultation to identify projects (not included in the Ten Year Network Development Plan - TYNDP) as potential PCIs. Information about the consultation, including an online questionnaire, was published on the "*Public consultations*" website of DG Energy¹⁹.
- 20 June 2012 - 4 October 2012: open public consultation to obtain views of the public (through a detailed online questionnaire) on all projects proposed as potential PCIs. Information about the consultation was announced on the "*Your Voice in Europe*"²⁰ and "*Public consultations*"²¹ webpage of DG Energy.
- 17 July 2012: the "*Information Day on the process of identifying PCIs in energy infrastructure*" to provide the public with detailed information on the PCIs identification process and the ongoing public consultation. Information about the meeting was published on the "*Events*"²² webpage of DG Energy.
- 18 April 2013: the European Gas Regulatory Forum²³ (Madrid Forum) meeting to obtain views on the PCIs proposals in the gas sector. Information about the meeting was published on DG Energy's website²⁴.
- 16 May 2013: the Electricity Regulatory Forum²⁵ (Florence Forum) meeting to obtain views on the PCIs proposals in the electricity sector. Information about the meeting was published on DG Energy's website²⁶.
- June 2013: The draft regional lists of PCIs were submitted to the relevant environmental stakeholders and were later discussed at a dedicated Environmental Stakeholders meeting²⁷ held on 5 June 2013. Eleven different environmental organisations (including, World Wide Fund for Nature, European Environmental Bureau, and Bird-Life Europe) participated in this process.
- 3 July 2013 - 17 July 2013: the final written public consultation mainly with the environmental stakeholders.

Access to the consultation process was not subject to any limitations on the basis of the location, performed activities and any other stakeholders' characteristics. For example: (i) the target group for the open public consultation (held between 20 June and 4 October 2012)²⁸

¹⁹ http://ec.europa.eu/energy/infrastructure/consultations/20120607_non_tyndp_projects_en.htm

²⁰ http://ec.europa.eu/yourvoice/consultations/2012/index_en.htm

²¹ http://ec.europa.eu/energy/infrastructure/consultations/20120620_infrastructure_plan_en.htm

²² http://ec.europa.eu/energy/infrastructure/events/20120717_energy_infrastructure_infoday_en.htm

²³ National regulatory authorities, Member State governments, transmission system operators (TSO), gas suppliers and traders, consumers, network users, and gas exchanges are participants in the Madrid Forum.

²⁴ http://ec.europa.eu/energy/gas_electricity/gas/forum_gas_madrid_en.htm

²⁵ National regulatory authorities, Member State governments, TSOs, electricity supplier and traders, consumers, network users and power exchanges are participants in the Florence Forum.

²⁶ http://ec.europa.eu/energy/gas_electricity/electricity/forum_electricity_florence_en.htm .

²⁷ http://ec.europa.eu/energy/events/20130529_stakeholder_regional_pci_lists_en.htm

²⁸ http://ec.europa.eu/energy/infrastructure/consultations/20120620_infrastructure_plan_en.htm

was defined broadly and included: "*Public authorities, Member States authorities, private organisations, industry associations, SMEs, citizens, consumer organisations, trade unions, NGOs, environmental organisations, Notified Bodies, Consultancies, Workers Employers' federations, other relevant stakeholders and citizens.*", (ii) the participation in the Information Day²⁹ was free of charge, there were no predefined participants and the registration was carried out on a first come, first served basis.

Furthermore, the consultation process started at the earliest possible stage and it was held seventeen months prior to the adoption of the PCI Regulation. The open public consultation (between 20 June and 4 October 2012) lasted for fifteen weeks.

Identification of any specific target groups in Ireland and/or in other EU Member States for the purpose or carrying out the consultation on the PCI Regulation was not considered necessary, because the process was open to all stakeholders. Furthermore, the selection of specific target groups from among the total number of several hundred organisations active in the EU would (most likely) result in allegations about the unequal treatment of different stakeholders. Specific target groups concerned by a given PCI, however, are to be identified and consulted by project promoters at the stage of the project specific-consultation processes that are to be run at local and regional levels and whose positive outcome will be necessary for granting authorizations (by the national authorities) to build the infrastructure (Points 3 and 4 of Annex VI to the TEN-E Regulation).³⁰

The Commission also would like to explain that the consultation process was open to all stakeholders so that "*minority views in Ireland*" could also be voiced. Furthermore, "*the minority groups*" will still be able to express their views during the project specific-consultation processes since each PCI will have to undergo a complete permit granting process and it will have to be subject to a project-specific public consultation aimed at stakeholders likely to be directly affected by it, including landowners, citizens living in the vicinity of the project, and general public.³¹

(iv) Regarding the complainant's allegation that "*DG Energy failed to provide [in its reply to the complainant of 7 May 2013] any examples of how the population of the Midlands in Ireland were informed of the public consultation*" the Commission finds these claims ungrounded as the reply of DG Energy of 7 May 2013 provides examples on how the population in Ireland was informed of the public consultation. Page 2 of DG Energy' reply of 7 May 2013 states that: "*the call for public consultation was published on the official website of the European Commission and was announced on its single access point of public consultations "Your voice in Europe" web portal*³². *It provided the access of the public to an online questionnaire, as well as a postal mail address where comments and contributions could be submitted*". Furthermore, DG Energy's reply states that "*another communication tool used by the Commission was the organisation of an Information Day on the process of identifying Projects of Common Interest (PCI) in energy infrastructure in Brussels on 17 July 2012. This event gave interested parties the opportunity to find out more about the PCI identification process and to put questions to a range of expert panellists*³³" and that "*the consultations launched by the European Commission does not prejudice any future*

²⁹ http://ec.europa.eu/energy/infrastructure/events/20120717_energy_infrastructure_infoday_en.htm

³⁰ Reply to question "i" of the Ombudsman

³¹ Reply to question "ii" of the Ombudsman

³² http://ec.europa.eu/yourvoice/consultations/2012/index_en.htm

³³ http://ec.europa.eu/energy/infrastructure/events/20120717_energy_infrastructure_infoday_en.htm

consultations that will be carried out by the project promoter at project level [...] which requires public participation in decision-making".

The Commission's opinion regarding "Allegation 2"

The list of PCIs was adopted in the form of a delegated regulation and it was subject to the extensive consultations, including the consultations held by the regional groups, as required under point 5 of Annex III of the TEN-E Regulation.

The Commission is aware of the importance of providing the public (stakeholders and citizens) with information in their national languages, and it cannot agree with the allegation that it restricted the *"language of its website on the public consultation to English only"* and thus that it *"disenfranchised"* many EU citizens. As explained above, the information about public consultation on the PCI Regulation was published on the *"Your voice in Europe website"* that is the single access point for all public consultations launched by the EC. The information on that website is available in 23 EU languages³⁴. Consequently, all EU citizens and stakeholders were informed about the then ongoing public consultation on the PCI Regulation in their national languages. DG Energy's website that contained details of the ongoing consultation provided contact details of the service in charge of the consultation (both email and postal addresses) and thus any citizen or stakeholder interested in this consultation could have requested the Commission in his national language for information about any of the PCIs and the Commission would have provided such information in his national language.

Furthermore, the Commission would like to stress that Article 9(3) of the TEN-E Regulation and point 5 of its Annex VI impose obligations on project promoters to carry out a project-specific permit granting process including public consultations for every PCI included on the PCIs list. Consequently, before any decision will be made by project promoters and national authorities with regard to a given PCI (e.g. new electricity line), local communities and citizens living in a close vicinity of the project will receive from project promoters comprehensive information about that project in their national language(s) and will be able to communicate their views on it. National authorities in charge of authorising the construction of a given PCI will have to take due account of the results of this consultation when issuing a decision authorising the construction.

Finally, it is important to bear in mind that the translation service of the Commission, which has limited resources and increasing requests, has to give priority, for legal reasons, to translating legal acts or proposals for legal acts, which is not the case of consultation documents.

The Commission's opinion regarding "Claim 1"

The Commission disclosed to stakeholders all relevant information on PCIs already at the stage of the open public consultation (held between 20 June and 4 October 2012). The Commission published on its website³⁵ and on the *'Your voice in Europe'* website³⁶ the lists

³⁴ Example in Polish language: http://ec.europa.eu/yourvoice/consultations/2012/index_pl.htm

³⁵ http://ec.europa.eu/energy/infrastructure/consultations/20120620_infrastructure_plan_en.htm

³⁶ http://ec.europa.eu/yourvoice/consultations/index_en.htm

with all PCI candidates (in the electricity³⁷, gas³⁸ and oil³⁹ sectors) which contained the following details: countries concerned, name, description, planned year of completion, project promoter(s) and reference number in the Ten Year Network Development Plan (TYNDP).

Due to the different degrees of maturity of the proposed PCIs, the Commission did not have at the stage of establishing the PCI lists *detailed* information, such as *precise location, routing and technology of the projects* and their *impact on environment*. Such information will become available only at the permit granting stage and it is to be disclosed to the public within the project-specific public consultation.

Contact details of the Commission service in charge of PCIs (including a postal address and an e-mail address) and names of project promoters in charge of potential PCIs have been published on the website since June 2012. Therefore, members of the public interested in a given project had the possibility of requesting additional information from project promoters or the Commission. In 2012 and 2013, the Commission received and treated (according to Regulation 1049/2001) requests for access to information related to PCIs lists.

The Commission's opinion regarding "Claim 2"

As explained above, the Commission is aware of the importance of providing the public (stakeholders and citizens) with information in their national languages. The Commission has informed the public through "*Your voice in Europe website*" about the then ongoing consultation on the PCI Regulation in all the EU official languages and it has provided means for stakeholders and citizens to request further information in their national languages. In addition, uploading all information or even summaries on the website upfront in all the EU languages is challenging due to the limited resources of the translation service of the Commission which has to give priority, for legal reasons, to translating legal acts or proposals for legal acts, which is not the case of consultation documents.

IV. CONCLUSIONS

In view of the above considerations, the Commission considers that it has complied with the Commission's Communication on public consultation and the Aarhus Regulation.

It trusts that the above explanations will help the complainant acquire a better understanding of the preparatory and adoption processes of the PCI Regulation.

In any event, should the complainant wish to be given further explanation in this regard, the Commission is willing to meet him in Brussels or organise a conference call in order to be able to address all his outstanding questions and concerns.

³⁷ http://ec.europa.eu/energy/infrastructure/consultations/doc/pci_list_electricity.pdf

³⁸ http://ec.europa.eu/energy/infrastructure/consultations/doc/pci_list_gas.pdf

³⁹ http://ec.europa.eu/energy/infrastructure/consultations/doc/pci_list_oil.pdf