

CEE Bankwatch Network (the Applicant)

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To: Ms Emily O'Reilly, EU Ombudsman

16/2/2021

Complaint against the European Commission regarding the sustainability assessment of the Energy Community PECIs and PMIs list

1. We are complaining against the European Commission (EC), acting as the representative of the European Union (EU) under the Energy Community Treaty, concerning its role regarding the sustainability assessment of gas projects on the current List of Projects of Energy Community interest (hereinafter: PECIs) and Projects of Mutual Interest (hereinafter: PMIs), that was published on 14 January 2021<sup>1</sup>.
2. The complaint is related to the Decision in case 1991/2019/KR<sup>2</sup> on the European Commission's action concerning the sustainability assessment for gas projects on the current List of the Projects of the Common Interest.
3. We believe that the EC failed:
  - a) to require a sound sustainability assessment of the gas projects on the current PECIs and PMIs list, despite several pleas from the Applicant,
  - b) to take into account the EU Ombudsman's Decision in case 1991/2019/KR, despite the Decision being published a month before the PECIs and PMIs adoption,
  - c) to provide a satisfactory reply to the Applicant.
4. PECIs and PMIs are the Energy Community's equivalent of the EU Projects of Common Interest (hereinafter: PCI). PECIs and PMIs are assessed and adopted in a similar manner to the projects on the PCIs list. Projects included on PECIs and PMIs

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<sup>1</sup> "Ministerial Council Adopts Measures Against Bosnia And Herzegovina And List Of Priority Infrastructure Projects". 2021. Energy-Community.Org. <https://www.energy-community.org/news/Energy-Community-News/2021/01/14.html>.

<sup>2</sup> EU Ombudsman's decision 1991/2019/KR of 17 November 2020

list can benefit from accelerated planning and permit procedures and are subject to financial incentives.

5. The EC has a significant role in the PECIs and PMIs adoption process. It is the coordinator of (all) the Energy Community activities. The EC has to cast an affirmative vote in order for the PECIs and PMIs lists to be adopted.
6. Scientific evidence proves fossil gas is a significant driver of global warming and climate change – not just due to the CO<sub>2</sub> emissions produced during combustion, but also because of the methane leaks that occur during extraction and transport. New gas infrastructure has a significant economic lifespan (usually between 30 and 50 years) that goes way beyond the point when the world would need to fully decarbonize.
7. We will lay out our case that the sustainability of the 12 approved gas projects (4 PECIs and 8 PMIs), estimated to be worth at least EUR 2 billion<sup>3</sup>, that enjoy streamlined permitting and potential financing via EU facilities, was based on the same methodology that was abandoned during the PCIs process due to its insufficiencies. Having reviewed the publicly available information, we have reason to believe that the sustainability indicator used to assess the sustainability benefits of the gas projects on the PECIs and PMIs list is almost the same as the one used by the European Network of Transmission System Operators for Gas (ENTSOG) in its Ten-Year Network Development Plan (TYNDP) which preceded the 4th PCI list selection.
8. We underline that the European Commission, Agency for the Cooperation of Energy Regulators (ACER), regional group for gas<sup>4</sup> and EU Ombudsman, considered the sustainability assessment provided by ENTSOG, which assigned a positive sustainability benefit to each and every candidate gas project for the 4th PCI list in 2019, suboptimal due to an inadequate methodology. The methodology could not even theoretically account for negative sustainability impacts of proposed projects. For this reason, the outcomes of ENTSOG's calculated sustainability benefits in the individual project-specific (PS) CBAs were disregarded by the Regional groups. They did not play a role in the ranking of candidate PCIs.
9. Although we welcome the fact that the EC recognised the flaws in the 4th PCI selection process and the need to update the indicators used for assessing the sustainability of projects that are candidates for the 5th PCI list in 2021, in 2020 we urged the EC not to adopt the PECIs and PMIs list without the projects' sustainability being properly assessed first and to reassess all fossil gas projects on the list.

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<sup>3</sup> Bankwatch estimate according to the CAPEX data from the Study “Assessment for the identification of candidate PEI and PMI projects (Final Report)”, REKK, DNV GL, June, 2020. CAPEX costs are not available for 2 gas projects (SCP Georgian Offtake Expansion for EU LNG Swap and South Caucasus Pipeline Further Expansion - SCPFX) and they are therefore not included in the estimate.

<sup>4</sup> Regional groups for gas are composed of representatives of the Member States, national regulatory authorities, TSOs, as well as the Commission, the Agency and the ENTSO for Gas.

## Background to the Complaint

10. The Energy Community is based on the Energy Community Treaty which brings together the EU and its neighbours (Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Georgia, Moldova, Montenegro, Serbia and Ukraine) to create an integrated pan-European energy market. The key objective of the Energy Community is to extend the EU internal energy market rules and principles to Contracting Parties through a legally binding framework. The method for integration is based on the adoption by the Energy Community of the EU energy acquis, with some adaptations, which is then transposed by the Contracting Parties in their domestic legal order and implemented. The Commission represents the European Union in this body, as the European Union is a Party to the Energy Community Treaty.
11. PECIs and PMIs are key cross border infrastructure projects that link the energy systems among Contracting Parties and between Contracting Parties and EU Member States. PECIs and PMIs, an Energy Community's equivalent of the PCIs, are assessed and adopted in the similar manner to the projects on the PCIs list. The adapted Regulation (EU) 347/2013 on guidelines for trans-European energy infrastructure (hereinafter: the adapted TEN-E Regulation) serves as a legal framework for identifying, planning, and implementing PECIs and PMIs in electricity and gas, while ENTSOG cost-benefit methodology<sup>5</sup>, that was used in the 4th PCI process, serves as a basis for the project assessment.
12. The call for the 3rd PECIs and PMIs selection procedure was launched in February 2020. The Energy Community Secretariat contracted the consortium of REKK and DNV GL (hereinafter: Consultant) for the assessment of candidate PECIs and candidate PMIs. A public consultation was held in April 2020 on all submitted projects. The draft preliminary list of PECIs was agreed by Gas-Oil Working Group at technical-level meeting. Following the positive opinion of the Energy Community Regulatory Board (ECRB) on the consistent application of the assessment criteria and the cost/benefit analysis, the proposed list of priority projects was discussed in the 56th meeting of the Energy Community Permanent High Level Group (PHLG) on 16 July 2020 after which PHLG tasked EC to initiate the decision to adopt the lists<sup>6</sup>. The lists were finalised and endorsed by the PHLG on 16 December 2020 and the formal decision by the Ministerial Council of the Energy Community followed<sup>7</sup>. The Decision and Recommendation were published on 14 January 2021.

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<sup>5</sup> 2nd ENTSOG methodology for cost-benefit analysis of gas infrastructure projects, ENTSOG, February 2019

<sup>6</sup> Conclusion of this meeting state: "...(20) The PHLG took note of the preliminary list of Projects of Energy Community Interest (PECI) and Projects of Mutual Interest (PMI) proposed by the Electricity, Gas and Oil Groups, and invited the European Commission to start the procedure for the adoption of a Ministerial Council Decision on the List of Projects of Energy Community Interest, and the Recommendation on the List of Projects of Mutual Interest based on the proposal presented by the Secretariat." , available at <https://www.energy-community.org/events/2020/06/PHLG.html>.

<sup>7</sup> The Ministerial Council adopted the current PECIs and PMIs lists on 29 December 2020 by the Decision of the Ministerial Council of the Energy Community D/2020/04/MC-EnC on the establishment of the list of projects of Energy Community interest and the Recommendation of the Ministerial Council of the Energy Community R/2020/01/MC-EnC on Projects of mutual interest between Contracting Parties and Member States of the

13. Following a complaint from Andy Gheorghiu, on behalf of environmental NGO Food & Water Europe, concerning the sustainability assessment of gas projects on 4th PCI list, EU Ombudsman opened a case against the EC in February 2020. In the course of the inquiry, the Ombudsman sent detailed questions to the EC. The EC, in its comments on a request for information from the EU Ombudsman in case 1991/2019/KR8, responded that the ENTSOs sustainability indicator did not play part of the ranking methodology for candidate projects for the 4th PCI list "because the Regional groups in April to May 2019 observed that the ENTSO calculation of the sustainability benefits include significant limitations: the key underlying assumption in the CBA was that all gas projects would automatically show only positive benefits towards CO2 mitigation, while the methodology excludes any negative impacts (such as the possible increase in CO2 emission)" and that "the use of the proposed methodology would have led to more gas projects having a positive assessment and becoming PCIs." Furthermore, in its response the EC noted that the "lack of reliable, accurate and consistent project-specific data did not allow for a non-discriminative assessment of that criterion for all candidate projects."
14. We addressed the issue of the PECIs' and PMIs' sustainability assessment for the first time during the public consultations in April 2020. Afterwards, we sent 3 written requests to the EC (September, November and December) and Energy Community Secretariat (December) and had separate meetings with the EC and Energy Community Secretariat (in November and December respectively). We have received 2 written responses from the EC (in November, following our request from September, and in December, following the meeting in November).

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European Union, available at <https://www.energy-community.org/regionalinitiatives/infrastructure/selection/2020.html>

<sup>8</sup> Comments of the Commission on a request for information from the European Ombudsman - Complaint 1991/2019/KR on the alleged failure to carry out a sustainability/climate assessment for all existing fossil fuel projects on the list of Projects of Common Interest (PCIs)

## Arguments

15. The EC failed to secure a sound sustainability assessment of gas energy infrastructure, even though the issues related to the lack of consistent data and the fallacy of the methodology for the sustainability assessment and the need for improvement were already recognised in the PCIs process at least 12 to 18 months before the PECIs and PMIs sustainability assessment and final decision respectively.
16. This argument is twofold: Consultants used a similar methodology for the sustainability assessment of the gas infrastructure projects for the PECIs and PMIs list to the one that was discarded from the 4th PCIs process; the EC, even though aware of the issues with the sustainability assessment methodology from the 4th PCI process, failed to require the improvement of the methodology so that a ranking (and possible screening out) of candidate gas PECIs and PMIs based on their sustainability would have been possible.
17. Furthermore, we argue that although the selection of PECIs and PMIs can be based on other eligibility criteria than sustainability (the same as in the PCIs process), due consideration must be given to sustainability and no project should proceed if there is a lack of or if there is an inadequate sustainability assessment.
18. Finally, we will explain why we consider responses that we have received from the EC not to be satisfactory.

### *The EC failed to require a sound sustainability assessment of gas PECIs and PMIs*

19. The criteria applied for assessing gas PECIs are described in Article 4 and Annex III of the TEN-E Regulation as adapted for the purposes of the Energy Community Treaty<sup>9</sup>. In line with Article 4(2) (b) *"for gas projects... the project is to contribute significantly to at least one of the following specific criteria: (i) sustainability, (ii) market integration, (iii) security of supply, or (iv) competition."* Article 4(2)(b)(iv) defines that a project contributes to sustainability *"through reducing emissions, supporting intermittent renewable generation and enhancing deployment of renewable gas"*. Annex III(3)(d)<sup>10</sup> provides further guidance that the sustainability for gas projects *"shall be measured as the contribution of a project to reduce emissions, to support the back-up of renewable electricity generation or power-to-gas and biogas transportation, taking into account expected changes in climatic conditions"*.

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<sup>9</sup> The (only) difference to the EU TEN-E Regulation is the article enumeration.

<sup>10</sup> In line with Article 4(3): *"For projects falling under the energy infrastructure categories set out in Annex I.1 to 3, the criteria listed in this Article shall be assessed in accordance with the indicators set out in Annex III.2 to 5."*

20. A consortium of consultants was responsible for the assessment of candidate PECIs and PMIs<sup>11</sup>. The assessment methodology<sup>12</sup> and results were published in June 2020<sup>13</sup> (hereinafter: the Consortium's report).
21. The sustainability indicator that was used in the PECIs and PMIs assessment is explained in the following sections of the Consortium's report: Assessed benefit categories (4.1.3.1.), Variation of CO<sub>2</sub> emissions (4.1.3.1.4.), and the Modelling the CO<sub>2</sub> emission effect of increased gas consumption (Annex I.).

**"4.1.3.1 Assessed benefit categories:**

According to the guidelines on CBA methodology and the Regulation, the following factors had to be taken into account: ... Sustainability which includes contribution to reduce emission (CO<sub>2</sub> savings).

**4.1.3.1.4 Variation of CO<sub>2</sub> emissions:**

Within the CBA the sustainability benefits are estimated by the impact of projects in changing greenhouse gas emissions. In case of gas infrastructure projects, the project related environmental benefit is estimated by multiplying the corresponding change in the countries' CO<sub>2</sub> emissions with an exogenous carbon value. For the calculation a simplified assumption is used in that the modelled change in gas demand changes the average primary energy mix of the respective countries but without crowding out renewables."

**"Annex I. MODELLING THE CO<sub>2</sub> EMISSION EFFECT OF INCREASED GAS CONSUMPTION**

It is argued often that increased gas use in an economy helps to lower CO<sub>2</sub> emissions, since natural gas is a "cleaner" fuel compared to coal, oil and other fossil fuels. To quantify this effect, we consulted the annual energy statistics of each affected Contracting Party of the Energy Community and Member State of the EU. Energy statistics offer us a detailed primary energy use of each economy. To assess the potential CO<sub>2</sub> savings due to increased gas consumption we use the following logic:

- Energy consumption of transport and non-energy use of fuels is not considered

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<sup>11</sup> The task of the Consultant was as follows: "To use REKK electricity and gas market models and use these in the cost-benefit assessment of PEI/PMI candidates; To develop a multi-criteria assessment methodology taking into account the ENTSO-E and ENTSG methodology for cost benefit analysis where applicable; To assess the candidate projects for electricity, gas and oil infrastructure, as well as for smart grids, in order to be able to identify those which bring the greatest net benefits", Consultant's report, p. 13

<sup>12</sup> For the assessment methodology the Consortium developed a methodology building on "previous assessments of infrastructure projects by the same Consortium on behalf of the Energy Community in 2013, 2016 and 2018", and taking into account the methodology applied for the latest selection of EU Projects of Common Interest (PCIs) and methodologies for the assessment of network infrastructure projects developed by ENTSO-E and ENTSG", Ibid, p. 7.

<sup>13</sup> Assessment for the identification of candidate PEI and PMI projects (Final Report), REKK, DNV GL, June, 2020.

- *The country's energy consumption is kept constant*
- *Additional 1 TWh of gas consumption crowds out other fossil fuels in their ratio in the primary energy mix*

*Although this calculation is simplistic, it offers robust results on the 2009-2014 timeframe for the analysed countries, ie. the changes in emission are constant on the analysed time period. To ensure compatibility of the modelling, we applied the emission factors used in the EEMM model.*

*For all countries analysed, the more gas consumption, we see lower emissions. One caveat must be raised: in our methodology, gas does not crowd out renewable generation, only fossil fuels. This might not be the reality, as in countries with high hydro penetration increased gas-fired generation may replace hydropower, thus the effects can be positive as well (ie. increased gas consumption results in increased CO2 emissions).*

22. The sustainability indicator<sup>14</sup>, that was used to calculate sustainability benefits of gas projects on 4<sup>th</sup> PCI list, is defined in the 2nd ENTSOG methodology for cost-benefit analysis of gas infrastructure projects (hereinafter: CBA 2.0). As was noted in the EU Ombudsman decision, ENTSOG's calculation of the sustainability benefits includes significant limitations: the key underlying assumption in the CBA was that all gas projects would automatically show only positive benefits towards CO2 mitigation. Simultaneously, the methodology excludes any negative impact (such as a possible increase in CO2 emissions).

**"Reduction of CO2 emissions"<sup>15</sup>**

*This indicator measures the benefits related to CO2 savings of the following types of projects:*

- *A project allowing to lift isolation of areas not previously connected to gas, or allowing further use of gas;*
- *A project allowing a switch from coal (or oil) to gas for power generation;*
- *A project replacing or modernising an existing infrastructure in order to increase its efficiency.*

*The benefits stem from the reduction of CO2 emissions enabled by the implementation of a project allowing the substitution of higher carbon content fuels."*

ENTSOG's formula for monetisation of CO2 emission savings is as follows:

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<sup>14</sup> For the purpose of clarity CBA 2.0 defines 2 indicators related to sustainability: CO2 emission savings (quantitative indicator, monetised) and environmental impacts (qualitative indicator, with associated costs). This complaint concerns only the CO2 emission savings indicator.

<sup>15</sup> CBA 2.0, p. 46-47

Benefit from replacement of higher carbon content fuels =

$$= (Q_{\text{fuel}1} * \text{factor}_{\text{fuel}1} + \dots + Q_{\text{fuel}n} * \text{factor}_{\text{fuel}n} - Q_{\text{gas}} * \text{factor}_{\text{gas}}) * \text{CO}_2 \text{ value}$$

where

- > Q is the quantity of fuel<sub>i</sub> in energy terms (such as GWh). All quantities need to be expressed in the same units;
- > fuel<sub>i=1 to n</sub> is any alternative fuel replacement by gas driven by the project;
- > factor<sub>fuel</sub> is the CO<sub>2</sub> emission factor of the specific replaced fuel;
- > factor<sub>gas</sub> is the CO<sub>2</sub> emission factor of gas;
- > CO<sub>2</sub> value (such as EUR/ton) as further described below.

Further explanation of the ENTSOG sustainability indicator rejected during the 4<sup>th</sup> PCI process is provided in the study *Measuring the contribution of gas infrastructure projects to sustainability as defined in the TEN-E Regulation*<sup>16</sup>. The EC commissioned the study to determine the relevant data collection and the provision of analytical methodologies for analysing the sustainability of candidate projects for the forthcoming 5<sup>th</sup> PCI list.

### **"1.3. Sustainability in ENTSOG's Cost-Benefit Analysis 2.0**

*... The objective of the "CO2 savings" indicator is to quantify and monetise the project's impacts on CO2 emissions. The rationale is that a given gas infrastructure project can enable gas to substitute more carbon-intensive fuels;*

*... The key steps of the ENTSOG methodology to assess the effect of infrastructure projects between two consecutive years of the modelled scenarios (e.g. 2020 to 2025, 2025 to 2030) are the following:*

*Step 1: Assessment of evolution of the use of gas by sector during the period*

*Step 2: Computation of CO2 savings from fuel switching per sector*

*Step 3: Evaluation of CO2 savings in each country*

*Step 4: Allocation of CO2 savings to projects in the country."*

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<sup>16</sup> Measuring the contribution of gas infrastructure projects to sustainability as defined in the TEN-E Regulation, Trinomics and Artelys, October 2020, available at [https://ec.europa.eu/energy/studies\\_main/final\\_studies/measuring-contribution-gas-infrastructure-projects-sustainability-defined\\_en](https://ec.europa.eu/energy/studies_main/final_studies/measuring-contribution-gas-infrastructure-projects-sustainability-defined_en)



23. When compared, these 2 sustainability methodologies (para. 20. and 21.) appear almost the same. The sustainability methodology used by the Consultants to assess the PECIs and PMIs list appears to be very similar to the one used by ENTSOG in its TYNDP, during the so-called project-specific cost-benefit analysis (PS CBA).
24. The sustainability assessment methodology in the Consultants' report can be described as an attempt to quantify the sustainability benefit from CO2 emissions reduction and a fuel switch with a specific assumption that gas will substitute more polluting fuels in the country's primary energy mix which is the same as in the ENTSOG methodology for the purpose of the 4th PCI list. The methodology's key assumption is that the additional gas consumption replaces consumption of more carbon-intensive fuels such as oil and coal, up to the volume of oil and coal present in the energy mix. A further key assumption is that there is no rise in energy consumption, so gas would not create additional emissions<sup>17</sup>.
25. As was noted in the EU Ombudsman decision in case 1991/2019/KR, ENTSOG's calculation of the sustainability benefits includes significant limitations: the key underlying assumption in the CBA was that all gas projects would automatically show only positive benefits towards CO2 mitigation. Simultaneously, the methodology excludes any negative impact (such as a possible increase in CO2 emissions). Similarly, the Consultants reported that the PECIs and PMIs assessment results were overestimated due to constraints of the methodology, with a substantial part of the benefits for some projects related to CO2 emission reduction:

*"For all countries analysed, the more gas consumption, we see lower emissions. One caveat must be raised: in our methodology, gas does not crowd out renewable generation, only fossil fuels. This might not be the reality, as in countries with high hydro penetration increased gas-fired generation may replace hydropower, thus the effects can be positive as well (ie. increased gas consumption results in increased CO2 emissions)."<sup>18</sup>*

26. According to our understanding, the only real difference between the sustainability methodologies applied in these processes are the scenarios for future gas demand against which individual gas projects are weighted<sup>19</sup>. We do not believe that this had any effect on the sustainability methodology's fallacies that are summarized above.
27. The consequence of EC inaction regarding the sustainability indicator is the likely displacement of renewables from the national energy mix in these countries. In the assessment leading to the adoption of the list, there was an unproven assumption that all the gas from the projects would replace fossil fuels (mainly coal), which the authors also admitted may not be the case<sup>20</sup>. We have looked more into the issue of renewables displacement by certain proposed gas PECIs and PMIs. There has not

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<sup>17</sup> Consultant's report, p. 119

<sup>18</sup> Ibid, p. 121.

<sup>19</sup> The PECIs and PMIs assessment applied two scenarios for the electricity and gas modelling, using the PRIMES EUCO3235.5 (used as a basis for the Green scenario) scenario data as one option and the ENTSOGs 2020 TYNDP National Trend Scenario (used as a basis for the BAU scenario) as the other. The results of the scenarios were weighted 50%-50% in the scoring of projects.

<sup>20</sup> Consultant's report, p. 120

been any satisfactory project-level GHG calculation carried out for any of these projects, so we are not able to come up with specific data at this time, but we would like to highlight some projects where we find the displacement of renewables especially likely (please see Annex II.).

28. Furthermore, the Consultants' report for the PECl and PMI list does not cover other sustainability impacts, particularly the effect of the project on methane emissions<sup>21</sup>, on non-GHG emissions and on the integration of intermittent renewable electricity generation or synthetic gas. There was no analysis of whether the gas projects would, in fact, back up renewable electricity generation, power-to-gas or biogas transportation in accordance with Annex III (3)(d) of the adapted TEN-E Regulation.
29. We consider the EC responsible for the issue in question because the EU, represented by the EC, is party to the Treaty establishing the Energy Community (hereinafter: Energy Community Treaty), with a significant role in the PECl and PMIs list selection process. According to Article 4 of the Energy Community Treaty the EC acts as the coordinator of (all) the Energy Community activities. According to Article 83 of the Energy Community Treaty taken together with Article 3(4) of the adapted TEN-E Regulation, the EU's affirmative vote is necessary for the adoption of the PECl and PMIs list.
30. Furthermore, legal obligations of the EU regarding the sustainability, environment protection, and policy consistency, arising from its international agreement commitments and EU primary law, create a clear imperative for the EC regarding its role in the Energy Community and in the PECl and PMIs process. The EU is a party to the Paris Agreement and has repeatedly committed to making the emission reductions and facilitating the clean energy investment required by that Agreement. In accordance with Article 216(2) of the TFEU, international agreements commitments are binding upon the European Union's institutions. Article 3 of the TEU provides that the internal market shall "*work for the sustainable development of Europe*" and shall *inter alia* contribute to a "*high level of protection and improvement of the quality of the environment*". Similarly, under Article 11 of the TFEU and the Article 37 of the CFREU, "*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.*" Article 191 of the TFEU further details the EU's environmental policy, including in particular the precautionary principle. Under Article 194 of the TFEU, the "*need to preserve and improve the environment*" is an overarching principle of the Union energy policy. It is listed above the goals relating to the functioning of the energy market, security of supply and energy efficiency and the promotion of interconnections. According to the Article 7 of the TFEU the EU needs "*to ensure consistency between its policies and activities, taking all of its objectives into account*".
31. Therefore, having reviewed the publicly available information, we have reason to believe that the sustainability of gas projects on the PECl and PMIs list has not been

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<sup>21</sup> Fugitive methane emissions during the extraction and transportation of gas are crucial for estimating climate impacts, as methane is a much more powerful greenhouse gas than CO<sub>2</sub> and thus if methane leaks reach a certain percentage, gas becomes more damaging to the climate than coal.

satisfactorily assessed, as is required in Article 4(2)(b)(iv) and Annex III.3.d. of the adapted TEN-E Regulation and that this may well result in the displacement of renewable energy rather than fossil fuels, with the EC being responsible for the issue in question.

*Appropriate assessment of the projects' sustainability*

32. Besides, we would like to emphasise that although the selection of PECIs and PMIs, can be based on other eligibility criteria than sustainability, due consideration must be given to sustainability. No project should proceed if there is a lack of appropriate sustainability assessment for individual projects. We build this argument on the wording of the Article 4 of the adapted TEN-E regulation, the recent jurisprudence by the CJEU, and taking into account the PECIs' and PMIs' Priority status.
33. According to Article 4(4)(a) *"when assessing projects, each Group shall furthermore give due consideration to the urgency of each proposed project in order to meet the Union energy policy targets of market integration and competition, sustainability and security of supply."* We consider this obligation as a separate one to Article 4(2)(b) of the adapted TEN-E regulation, which requires that gas projects have to contribute significantly to one of the 4 criteria. While Article 4(2)(b) can be read as a threshold of significance that individual projects need to achieve in order to be selected, Article 4(4)(a) gives guidance on the quality of the assessment that needs to be met, i.e. no project can advance without an appropriate assessment of the criteria, including sustainability.
34. This has recently been reconfirmed by the CJEU (Case C-594/18 P Austria v Commission) which ruled that the Commission needs to ensure that its State aid decisions only authorise projects that comply with EU environmental law. Although the approval of PCI/PECI lists is not a State aid decision per se, their approval and the fact that Article 13 of the adapted TEN-E Regulation allows incentives to be provided for such projects means a presumption that they meet an objective of common interest in State aid assessments.
35. According to the Article 7(7) of the adapted TEN-E regulation<sup>22</sup> PECIs are considered as being of public interest from the energy policy perspective, and may be considered as being of overriding public interest from the environmental perspective. For this reason, the assessment in the PECIs and PMIs adoption process needs to be appropriate to allow assessment of whether these projects really meet the public interest criteria.

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<sup>22</sup> *"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, to the extent applicable to a Contracting Party under bilateral arrangements with the European Union, projects of Energy Community 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 EC failed to give a satisfactory reply to the Applicant*

36. As was mentioned earlier in the complaint, during the course of the adoption of the PECIs and PMI list, we received 2 written responses from the EC regarding the sustainability methodology issues. In the first written response (dated 12 November 2020) the EC responded that they *“insist on the fact that a long term cost-benefit analysis has been prepared, including the impact on GHG emissions for all of them and only those with a positive ratio could be selected.”* In the second response (dated 23 December 2020) the EC wrote that the sustainability assessment *“while being similar to being similar to the ENTSO-G assessment of projects in the EU, the Energy Community differs in some aspects”,* among others because it is a dynamic market simulation, and that regarding the renewables displacement *“that as CO2 emissions are priced and the model allows for fuels substations<sup>23</sup>, there is de facto no possibility for gas projects crowding out renewable power generation.”<sup>24</sup>* Both answers see *“gas projects as a part of the energy transition for the Contracting parties.”*
37. In both its answers, and at the online meeting we had with the representatives of DG Energy in November 2020, the EC failed to explain how the sustainability assessment used in the PEI/PMIs process differs from the one which was discarded from the 4th PCI process. Also, the EC’s answer regarding the renewables displacement differs from the one given by Consultants who on other hand pointed out the possibility for the displacement of renewables because of the particular national energy mix. Therefore, we do not consider the EC’s reply satisfactory.

Final remarks

38. The sustainability of the 12 approved gas projects (4 PECIs and 8 PMIs), estimated worth at least EUR 2 billion, that enjoy streamlined permitting and potential financing via EU facilities, was based on the same methodology that was abandoned during the EU’s 4th PCIs process.
39. As a result, there is an open door for an influx of gas infrastructure projects financed by EU funds in EU neighbouring countries that are not connected to the international gas network (Albania, Montenegro, Kosovo) or are only partly connected (North Macedonia and Bosnia and Herzegovina). Greenlighting these projects now will undermine any efforts to decarbonise the energy sectors of these countries by 2050. There is a real risk of locked-in investments and stranded gas infrastructure for the already depleted financial capacities of the Energy Community countries. Also, new gas infrastructure may well result in the displacement of renewable energy rather than more polluting fossil fuels.
40. According to ACER, the absence of a sound assessment of the (PCIs) gas projects’ contribution to sustainability leads to great uncertainty and doubts about the viability

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<sup>23</sup> We assume this was meant to say “substitutions”.

<sup>24</sup> See Annex II for our response to this.

(or even the need) for the projects in the long run. In the EU discussions regarding the Trans-European Energy Networks Regulation ('TEN-E') revision, many stakeholders and ACER/CEER have stressed the importance of ensuring that sustainability is sufficiently taken into account for new gas infrastructure projects.

41. The Green Deal emphasises that the power sector must be based largely on renewable sources, complemented by the rapid phasing out of coal and gas decarbonisation. Making a "Green Deal" only at home would prove counterproductive for the EU – neither global carbon emissions would be significantly affected, nor would the economic competitiveness of the EU be protected. Moreover, several of the countries in question plan to join the EU. Exporting the European Green Deal abroad should be the number one diplomatic goal of the EU if it is serious about affecting global carbon emissions.
42. We believe that any new PECIs and PMIs cycle needs to be postponed until the revised TEN-E Regulation is adopted at the Energy Community level with an upgraded methodology.
43. Furthermore, regarding the current PECIs and PMIs list, we propose for EC to initiate a process of removal of the 12 gas projects on the grounds of lack of sound sustainability assessment. According to the Article 5(8) of the adapted TEN-E Regulation, projects that do not comply with Energy Community law can be removed from the Energy Community list<sup>25</sup>.

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<sup>25</sup> "A project of Energy Community interest may be removed from the Energy Community 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 Energy Community law."

## Annex I. – List of gas PECIs and PMIs

### PECIs

#	Project name	Cluster
Gas_13	Albania-Kosovo Gas Pipeline - ALKOGAP	Supplying competing 'cluster' Kosovo projects
Gas_26	North Macedonia–Kosovo Interconnector	Supplying competing 'cluster' Kosovo projects
Gas_11	Interconnector Serbia-North Macedonia	Supplying North Macedonia competing projects' cluster
Gas_09	Interconnector Bulgaria-Serbia (PCI) as a competing project with TurkStream expansion in Serbia (Gastrans project)	N/A

### PMIs

#	Project name	Cluster
Gas_29	SCP Georgian Offtake Expansion for EU LNG Swap	N/A
Gas_10	Gas Interconnector Serbia-Croatia (Phase I)	N/A
Gas_28	Trans-Anatolian Pipeline Expansion -TANAPX	Southern Gas Corridor Expansion-TANAPX-SCPFY-IAP
Gas_22	South Caucasus Pipeline Further Expansion - SCPFY	Southern Gas Corridor Expansion-TANAPX-SCPFY-IAP
Gas_16	Ionian Adriatic Pipeline - IAP	Southern Gas Corridor Expansion-TANAPX-SCPFY-IAP
Gas_4b	Interconnector Greece-North Macedonia	Supplying North Macedonia competing projects' cluster
Gas_01	Interconnector Bosnia and Herzegovina - Croatia North	Supplying Bosnia and Herzegovina competing projects' cluster
Gas_03	Interconnector Bosnia and Herzegovina - Croatia South	Supplying Bosnia and Herzegovina competing projects' cluster

## Annex II. – Fossil gas displaces renewables

We have also looked more into the issue of renewables displacement by certain proposed gas PECIs and PMIs. As we mentioned before in the complaint, there has not been any satisfactory project-level GHG calculation carried out for any of these projects so we are not able to come up with specific data at this time, but we would like to highlight some projects where we find the displacement of renewables especially likely.

The Consultant's report agrees this might be an issue<sup>26</sup>:

*"For all countries analysed, the more gas consumption, we see lower emissions. One caveat must be raised: in our methodology, gas does not crowd out renewable generation, only fossil fuels. This might not be the reality, as in countries with high hydro penetration increased gas-fired generation may replace hydropower, thus the effects can be positive as well (ie. increased gas consumption results in increased CO2 emissions)."<sup>27</sup>*

In the tables on p.94 and 95 (BAU scenario and Green scenario), the issue of overestimating the benefits of switching to gas was highlighted in relation to some specific projects that were later chosen as PECIs or PMIs, namely:

*Gas\_13 Albania-Kosovo Gas Pipeline – ALKOGAP – gasification benefits overestimated*

*Gas\_16 IAP – gasification benefits overestimated*

*Gas\_26 MK-KO\* – gasification benefits overestimated*

No explanation is given of what these overestimated benefits mean in reality.

Although the EC, in its answer of 23 December 2020 stated that it is de facto impossible for gas from the PECIs or PMI projects to displace renewables because of the inclusion of a carbon price in the assessment, this does not correspond to the situation on the ground, as the countries are not yet part of the EU Emissions Trading Scheme. Moreover, a carbon price would in reality only apply to larger facilities, so would not be relevant eg. in household heating, where gas may easily displace existing biomass or (fossil or renewable) electricity use.

### **Ionian-Adriatic Pipeline (IAP)**

The Ionian-Adriatic Pipeline is, to the best of our knowledge, the only project on the proposed PMI-PECI list for which a feasibility study is publicly available<sup>28</sup>. The feasibility study includes an attempt to quantify displacement of different fuels.

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<sup>26</sup> Consultant's report, p. 120

<sup>27</sup> It is clear that this is the case for Albania, which currently generates all of its domestic electricity from renewable energy but for which a reduction in GHG is foreseen in the REKK study. This appears to be due to the fact that Table 45 includes the Vlora oil-fired power plant, which in reality does not work due to technical problems.

<sup>28</sup> [https://www.eca-uk.com/wp-content/uploads/2018/05/ECA-report\\_IAP\\_feasibility\\_2018.pdf](https://www.eca-uk.com/wp-content/uploads/2018/05/ECA-report_IAP_feasibility_2018.pdf)

For the power sector, representing an estimated 17% of throughput in the base case, it was assumed that the gas would only displace coal. Given the current electricity mix in Croatia, Bosnia and Herzegovina, Montenegro and Albania, we find this highly unlikely, as Albania, Montenegro and Croatia all generate more than 40 percent of their electricity from hydropower most years - 100 percent in the case of Albania - while hydropower represents an average of about a third of generation in BIH. So at least some of the gas would displace hydropower, not coal, in the power sector.

For the non-power sector (62% of throughput<sup>29</sup>), the feasibility study considers displacement of fuel oil, coal, wood fuel and electricity by applying the shares of existing fuel consumption in Albania, Montenegro and Croatia weighted by the volume of gas delivered in each country. i.e. it assumes that gas displaces incumbent fuels in the proportions currently used in each country, which it puts as follows:

- Wood fuel: 40%
- Coal: 1%
- Fuel oil: 12%
- Electricity: 47%

These figures are based on Eurostat's 2016 energy balances and weighted by the gas throughput to the non-power sector in each country.

So a significant proportion of the gas would be displacing wood fuel and electricity.

In fact, the study concludes that replacing electricity with gas in the heating sector generates the largest economic gain for the IAP with EUR 1,376 million because electricity is the most common form of energy used in each of the three countries at household and commercial level.

However, as we have pointed out above, a significant proportion of this electricity is generated by hydropower even now. In the future, it is expected to be increasingly generated by renewable sources, so from a GHG point of view, this fuel switch would not necessarily be positive.

Similarly, only the IAP option is examined, and no other alternatives such as heat pumps or solar water heating that may bring significant environmental gains.

### **Zagvozd-Posusje-Travnik (branch to Mostar)**

The main goal of this project is to establish a new supply route for Bosnia and Herzegovina. Very little concrete information is publicly available about the project, apart from a promotional video<sup>30</sup> that confirms that it will be connected to the existing gas pipeline in Bosnia and Herzegovina. The cities along the route will be connected to the gas supply.

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<sup>29</sup> The remainder of the throughput is foreseen as transit - 21%, and not quantified in terms of fuel displacement.

<sup>30</sup> [https://www.youtube.com/watch?v=HXucP5J8KOI&feature=emb\\_logo](https://www.youtube.com/watch?v=HXucP5J8KOI&feature=emb_logo)



While we do not have data on how the gas from this pipeline will change consumption patterns in the areas of Bosnia and Herzegovina covered by the existing gas pipeline, most of the area to be newly gasified are currently provided with electricity by Elektroprivreda HZHB, which generates 100 per cent of its electricity from hydropower and wind power.

These include the city of Mostar, the towns of Posušje and Tomislavgrad, and presumably also the town of Kupres, since it is directly on the roughly shown route on BH Gas's website.<sup>31</sup> These areas mostly use electricity and wood for heating currently, so gasification in these areas will displace these sources, not coal.

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<sup>31</sup> <http://www.bh-gas.ba/mapa-gasovoda/>