

5th PCI list consultation response (7.4.2021.)

The Krk LNG terminal project does not significantly contribute to market integration/sustainability/security of supply/competition.

After its official inauguration in January 2021, **only one of the four** expected (<https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/021221-still-only-one-cargo-received-at-croatia-lng-terminal-since-2021-startup>) liquefied natural gas (LNG) ships have reached the floating LNG terminal in Omišalj; "Tristar Ruby" (<https://www.reuters.com/article/croatia-lng-idUSL8N2JC0FN>), with fracked gas from the United States, while the others were diverted to Asian markets, where the price of LNG has reached record highs recently. Only during March 2021, two more LNG ships ('Adam' with gas from Nigeria and 'Patris' with fracked gas from Texas) reached the Omišalj terminal.

Moreover, the liquefied terminal's construction progress has been associated with grave irregularities that the EU should condemn and it seriously contradicts the EU's commitment to respect the Paris Agreement. For all these reasons (detailed below), **the continuation of the project (LNG Krk Phase 2) and its associated pipelines/interconnectors and gas compressor projects should not be given PCI status.**

1. BACKGROUND

The Krk LNG terminal, a project by the company LNG Croatia d.o.o., is the first terminal of its kind in the Western Balkan region, and it has been loudly promoted as a potential gas hub for South-East and Central Europe. Its advocates claim it will secure energy needs, and increase the security of the region's gas supply, through the provision of up to 6.5 billion cubic meter (bcm) of gas from new gas supply routes. The project, initially envisaged as an onshore regasification facility, was first mentioned in the 1990s, but was not developed significantly until the late 2000s. The decision to establish it at Port Omišalj, part of an industrial zone on the island of Krk, was taken by the Croatian government in 2008. In 2015, the government declared the terminal to be a Strategic Investment Project of the Republic of Croatia, and, based on the environmental impact assessment (EIA) that had been conducted, issued a location permit. In 2016, the government decided to change and accelerate the project through a phased development: Phase 1 would be a floating

terminal (apparently less expensive), which would then be turned into an onshore terminal, as Phase 2. In February 2017, thanks to its EU 'project of common interest' (PCI) status, the project received a significant boost of €102 million of European public subsidies (via the Connecting Europe Facility programme) for the implementation of Phase 1.

Since the beginning, the project has been highly politicised and strongly prioritised by the Croatian government, despite the very serious economic, environmental and climate questions cast over it

(https://s3-eu-west-1.amazonaws.com/zelenakcija.production/zelenakcija/document_translations/1167/doc_files/original/LNG_krk_report_board.pdf?1544608742). In its Phase 1 floating terminal stage, the project was strongly opposed by all local municipalities from Krk Island, the Primorje-Gorski Kotar County and by local environmental NGOs. Environmental organisations at the national level oppose the project as a whole (i.e. not just the floating terminal phase) (<https://www.reuters.com/article/croatia-lng/croatias-krk-lng-project-faces-opposition-as-investment-decision-looms-idUSL8N1Q62QJ>).

2. QUESTIONABLE ECONOMIC VIABILITY

Yet, the project is now, once again, in a state of limbo: Since the floating terminal started operating in January 2021, four LNG ships were supposed to arrive at Omišalj, yet only one did when it was supposed to. The other three: two ships were supposed to arrive at the request of the Hungarian capacity lessee, the company MVM, and one ship for the Croatian HEP. In the case of HEP, one of the national leading magazine Nacional's (<https://www.nacional.hr/otvaranje-lng-terminala-na-krku-pokvario-nedolazak-triju-brodova-s-plinom/>) sources claim that this happened because the state-owned company (HEP), which is a co-investor with the government in this EUR 234 million project co-financed by the European Union, simply did not protect itself with a contractual clause that would allow mandatory gas supply at a pre-agreed price regardless of market circumstances and prices. However, two sources, including the one from the top of HEP, warned Nacional that this was not the only problem related to HEP, but that on the day of commissioning, it happened that the terminal still did not have its own electricity connection. HEP also recently closed a tender in which it requested five deliveries of LNG ships in the period January-September 2021, "using the fact that current market prices are competitive with deliveries from the pipeline". But that first ordered ship did not arrive when it was supposed to, precisely because of the jump in LNG prices in the world market and the sudden decision of traders to sell gas to another buyer who offered a higher purchase price.

The LNG Croatia company has stated that the deviation from the planned ship arrival will not negatively affect the terminal's operations, but a rough calculation done by the newspaper Novi list in cooperation with maritime experts

(https://www.novolist.hr/novosti/hrvatska/prazan-lng-terminal-je-poprilocno-skup-gubimo-milijun-i-pol-kuna-po-svakom-tankeru-koji-ne-dode-u-omisalj/?meta_refresh=true) showed that the Croatian economy loses about 200 thousand

EUR, or about a million and a half HRK, with each absence of a ship with liquefied natural gas at the LNG terminal in Omišalj.

Furthermore, until this day, no one has seen a cost-benefit study (CBA) for the project despite the fact that the Omišalj Municipality asked for it numerous times. The project promoter LNG Croatia claimed they have a few studies, but have refused to show it publicly.

This lack of transparency is deeply problematic: If the Krk LNG terminal was a true project of “common interest”, crucial information such as CBAs would not be kept secret because of some alleged commercial confidentiality. The public interest should prevail over the private one. This is in fact what the European Court of Justice confirmed on March 7th 2019: it set a decisive precedent when it confirmed that during access to documents requests’ procedures on environmental issues, “an overriding public interest in disclosing the studies is deemed to exist, and [European agencies] could not refuse to disclose them on the ground that that would have an adverse effect on the protection of the commercial interests of the owners of the requested studies for the purposes of Article 4(2), first indent, of Regulation No 1049/2001.”

(<http://curia.europa.eu/juris/document/document.jsf?text=&docid=211427&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3615895>)

Considering the significant risks of environmental impacts (that we consider as likely “costs”), the same treatment should be applied on CBAs.

It should be added that the project is now applying to the new list with a 2nd phase: While it failed to justify the capacity of its first phase, the expansion of its capacity with phase 2 is even less justifiable, especially considering the time required to build this infrastructure, its compatibility with the decarbonisation objective and the risk of stranded assets.

The low utilisation of the floating terminal and questionable economic/commercial viability, combined with the non-publication of a CBA study, cast serious doubts over the real profitability of the whole project and especially Phase 2.

3. QUESTIONABLE PCI STATUS AND EU FINANCIAL SUPPORT

According to the European Commission, Projects of Common Interest (PCIs) are key cross border infrastructure projects that link the energy systems of EU countries. The project must have a significant impact on energy markets and market integration in at least two EU countries, boost competition on energy markets and help the EU's energy security by diversifying sources as well as contribute to the EU's climate and energy goals by integrating renewables (<https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest>).

Yet, the Krk LNG project does not seem to meet these criteria, especially when it comes to “having a significant impact on energy markets and market integration in at least two EU countries”, taking into account also that so far the terminal’s import capacity has been underutilized.

4. SUSTAINABILITY TOTALLY IGNORED

Impact on climate:

The Krk LNG terminal is definitely not aligned with the sustainability criterion (yet to be defined and properly implemented, as recognised by the European Commission and according to the Decision of the European Ombudsman in case 1991/2019/KR on the European Commission’s action concerning sustainability assessment for gas projects on the current List of Projects of Common Interest <https://www.ombudsman.europa.eu/en/decision/en/135095>):

This project is mostly aimed at bringing fracked gas from the US (two LNG boats that arrived at the Krk terminal were from the US <https://lng.hr/en/first-LNG-carrier-arrives-to-the-terminal>) with manifold severe environmental and climate implications. The EU-COM/Ecorys Trade Sustainability Impact Assessment report on TTIP highlights that "there are, however, some public concerns about the environmental aspects of shale gas production, such as methane leakages, with shale gas likely to form a proportion of the LNG exported from the US." (<http://www.trade-sia.com/ttip/wp-content/uploads/sites/6/2014/02/TSIA-TTIP-Final-Report.pdf>). The report also points out that the expansion of US LNG imports could "impact the human right to health, and human right to a clean environment" and that it "could further stimulate fracking in the US, which has a negative environmental impact in its own right." Finally, it refers to the EIA 2015 Annual energy outlook, stating that emissions of methane along the supply chain will dent the environmental credentials of gas unless action is taken to tackle these leaks. In 2015, the EU-Parliament adopted the Resolution 2015/2137(INI) (<http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2015/2137%28INI%29>) urging that member states should be, “taking into account the risks and the negative climate, environmental and biodiversity impacts involved in hydraulic fracturing – not to authorise any new hydraulic fracturing operations in the EU”. It would therefore be a contradiction to reach out now for more fracking gas in the USA. The Croatian government has actually prohibited massive hydraulic fracturing (the same method used in the US) in the new amendments to the Law

on Exploration and Exploitation of Hydrocarbons (<https://www.croatiaweek.com/croatian-government-puts-forward-bill-banning-mass-scale-fracking/>), in accordance with the Recommendation of the European Commission (EC) of 22 January 2014 on minimum principles for hydrocarbon exploration and production (such as shale gas) using a high-volume hydraulic fracturing process (2014/70/EU <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014H0070>). Yet, it plans to import such fracked gas.

Finally, it is truly regrettable to scale up the LNG terminal on an island set to become Croatia's first energy independent area free of carbon-dioxide emissions, only powered by renewable energy sources by 2030 (<http://www.total-croatia-news.com/total-eco-croatia/18781-croatian-island-to-become-energy-independent-island-first-in-region> & <http://balkangreenenergynews.com/krk-island-to-become-energy-independent-and-carbon-free/> & http://www.covenantofmayors.eu/IMG/pdf/Krk_2016.pdf & <http://www.hr.undp.org/content/croatia/en/home/presscenter/articles/2013/10/17/energy-independent-islands-with-zero-carbon-emission.html> & http://www.zez.coop/other_projects.html).

Impacts on the environment:

The floating LNG terminal was deemed environmentally acceptable in an Environmental Impact Assessment carried out by the Croatian Ministry of Environment and Energy, despite big opposition from citizens and civil society. In a public consultation on the Environmental Impact Assessment, 80% of the 845 comments and objections were rejected (<https://dnevnik.hr/vijesti/hrvatska/prosvjed-uoci-sjednice-povjerenstva-lng-terminal-na-krku-je-neisplativ-i-neprihvatljiv--509323.html>). For example, there were objections to the use of seawater and chlorine for regasification. In the Krk case, over 160 institutions, NGOs and individuals warned that this project is extremely damaging to the environment, climate and tourism.

While it is compulsory for projects of this kind to conduct environmental impact assessments (EIA), the EIA carried out for the Krk LNG terminal was full of omissions and procedural mistakes. The jurisprudence of the European Court of Justice (ECJ) is clear that when an EIA is carried out, it should look at the potential impacts of the entire project. Dividing-up a project and looking at only some of the potential impacts – a practice called “salami-slicing” (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0334&from=EN>) – is strictly forbidden by the EU EIA Directive (<http://ec.europa.eu/environment/eia/eia-legalcontext.htm>).

Yet, this is precisely what occurred in the Krk case: two separate EIA studies were prepared, one for the onshore terminal in 2013 (project with a much larger capacity that was completely changed i.e. into the phase project) and the other for the floating terminal in 2017 which looked only at the potential impacts of Phase 1 - the small floating LNG terminal - and not the Phase 2 – onshore terminal. The EIA for the floating terminal not only ignores the specific impacts of the other phases

of the project (only mentions them), it also ignores the cumulative environmental effects of all the different phases. It is, therefore, only a partial impact assessment, and a violation of the EU's EIA rules.

Violation of the EIA procedure was also one of the main arguments in the lawsuit filed by Zelena akcija/FoE Croatia (<http://hr.n1info.com/English/NEWS/a303948/NGO-sues-Environment-Ministry-over-LNG-terminal.html>) against the decision of the Ministry of Environment and Energy on the environmental acceptability of the floating LNG terminal project (https://zelena-akcija.hr/en/programmes/energy_and_climate_change/first_hearing_held_in_the_case_against_the_ministry_of_environmental_protection_regarding_the_krk_lng_terminal_2).

Furthermore, it is extremely important to note that in the EIA for the onshore LNG terminal, which was done in 2013-2014, the basic precondition was the ban on the use of seawater for regasification, which was imposed by the previous Ministry of Environmental Protection and Energy due to the known harmful effects of suction and discharge of chlorinated water into the marine environment. Completely contrary to the position at the time, the Ministry then accepted the use of seawater for regasification in the EIA for the floating terminal.

Additionally, no alternatives, as well as no “zero alternative” (=not carrying out the project at all) of the project were evaluated in the EIA study, but only different technical solutions of the same project. This was confirmed by the Ministry during the court procedure with poor arguments stating that there is just no other possible location for the project or other alternative solutions for this project. Among other things, such as the use of old data in the EIA study, this project was not in line with the local and regional spatial plans, which is a clear illegality in the procedure, but the Court did not take this fact into account while making its decision.

Two other lawsuits were filed by the Municipality of Omišalj and the Primorje-Gorski Kotar County. On 25th February 2019, the Rijeka Administrative Court dismissed all three lawsuits, on the same day that the second hearing was held (https://zelena-akcija.hr/en/programmes/energy_and_climate_change/lng_judgment_will_not_stop_the_campaign_against_the_construction_of_the_terminal). The judge briefly stated that she had not found any illegalities in the process of enacting the decision on the environmental impact assessment, without looking into the content of the EIA which was actually the point of the lawsuits - the poorly done impact assessment. This example shows a wider problem regarding EIAs in Croatia, namely that in most cases, they are conducted only to justify specific projects without looking into the content. Furthermore, it shows that there is in fact no adequate legal protection in environmental protection procedures in Croatia. Specifically, here as well as in other environmental cases before the administrative courts in Croatia, the proposed expert testimonies were rejected, which means that there was no customary evidence procedure.

Last but very important, the EIA for the floating Krk LNG terminal was not in line with the EIA Directive (2011/92/E) amended in 2014 (2014/52/EU) to include, among others, a climate change assessment. The EIA for the floating LNG terminal did not take into account a proper climate change impact assessment of this project, and especially not for the 2nd Phase which has now been proposed for PCI status.

The question remains whether any (and if so, which) of the two existing EIA studies will be used for the Phase 2 LNG project or whether there will be a new study conducted. Zelena akcija/FoE Croatia sent a request for access to information to the Croatian Ministry of Economy and Sustainable Development asking whether there will be a new EIA commissioned only to be denied the information without any clarification. This only shows that the Ministry is continuing to be non-transparent even with the Krk LNG 2nd Phase.

There needs to be a proper EIA for both Phase 1 and Phase 2 of the Krk LNG project as a whole, including gas projects depending on the terminal, with a wide public consultation process. Otherwise it should automatically be excluded from being considered for PCI status.

4. DISREGARD OF CITIZENS' VOICES/RIGHTS

All local municipalities of the island of Krk, as well as the Primorje-Gorski Kotar County and the City of Rijeka have clearly stated their opposition to the floating LNG terminal. The project was also opposed by citizens, as shown by a major protest in Rijeka held on March 3rd 2018, which was attended by thousands of people (<https://glashrvatske.hrt.hr/en/news/politics/thousands-protest-in-rijeka-against-lng-terminal/>). An online petition initiated by the Municipality of Omišalj (where the terminal is located) against the floating terminal has been signed by 18.944 people (<https://dnevnik.hr/vijesti/hrvatska/stanovnici-krka-protiv-terminala-osim-sto-je-opasnost-za-okolis-ekonomski-je-neisplativ---519052.html> & https://zelena-akcija.hr/hr/kampanje/aktualne_kampanje/kontra_lng_a/sabor_mora_glasovati_protiv_lex_lng_18_944_gradana_i_gradanki_je_tako_odlucilo).

The project was initially planned as an onshore terminal, but the form of the project was completely changed into a phased project in 2016 - without any public discussion - and solely by the decision of the Croatian Government. While the locals might have been in favor of the onshore terminal back then, mainly because there was a proper public consultation done, the sentiment has very much changed as the public discussion around the floating LNG terminal was done poorly. The opinion of the local community as well as local authorities of Krk Island has been completely ignored by both the Ministry and the Government.

Furthermore, a special law was designed just for this project. This law was highly controversial for a number of reasons. Firstly, the Croatian media have discovered that one of the authors of the law was Barbara Dorić, at the time Director of LNG Croatia d.o.o., the promoter of the project

<https://www.tportal.hr/biznis/clanak/tportal-otkriva-pisala-lex-lng-a-sada-bi-ga-trebala-provesti-ima-li-tu-sto-sporno-foto-20180614>). She was part of the working group that drafted the Law while she was the head of the state Agency for Hydrocarbons. She became the new director of the LNG company in April 2018, before the Law was adopted by the Croatian parliament. This potential conflict of interest was never questioned or investigated by any Croatian institution nor by European ones.

This fact is even more problematic as the Law gives special rights to LNG Croatia d.o.o.:

1. Firstly, a concession over maritime area for the implementation of the terminal and its supporting infrastructure project was given for a period of 99 years. This raises the question of why the concession was granted for 99 years if the floating terminal is (only) the first phase of the project meant to operate for 10 years (as stated in the EIA);
2. Secondly, compensation to the company for security of supply is also defined - money that would come from taxpayers' pockets if there is not a sufficient amount of gas consumed;
3. Thirdly, the Law regulates property and legal relations at the LNG terminal location, and gives the right to LNG Croatia to fast-track land expropriation procedures.

Beyond the Law's problematic content, the process of making it was also paved with procedural errors. It was given only 15 days of public debate, despite Croatia's Environmental Protection Act requiring that projects with significant environmental impacts, such as this one, undergo a minimum of 30 days public debate. This speeding-up of the legislative process was exacerbated by the urgent procedure used to further reduce time for parliamentary and public debate.

The democratic process and public participation dimensions in the Krk LNG project have been nothing more than a tick box exercise for the Croatian government and LNG Croatia d.o.o. With a flawed EIA process and a special law to fast-track procedures and give even more rights to the company, a mockery has been made of the public consultation process as well as public's legitimate concerns, whilst the risk of serious environmental impacts has been knowingly ignored. The local community's support for an onshore terminal, at least five years ago, cannot be presumed for the current project which has completely changed its form and since the process of public participation was made into a sham. The same process that disregards and even violates citizen's rights is very likely to repeat for phase 2 of the LNG project as even in this stage we are denied access to information. Such projects should not be given PCI status.

6. CONCLUSION

There are still many open questions and serious doubts about the project. No economic/commercial viability has been proven, rather the opposite: The fact that the floating Krk LNG terminal received CEF grants of over €100 million for works indicates that the fossil fuel project is deemed not economically viable. There has been a number of procedural and legal omissions for the Phase 1 of the project. The local community has been ignored and even

silenced. Furthermore, nothing is known about the second phase - an onshore terminal - except that one should be built, but without a proper EIA, public consultation, any defined deadlines and decommission, cost estimates, investors, etc. The Krk LNG terminal is far from cheap, and its high cost will mostly be borne by taxpayers and consumers, without their consent. The market – since the floating terminal’s low utilisation rate so far - does not want it and is not willing to pay for it. The project is, most of all, not compatible in the short or in the long term with Europe’s climate commitments. **For all the reasons mentioned, we ask the European Commission not to approve the PCI status to the LNG Krk project at the occasion of the 5th PCI list.**