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To:

Maroš Šefčovič

Vice-President to the Energy Union

European Commission

Rue de la Loi, 200

1049 Brussels

Strasbourg, 17 April 2019

Subject: EU political and financial support for the LNG terminal project in Croatia

Dear Vice-President Šefčovič,

With the present letter, we, Members of the European Parliament, would like to express our concern regarding the political and financial support given by the EC for the construction of the LNG terminal on Krk island. This project, which is endorsed through the Union list of projects of common interest ('PCI List'), is designed to include a FSRU in the 1st phase of the project and an onshore terminal in the 2nd phase. Not only do we believe that this project directly contradicts the EU's commitment to respect the Paris Agreement, but we also observe with great concern the numerous irregularities paving the way of this project, which yet do not alter the support given to the project by the European Commission.

This is why we consider that the support given by the EC to the project should immediately cease. The European Commission should also give explanation as to why political and financial support has been given so far (with tax payers' money) while the LNG terminal makes little to no sense economically, neglects the Paris Agreement by prolonging our fossil fuels' addiction, and is trampling on legitimate local populations' concerns about environmental impacts. All of which makes it quite far from what we would consider as a real project of 'common interest'.

More details and specific questions can be found below:

I. BACKGROUND

The Krk LNG terminal, a project promoted by the company LNG Croatia d.o.o., would be 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. The project would include the building and operating of infrastructure to receive, store, reload and regasify LNG. 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 1.¹

Yet, the project is now in a state of limbo: despite high political support, the plans for an annual gas import capacity of 6.5 bcm – which is 2.5 times more gas than Croatia consumes each year – were put in question by the lack of interest from firms in booking capacity at the terminal.² It was for this reason that, in May 2018, a year and a half after receiving the CEF grant, LNG Croatia d.o.o. launched a new tender for a smaller floating storage and regasification unit (FSRU), designed for just 2.6 bcm of gas annually.³ At the same time, the company conducted an Open Season procedure for contracting the terminal regasification capacities. Confronted to a total lack of interest from the market, the tender's deadline was extended, but in the second round only two companies showed a binding interest – Croatian state companies INA and HEP – for only 0.52 bcm of gas. This is considerably less than an estimated 1.5 bcm required to make the investment in the

¹ €101.4 million for construction and €747,000 for development studies. European Commission, EU invests €444 million in key energy infrastructure, 17/02/17, http://europa.eu/rapid/press-release_IP-17-280_en.htm

² Total Croatia News, Disappointing interest for potential LNG terminal in Croatia, 14/04/18, <https://www.total-croatia-news.com/business/27469-disappointing-interest-for-potential-lng-terminal-in-croatia>

³ <https://www.lng.hr/en/news-details/procurement-procedure-for-fsru-is-closed-95>

construction of the terminal profitable.⁴ Yet, following this, a final investment decision was made on January 31st 2019.⁵

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.⁶ In its Phase 1 floating terminal stage, the project is now 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).⁷

II. 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.⁸

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”*, seeing that until now, there is no other country involved nor has provided official interest in the project. Neighbouring Hungary has not put forward any official bid during the Open Season prolonged procedure and the country's state officials have even indicated that they might buy LNG from Italy via Slovenia instead.⁹ While this political game is not rare for projects of this kind, the fact is that there has been no official interest shown from other parties other than the Croatian ones so far.

As previously mentioned, the project has been changing in shape and size, and hardly succeeds to receive any interest from the market or users. It was the case before it received EU subsidies, but it continues to be the case afterwards, which casts a lot of doubts over the decision to grant these €101 million of CEF subsidies. According to the official “Guide to Applicants”¹⁰, the following five award criteria should have been respected by LNG Croatia d.o.o.:

⁴ <https://www.total-croatia-news.com/business/33172-lng-terminal-on-krk>

⁵ <https://www.lng.hr/en/news-details/final-investment-decision-for-the-lng-project-construction-was-adopted-97>

⁶ https://s3-eu-west-1.amazonaws.com/zelena-akcija.production/zelena_akcija/document_translations/1167/doc_files/original/LNG_krk_report_board.pdf?1544608742

⁷ <https://www.reuters.com/article/croatia-lng/croatias-krk-lng-project-faces-opposition-as-investment-decision-looms-idUSL8N1Q62QJ>

⁸ <https://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest>

⁹ <https://www.total-croatia-news.com/business/33981-lng-terminal>

¹⁰ https://ec.europa.eu/inea/sites/inea/files/2018-2_cefenergy_guide_for_applicants_inea_final_2018.vij_.19.pdf

1. Maturity of the Action with regards to the developmental stage of the project
2. Cross-border dimension of the Action
3. Extent of the positive externality provided by the Action involving works, impact of the Action on solidarity
4. Need to overcome financial obstacles
5. Soundness of the implementation plan proposed for the Action

Yet, regarding maturity, LNG Croatia was supposed to “*precise state of preparation or implementation at the time of the submission of the application*” and to “*provide evidence that the proposed Action can be carried out without delay and that the main activities of the proposed Action will start as closely as possible to the defined starting date of the proposed Action*”... But we are now two years after the decision to give these €101 million, but the project has not progressed and looks very different from what was promised at that time. Regarding the “cross-border dimension”, only Croatian companies have booked capacities during the Open Season procedure which means the project fails to show a cross-border impact. As to the “Need to overcome financial obstacles”, we now see that the project would be entirely paid with taxpayers money, but without their consent (CEF grant + state aids + capacities booked by state-owned companies). We do not consider that it is an honest and reasonable way to overcome these obstacles. It is even going against the idea often defended by the European Commission to provide a level playing field for investors and industries.

According to this same “Guide to Applicants”, LNG Croatia was supposed to provide a cost-benefit analysis (CBA) but this aspect is also called into question:

- 1) No concerned party, except LNG Croatia and the European Commission, has been able to get access to this CBA, which constitutes a clear problem of transparency, which can now even be legally challenged (see below);
- 2) While LNG Croatia d.o.o. claims to have done several CBAs, the positive results cannot be assumed (especially if not publicly shared). And the PCI status cannot be used to assume a positive outcome for the CBA: In its report on the progress of electricity and gas PCI for the year 2017, published in July 2018, the Agency for the Cooperation of Energy Regulators (ACER) notes that “*the assessment of the benefits of the gas PCIs faced serious difficulties and the Agency lacked comprehensive monetised benefits data for gas projects, as it was only reported for 6 gas projects*” out of the 53 gas projects from the PCI list. The ACER

concludes that it "*discourages listing as PCIs projects which do not provide credible information or cannot reliably justify that the project benefits outweigh their costs*";¹¹

- 3) Finally, the MidCat precedent also shows the importance of running independent CBAs: In April 2018, an independent CBA for the PCI MidCat gas pipeline project, commissioned by the European Commission but kept secret for commercial reasons, was eventually leaked to media, against promoters' consent.¹² The study revealed the uselessness of the project and its financial non-viability. It is for a big part based on this analysis that the French and Spanish energy regulators eventually decided to refuse the promoters' investment request.¹³

Considering this obvious lack of cross-border impact and regional link, we would like to know how the Croatian Government has justified this to the European Commission to obtain a PCI status for the project as well as European subsidies for its construction? And in this context, we would like to understand what has convinced the European Commission to support such a project?

III. NO ECONOMIC VIABILITY

In the three rounds (as it was prolonged couple of times) of the Open Season procedure to identify potential terminal users¹⁴, LNG Croatia received bids for binding capacities booking of the LNG terminal on Krk in the amount of 0.52 bcm. As mentioned earlier, this is considerably less than an estimated 1.5 bcm required to make the investment in the construction of the terminal profitable¹⁵, as stated previously by LNG Croatia itself. The only companies that sent binding offers are two Croatian state companies - the INA oil company for about 100 million cubic metres and the HEP power company for about 400 million cubic metres. This poor Open Season result is following the decision to downsize the FSRU to a processing capacity of 2.6 bcm of gas annually.¹⁶

Furthermore, until this day, no one has seen a cost-benefit study for the project despite the fact that the Omišalj Municipality asked for it numerous times. LNG Croatia is claiming 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

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https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/Consolidated%20Report%20on%20the%20progress%20of%20electricity%20and%20gas%20projects%20of%20Common%20Interest%20for%20the%20year%202017.pdf

¹² <https://in.reuters.com/article/france-spain-gas-idNL8N1ZM5DQ>

¹³ <https://www.cre.fr/Documents/Deliberations/Decision/Projet-d-interconnexion-gaziere-STEP>

¹⁴ <https://www.lng.hr/en/open-season>

¹⁵ <https://www.total-croatia-news.com/business/33172-lng-terminal-on-krk>

¹⁶ <http://interfaxenergy.com/gasdaily/article/30894/croatian-fsru-faces-further-delays-after-downsizing>

in fact what the European Court of Justice just confirmed on March 7th this year: 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."¹⁷

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

If the project is needed and profitable, as the company is claiming, why was the study - if it exists - not published or shown to those interested, especially the local community of Krk island? Moreover, how is it possible that the project is going ahead despite all these facts and especially without a feasibility study?

IV. POOR PRACTICE IN ENVIRONMENTAL PROCEEDINGS

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.¹⁸ For example, there were objections to the use of seawater and chlorine for regasification. On 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"¹⁹– is strictly forbidden by the EU EIA Directive²⁰. Yet this is precisely what occurred in the Krk EIA: it looked only at the potential impacts of Phase 1, the small floating LNG terminal. The EIA not only ignores the specific impacts of the other phases of the project, it also ignores the cumulative environmental effects of all the

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

¹⁸ <https://dnevnik.hr/vijesti/hrvatska/prosvjed-uoci-sjednice-povjerenstva-Ing-terminal-na-krku-je-neisplativ-i-neprihvatljiv--509323.html>

¹⁹ European Commission, Report: How successful are the Member States in implementing the EIA Directive, 2003, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0334&from=EN>

²⁰ European Commission, Environmental Impact Assessment, <http://ec.europa.eu/environment/eia/eia-legalcontext.htm>

different phases. It is, therefore, only a partial impact assessment, and a violation of the EU's EIA rules.

This was also one of the main arguments in the lawsuit filed by Zelena akcija/FoE Croatia²¹ against the decision of the Ministry of Environment and Energy on the environmental acceptability of the floating LNG terminal project.²² Additionally, there were no alternative, as well as no “zero alternative” (not carrying out the project at all) of the project 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 is 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.²³ 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. 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.

When the plaintiffs receive the Court's decision, there is a possibility to send an appeal to the High Administrative Court in Croatia and all three plaintiffs will appeal.

V. VIOLATION OF CITIZENS' 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 is also

²¹ <http://hr.n1info.com/English/NEWS/a303948/NGO-sues-Environment-Ministry-over-LNG-terminal.html>

²² 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

²³ https://zelena-akcija.hr/en/programmes/energy_and_climate_change/lng_judgment_will_not_stop_the_campaign_against_the_construction_of_the_terminal

opposed by citizens, as shown by a major protest in Rijeka held on March 3rd 2018, which was attended by thousands of people²⁴. An online petition initiated by the Municipality of Omišalj (where the terminal is supposed to be built) against the floating terminal has been signed by 18.944 people²⁵.

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. 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 for Environmental Protection and Energy and the Government.

Furthermore, a special law was designed just for this project. This Law is highly controversial for a number of reasons. Firstly, the Croatian media have discovered that one of the authors of the law is Barbara Dorić, current Director of LNG Croatia d.o.o., the promoter of the project.²⁶ 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

²⁴ <https://glashrvatske.hrt.hr/en/news/politics/thousands-protest-in-rijeka-against-lng-terminal/>

²⁵ <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

²⁶ <https://www.tportal.hr/biznis/clanak/tportal-otkriva-pisala-lex-lng-a-sada-bi-ga-trebalo-provesti-ima-li-tu-sto-sporno-foto-20180614>

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's legitimate concerns, whilst the risk of serious environmental impacts have been knowingly ignored.

VI. CONCLUSION

There are still many open questions and serious doubts about the project. No economic viability has been proven. There has been a number of procedural and legal omissions. The local community is being ignored and even silenced. Furthermore, nothing is known about the second phase - an onshore terminal - except that one should be built, but without any defined deadlines, cost estimates, investors, etc.

The Krk LNG terminal, whatever form it may take, is far from cheap, and its high cost will mostly be borne by taxpayers and consumers, without their consent. The market does not want it and is not willing to pay for it.

For all the reasons mentioned, we ask the European Commission:

- not to approve the requested state aid to the Croatian Government
- to withdraw its CEF support for the acquisition of the floating LNG terminal
- not to renew the PCI status to the project at the occasion of the 4th PCI list currently under preparation

Yours sincerely,

For the Greens/ EFA Group

MEP Thomas Waitz

MEP Max Andersson

MEP Reinhard Bütikofer

MEP Sven Giegold

MEP Philippe Lamberts

MEP Florent Marcellesi

MEP Tilly Metz

MEP Michèle Rivasi

MEP Monika Vana