

Spain Gas Network Expansion II

Complaints SG/E/2018/13-18
and 20-23

Spain

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

Statement regarding the EIB-CM's decision to close investigation into EIB's investment in Spain Gas Network Expansion II

10 September 2019

Prepared by

EIB Complaints Mechanism

External Distribution

Complainants

Internal Distribution

Management Committee

Secretary General

Inspector General

EIB services concerned

About EIB-CM

The EIB-CM is a tool enabling resolution of disputes in case any member of the public feels that the EIB and/or the EIF has done something wrong, i.e. if the EIB Group has committed an act of maladministration.

Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples of failure to respect the principles of good administration are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information and unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to the implementation of project cycle-related policies and other applicable policies of the EIB Group. Decisions, actions or omissions by the EIB Group which fail to give due consideration to legitimate concerns of stakeholders may also be considered as maladministration.

For more information on the EIB-CM, please visit:

<http://www.eib.org/about/accountability/complaints/index.htm>

1. Overview

Between 7 February and 2 March 2018, the European Investment Bank (EIB or "the Bank") received 10 complaints making a number of allegations of non-compliance with EIB policy and its objectives concerning Spain Gas Network Expansion II programme. The primary focus of the complaint relates to the promotor's expansion into newly licensed areas of the Canary Islands. The EIB Group Complaints Mechanism (EIB-CM) determined that the complaint met its admissibility criteria at a time when the programme components in question had been approved for financing, and an assessment of the complaint was initiated. After learning from the EIB that the Canary Island programme components are no longer being considered for financing, the EIB-CM is concluding its involvement in the case.

2. Background

The programme

Redexis Gas, S.A. (Redexis Gas or "the promotor") is one of the four largest gas distribution system operators in Spain. The Bank has an established relationship with the promoter, having participated in a previous project during the period 2015-2018. A second EIB loan of up to EUR 125 million will be used to support in the reinforcement and extension of natural gas distribution networks in Spain.

As part of its programme, the EIB had approved investments in Tenerife and Gran Canaria, which consisted of propane-air stations, and corresponding kilometres of distribution pipelines and user connection points.

The complaint

Between 7 February and 2 March 2018, the Bank received 10 complaints of similar or exact content relating to the promotor's expansion into newly licensed areas of the Canary Islands. The complainants allege the project contravenes international agreement obligations for the mitigation of greenhouse gases signed by the EIB or by the European Union (EU). In addition, the complainants allege the project fails to comply with EU regional energy policy, specifically in relation to the outermost regions. The complainants also believe the project lacks long-term vision and fails to consider wider environmental and economic sustainability factors.

In May 2019, the EIB-CM announced its decision to proceed with an investigation into certain allegations concerning the economic, environmental and social viability of the programme in what concerned the Canary Island components. Those allegations relating to the Bank's eligibility screening of the programme, i.e. programme consistency with EIB/EU objectives, particularly as relate to energy and climate mitigation, were closed at initial assessment. The full assessment is accessible on the [EIB-CM website](#).

3. Summary of closure decision

Based on discussions maintained and information received from the EIB during investigation, the EIB-CM learned that the Bank was no longer actively considering financing the Canary Island components under the Spain Gas Network Expansion II programme.

The Finance Contracts between the EIB and the promotor include provisions that do not allow the use of funds to finance any part of the programme that does not have all the required authorisations, licenses, rights and permits necessary for the implementation, development, execution and operation of the programme.

In March 2018, the High Court of the Canary Islands laid down a ruling ("TSJ Ruling") whereby the Decree 354/2015, 15 October, was found to be contrary to the state basic legislation and thus, was partially held invalid. As a result of the foregoing, the public tender processes whereby Redexis Gas was awarded the relevant licence and other authorisations to develop the Canary Islands investments are also currently invalid. The Canary Islands government and Redexis Gas have submitted an appeal against the ruling before the Spanish Supreme Court.

As long as the TSJ ruling is in force and there is not a final decision by the Supreme Court, the above provisions of the finance contracts are not complied with in respect of the Canary Island investments. It is unlikely that a ruling from the Supreme Court will be received before the end of the programme's investment period, which terminates in 2019. This change in the status of the Canary Island investments means that EIB is no longer actively involved in those components under complaint.

Prior to this change in status, the EIB-CM had launched a search for technical experts as specified in the EIB-CM's Initial Assessment report. As a result of the developments described above, the EIB-CM requested telephonic meetings with the complainants to discuss the financing status of the Canary Island programme components. Of the 10 complainants contacted by the EIB-CM, three replied in the affirmative; discussions were held from July 24-30.

Under these circumstances, the EIB-CM has decided to close the remaining aspects of its investigation in the referenced case. This decision was reached subsequent to the EIB-CM's discussions with complainants and in considering the need to allocate its resources efficiently across its portfolio of complaints.

The EIB-CM considers that, on balance, continuing with the remaining aspects of its investigation would not be the best use of the EIB-CM's resources. Complainants are kindly reminded that in accordance with the EIB-CM Rules of Procedure, those who are not satisfied with the outcome of this procedure may file a complaint with the European Ombudsman.

4. Additional remarks

The EIB-CM notes that separately from the EIB-CM compliance review process, a public consultation was held in a process to revise the Bank's Energy Lending Policy. Further details are available on the Bank's website:

<https://www.eib.org/en/about/partners/cso/consultations/item/public-consultation-energy-lending-policy.htm>.

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