

## Castor Underground Gas Storage

Spain

*Complaint SG/F/2014/01*

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

# CONCLUSIONS REPORT

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Prepared by

**Complaints Mechanism**

Alfredo Abad

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***Sonja Derkum***

*Head of Division*

*Complaints Mechanism*

External Distribution

Individual Spanish resident

PCDTS

Cobra Group

Internal Distribution

Management Committee

Secretary General

Inspector General

Relevant EIB services

## **The EIB Complaints Mechanism**

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants who are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of receipt of that reply. In addition, complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB with the European Ombudsman.

The EO was “created” by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds 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, as set out by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/about/accountability/complaints/index.htm>

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## EXECUTIVE SUMMARY

The EIB Complaints Mechanism (EIB-CM) received two complaints in December 2013 concerning the Bank's due diligence of the Castor Underground Gas Storage project (the project, or Castor) after the Spanish authorities had ordered the suspension of Castor's activities in October 2013. The two complaints were submitted by Plataforma Ciudadana en Defensa de las Terres del Sènia (PCDTS), a local civil society association based in Alcanar, Tarragona, and an individual resident of Barcelona (both of them referred to as the Complainants). The complaints concerned the Bank's appraisal of the project in the light of the EU and EIB energy policies as well as issues concerning the economic, financial and legal due diligence of the project carried out by the Bank. In particular, the Complainants asked the EIB-CM to review the Bank's project assessment relating to the project's **investment costs, market and alternative investments**. The Complainants also raised issues with the Bank's review of the technical and financial capacity of the main investor and promoter of the project, and the legal framework of the concession.

The EIB-CM carried out an independent review of the allegations in accordance with the provisions of its Principles, Terms of Reference and Operating Procedures. The review assessed the complaints with respect to the relevant operational policies and procedures governing the Bank's due diligence in financing projects. Two separate meetings took place with the Complainants in September 2014.

The EIB-CM has found that the Bank's services appraised the project in line with the relevant EU and EIB energy policies prevailing at the time. It also found that the Bank had properly identified and assessed risks associated with the investment costs and market forecasts, as well as alternative investments. The Bank's assessment of the technical and financial capabilities of the investors and promoters of the project as well as the regulatory framework are also considered to be appropriate by the EIB-CM. These analyses were documented in a timely manner and reported to the decision-making bodies of the Bank accordingly. EIB-CM's review and the points raised by the Complainants have confirmed the importance of the Bank's project appraisal processes as part of its financing decisions.

**In light of the above, the EIB-CM concludes that its inquiry did not reveal any instances of non-compliance by the Bank's services. Therefore, the EIB-CM considers the case settled and closed with no maladministration from the Bank.**

## CONCLUSIONS REPORT

**Project:** Castor Underground Gas Storage

**Complainants:** Individual Spanish resident and Plataforma Ciudadana en Defensa de les Terres del Sènia (PCDTS)

**Complaints Received:** December 2013

**Loan status:** Repaid

**Approvals:** Board Reports of July 2010 and September 2011. Management Committee Decision of June 2013.

**Contract amount:** Subscription of Project Bonds (EUR 300m) and Credit Enhancement Facility (actual EUR 200m)

### 1. ALLEGATIONS

1.1 In early December 2013, the EIB Complaints Mechanism (EIB-CM) received a complaint from the Plataforma Ciudadana en Defensa de les Terres del Sènia (PCDTS), a local civil society association based in Alcanar, Tarragona, concerning the Castor Underground Gas Storage project (the project or the Castor project).

On 20 December 2013 the EIB-CM received a second complaint on the project from a Spanish resident (the individual complainant) with similar allegations. This complaint had also been submitted to the European Ombudsman (EO) on 3 December 2013. During the EO's preliminary inquiry, it was agreed with the individual complainant that the complaint would first be handled by the EIB-CM, in accordance with the Memorandum of Understanding between the EO Office and the Bank<sup>1</sup>.

PCDTS and this individual are hereafter referred to "The Complainants".

1.2 This present report (SG/F/2014/01) summarises the findings and, conclusions for the allegations of strategic, economic, or financial nature (excluding environmental and security issues). In agreement with both parties – PCDTS and the individual complainant - the two complaints have been grouped together. This report has been prepared in addition to the Conclusions Report SG/E/2013/12, Castor Underground Gas Storage Spain, submitted to the complainants on 23 March 2018, which focuses on environmental and social risks, including the associated industrial (security) and seismic risks.

1.3 Table 1 summarises the main points of this complaint (SG/F/2014/01) as expressed in email exchanges between EIB-CM and the Complainants.

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<sup>1</sup> [http://www.eib.org/attachments/strategies/complaints\\_mou\\_eo\\_eib\\_en.pdf](http://www.eib.org/attachments/strategies/complaints_mou_eo_eib_en.pdf)

**TABLE 1 – SUMMARY OF THE COMPLAINTS**

**1. Failure of the Bank to properly assess the justification and the viability of the project.**

*According to the Complainants, the Bank did not adequately assess the justification of the investment in the context of the Spanish energy sector including the calculations of the project costs, the economic analysis of the future gas demand and the development of combined cycle thermal power stations;*

**2. Failure of the Bank to properly assess the legal framework of the project.**

*According to the Complainants, the Bank did not adequately assess contractual arrangements and the licenses and permits granted by the different national, regional and local administrations;*

**3. Failure of the Bank to analyse the main promoter (ACS)'s technical and financial capacity to undertake the project**

*The Complainants allege that the promoter of the project did not have sufficient operational experience to undertake the project and that there were potential conflicts of interests amongst companies of the ACS group.*

**2. CLAIM**

The Complainants requested that the EIB-CM verify whether

- The Bank carried out proper due diligence in assessing the justification of the project,
- The Bank “*chose to ignore*” the seismic risk warnings,
- The Bank was aware of the change in the legal framework for this project, reducing the negative financial risk of the project for the project promoters at the expense of tax payers and energy consumers,
- The Bank had duly assessed the role of ACS in the project and had carried out a cost audit of the project.

### **3. THE PROJECT AND THE BANK'S FINANCING**

- 3.1 The Castor project consists of the conversion of an abandoned oil field ("Amposta") to a natural gas storage facility. The project, which was identified by the Bank as a priority TEN-E<sup>2</sup> project, involved the construction of two offshore platforms for wells and processing facilities, the drilling and completion of 13 new wells, an onshore compression and processing plant located in the municipality of Vinaroz and a 30 km pipeline between the offshore and onshore facilities. The project also included the connection to the national grid as an integral part of the project.
- 3.2 A timeline summarising the main events at project level and at the Bank is attached to the present report as Annex I.

On 14 July 2010, the Bank's Board of Directors approved a loan of up to EUR 600 million for the Castor Underground Gas Storage project. In 2011, the project was also identified for potential financing under a Project Bond. On 20 September 2011, the Bank's Board of Directors approved a proposal to change the initial loan approval to approval for a EUR 200m Project Bond Credit Enhancement (PBCE) instrument in the form of a standby Letter of Credit. The balance of the initial approved loan amount was to be subscribed as Senior Bonds and/or to be lent to the project through the intermediary of acceptable banks. The final terms and conditions of the proposal were approved by the Bank's Management Committee in July 2013. The project was the first to be financed under the Bank's pilot phase of the PBCE instrument launched in July 2013.

- 3.3 However, in October 2013 the Spanish authorities ordered the suspension of the project following seismic activity in the region around the Gulf of Valencia. In July 2014, the promoter submitted a formal request to the Spanish authorities to relinquish the concession. In September 2014, this request was accepted by the Spanish Government and ownership of the facilities reverted to the public domain by Royal decree-law<sup>3</sup>.

### **4. BACKGROUND TO THE COMPLAINT**

- 4.1 Following suspension of the project's activities in October 2013, EIB financing came under scrutiny from Spanish and European civil society and the European Parliament. In the autumn of 2013 a group of 14 NGOs (later extended to become 27) asked the Bank to clarify its position on the issues surrounding the suspension of the project's activities. The Bank's services replied on 27 November 2013.
- 4.2 In addition, on 8 October and on 18 November 2013 the individual complainant wrote to the Bank asking for various explanations concerning the Bank's project appraisal and due diligence. The Bank's services responded by letter dated 5 December 2013. In the meantime, on 3 December 2013 the individual complainant had lodged a complaint with the EO. The EO opened a telephone procedure and it was agreed with the complainant that the EIB-CM would handle the complaint - in line with the Memorandum of

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<sup>2</sup> Trans-European Energy Networks.

<sup>3</sup><https://www.boe.es/boe/dias/2014/10/04/pdfs/BOE-A-2014-10059.pdf>.



Understanding between the EO and the Bank. In the exchanges between the EO, the individual complainant and the EIB-CM, the individual complainant expressed that he was not satisfied with the Bank's reply of 5 December 2013.

- 4.3 In its complaint of December 2013, PCDTs referred to its letter sent to the Bank in 2010 in which it expressed concerns about the financing of the project by the EIB. PCDTs also provided information about the complaints it had submitted to the European Commission (EC) and the Petitions Committee of the European Parliament (EP Petitions Committee) in 2010. These documents were included in EIB-CM's review of the present complaint.

## 5. REGULATORY FRAMEWORK OF THE COMPLAINTS MECHANISM INVESTIGATION

- 5.1 When performing its activities, the EIB is bound by the Treaty of the European Union (TEU), the Treaty on the Functioning of the European Union and its Statute as well as by the relevant legislative and regulatory framework of the European Union. The EIB shall, therefore, operate in a manner that ensures that its various activities are carried out in compliance with EU law. In addition, the EIB periodically reviews its internal policies and procedures with a view to further refining the policy framework pursuant to which its activities are performed. The EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedures apply to complaints regarding maladministration<sup>4</sup> by the EIB Group.
- 5.2 According to § 4 of the principles of the EIB-CM: "*Decisions concerning the investment mandate of the EIB, its credit policy guidelines or the EIB's participation in financing operations fall outside the scope of the Mechanism*".
- 5.3 On the basis of Part IV, Article 2.3 of the Complaints Mechanism Principles, Terms of Reference and Rules of Procedures, "*the EIB Complaints Mechanism Division is not competent to investigate complaints concerning International organisations, Community institutions and bodies, national, regional or local authorities.*" In addition, "*the EIB CM cannot deal with complaints which have already been lodged with other administrative or judicial review mechanisms or which have already been settled by the latter*"; the EIB-CM's assessment therefore focuses on the actions related to the overall EIB project appraisal and monitoring.
- 5.4 In analysing the possible failure of the Bank during due diligence, the EIB-CM takes into consideration the relevant policies of the Bank in appraising projects, including the relevant Operational Policies. At the time of the Bank's appraisal of the Castor project, the EIB Energy Sector Lending Policy was set out in three documents: *The EIB Energy Review* of October 2006, the *Clean Energy for Europe: A reinforced EIB Contribution* (June 2007) and *Financing of Nuclear Energy* (July 2007). These three documents were replaced in 2013 by one single document, the *EIB Energy Lending Criteria*. For the purpose of the analysis of the allegations, the EIB-CM will refer to the first two

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<sup>4</sup> Maladministration 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.

documents which were the ones in force at the time of the Bank's first due diligence (October – July 2010).

- 5.5 Other relevant operational documents are *The Economic Appraisal of Investment Projects at the EIB*<sup>5</sup> and the Bank's internal documents providing guidance for project appraisal. Criteria for a typical EIB appraisal take into account the specific characteristics of each project and are based on the eligibility of the project i.e. its consistency with the EU's priority objectives, and the project's economic and financial profitability based on a quantitative analysis of the demand for the products/services over the project's life. This due-diligence analysis takes the form of an assessment of the added value of a project based on three pillars 1) Contribution of the project to EU objectives, 2) Quality and soundness of the investment and 3) EIB contribution<sup>6</sup>.

## 6 WORK PERFORMED BY THE EIB-CM

- 6.1 The complaint from PCDTS was registered in December 2013 with the reference number SG/E/2013/12. In January 2014, the EIB-CM registered the individual complainant with the reference SG/F/2014/01. The two cases reflect the differences in the content of the complaints: the allegations related to governance aspects are being processed under the case SG/F/2014/01, while the allegations related to the environmental and social impacts and industrial risks were addressed under case SG/E/2013/12. The present report deals exclusively with case SG/F/2014/01.
- 6.2 In September 2014, the EIB-CM carried out a Fact-Finding and Stakeholder Engagement mission to Alcanar (Tarragona) and Barcelona to clarify the allegations and to explain EIB-CM's mandate to the Complainants. It was agreed with the individual complainant that since the allegations of complaint SG/E/2013/12 also cover his complaint, he would also receive the EIB-CM's conclusions when they had been finalised. As far as the remaining points of his complaint were concerned the individual complainant requested a separate report. After clarifications with both complainants, it was agreed that the EIB-CM will issue a report addressing the common concerns of both parties.

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<sup>5</sup> <http://www.eib.org/infocentre/publications/all/economic-appraisal-of-investment-projects.htm>. Although this document was published in April 2013, it does not introduce new guidance but it just reflects the EIB's practice when carrying out the economic appraisal of projects

<sup>6</sup> Pillar 1: EU policy objectives, encompasses the EIB Operational Priority Objectives based on EU and national objectives.  
Pillar 2: Quality and soundness of the investment: analyse financial, project and promoter risk analysis and mitigants. The Economic Rate of Return (ERR) as well as the promoter's implementation and operational capabilities as well as the institutional framework are emphasised under this pillar.

Pillar 3: EIB contribution, discusses the Institutional and Technical contribution safeguarded by an EIB participation in the financing of a project in terms of Technical assistance provided or financial benefit of the Bank participating in the project's funding.

## 7. FINDINGS

### 7.1 Allegation 1: Failure of the Bank to properly assess the justification and the viability of the project.

#### 7.1.1 Details of the allegation

According to the Complainants, the Bank failed to properly assess the justification of the investment in the context of the Spanish energy sector. In addition to policy orientations, the Complainants consider that the Bank failed to properly assess the project costs, the economic analysis of the future gas demand and the development of combined cycle thermal power stations.

#### 7.1.2 Regulatory framework

The relevant policy of the Bank to assess this allegation is the EIB Energy Review. This document outlines a (i) review of past EIB energy operations; (ii) establishes the broader context in which the EIB operates from the perspective of the world energy outlook, the energy price scenarios and the EU energy outlook; and (iii) proposes target areas for the Bank's financing. The document<sup>7</sup> identifies that one of the main [energy] policy objectives of the EU is *"the development of the internal energy market, particularly the electricity and gas markets, through the promotion of competition and development of energy TENs<sup>8</sup>"* and that one of the main priorities of the EIB support is *"to contribute to the implementation of the EU energy goals"<sup>9</sup>*; the document also identifies that *"large energy projects (e.g ... major energy import facilities...) are key elements in the national and EU energy policy. Among these projects, energy TENs are top priority of the EU energy policy, because of their contribution to the creation of an internal energy market, to diversification of energy imports and to enhancing the security of energy supply"<sup>10</sup>*. Therefore, and in terms of large energy projects, like Castor, the Bank sets two key priorities: *"the financing of energy TENs and of energy projects contributing to the EU regions lagging behind in their economic development"<sup>11</sup>*.

In addition, in order to determine the eligibility of the project for EIB financing, the Bank's appraisal aims at demonstrating its consistency with the EU's priority objectives, and the project's economic and financial profitability based on a quantitative analysis of the products/services demand over the project's life. This due-diligence analysis takes the form of an assessment of the added value of a project based on the three pillars mentioned in §5.6.

The analysis of specific parameters such as the project's costs, the economic analysis of the projected gas demand are part of the Bank's due diligence for determining the viability of the project.

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<sup>7</sup> EIB Energy Review, page 29, 31 of January 2006

<sup>8</sup> Trans-European energy networks (TEN-E) priority projects: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A127066>

<sup>9</sup> EIB Energy Review, page 29, 31st of January 2006

<sup>10</sup> EIB Energy Review, page 30, 31st of January 2006

<sup>11</sup> EIB Energy Review, page 31, 31st of January 2006

### 7.1.3 Findings

In terms of the contribution to EU objectives (Pillar 1), the Bank's analysis in 2009/10 identified the importance of natural gas storage facilities in Spain and on the Iberian peninsula in terms of providing flexibility and security of gas supply, characterised by large variations in demand on one side and rigid supply on the other side, and against the background of seasonal demand variations. The Bank's services confirmed that the Castor UGS was a priority project of the Spanish Energy plan (type A Urgent) and a priority TEN-E project of common interest. In terms of the quality and soundness of the investment (Pillar 2) the Bank's services analysed the project's contribution to the Spanish gas system. Castor was considered as making a significant and unique contribution to Spain's combined natural gas storage capacity, particularly in the Barcelona region, reducing the risk of supply interruption and improving the gas system management in situations of excess of demand (peak loads) and excess of supply. In terms of the EIB contribution to the investment (Pillar 3) the Bank's services analysed that this type of large (gas) infrastructure project, which demands significant levels of funding, can be considered as one of the core areas where the Bank can play a major role. The Bank's financial involvement would contribute to the diversification of project funding, encouraging the financial community to strengthen their support to the promoter's investment programme.

Therefore the EIB-CM supports the view that the project fully responded to the criterion of the EU policy objectives (*contribution to the creation of an internal energy market, to diversification of energy imports and to enhancing the security of energy supply*) and thus the EIB operational priority objectives. The above information was therefore properly assessed and reported to the Bank's governing bodies.

At the time of raising the complaint and in subsequent exchanges, the Complainants also made specific allegations concerning the Bank's analysis of the project costs, changes in the market demand - in particular taking into account the economic and financial crisis that hit Spain from 2010 to 2013 - and the lack of analysis of alternatives such as combined gas cycles. These three items were included in the financial and economic Bank's assessment of the operations.

Project Costs: The Complainants raised concerns regarding the escalation of investment costs estimated in 2007 by the promoter from EUR 481m to the final investment costs of EUR 1.28bn of March 2010. This figure excludes investment in the cushion gas and other expenses. All costs combined brought the total investment to circa EUR 1.7bn.

EIB-CM's review confirmed that an analysis of the investment costs had been carried out as part of EIB's project appraisal. In June 2010, based on information provided by the promoter but adjusting the figures with its own estimates, the Bank also calculated a total investment close to EUR 1.7bn. The Bank's estimates show differences in the figures with those of the promoter in some items, and includes other items such as a provision for abandonment as required by law. The Bank's services also documented that the unit cost of the project is towards the upper end of the range compared with other UGS facilities but it was also noted in the appraisal documents that this could be explained to some extent by the fact that the reservoir is offshore, necessitating more facilities than an onshore project would require.

Based on the above, the EIB-CM concludes that the Bank's services properly assessed and analysed risks associated to the investment costs. Risks resulting from the lack of benchmarking costs in UGS projects were also noted. The Bank's services also identified measures to mitigate the risks. This information was also documented and reported as part of the decision-making process of the Bank.

Market demand: The Complainants consider that the Bank failed to carry out a proper economic analysis of future gas demand, especially in the light of the economic and financial crisis that hit Spain between 2010 and 2013.

The EIB-CM observes that the Bank's appraisal documents included a detailed assessment of the gas market and demand. The Bank's analysis is based on the forecast in the 2008-2016 Spanish Government Plan for gas demand including 1.2 Mm<sup>3</sup>/h of underground storage capacity. The Bank identified already in June 2010 the possible effect of the "*the recent economic downturn*" but concluded that the need for gas storage remained urgent. This conclusion was based on the prevailing gas storage capacity and its inadequacy to meet Spain's storage and seasonal peaks requirements. The Bank's services also prepared economic and financial projections with different scenarios (high and low) of price changes and gas demand. In the economic analysis, the Bank identified that the project will fulfil 3 main roles: (i) Seasonal storage (allows more gas to be bought in summer, when it is readily available and generally cheaper, and used in winter); (ii) Peak saving (can be used to meet demand on above-average cold or hot days); (iii) Provision of supply security. In 2011, the Bank's services carried out an update of potential impacts of gas prices on the project. Update on the gas demand was not considered to be necessary because the remuneration was set by the Spanish regulator and did not depend on the strength of demand for gas storage.

The EIB-CM concludes that market and demand were properly assessed during the Bank's appraisal. Whilst the Complainants' concerns reflected Spain's prevailing economic situation, the Bank's analysis was based on national plans for the period 2008 – 2016 and financial and economic projections were made in the long term with analysis of scenarios.

Analysis of Gas Combined Cycle alternatives: The Complainants consider that the Bank did not carry out an analysis of alternatives to underground gas storage.

As indicated above, the project was appraised in line with the objectives of the EU's energy policy prevailing at the time of the appraisal (*contribution to the creation of an internal energy market, to diversification of energy imports and to enhancing the security of energy supply*), and was included in the EC list of TEN-T priority projects. This criterion seems sufficient when analysing eligibility and the Bank is not required to study alternatives as, presumably, this has been part of the previous analysis carried out by the EC in the context of the TEN-E eligibility. However, the Bank did an analysis of the best alternative in the economic analysis, and it was concluded that whilst there was no alternate facility that can fully replicate the operations of an underground gas storage, the closest option was deemed to be an LNG regasification plant. If Castor UGS was not built, fourteen 150,000 m<sup>3</sup> LNG tanks would need to be constructed and operated

#### 7.1.4 **Conclusions**

The EIB-CM concludes that the Bank's services have assessed the investment in the context of the Bank's relevant energy policy and the three-pillar added value analysis. This analysis was sufficiently documented and reported to the Bank's decision-making bodies.

#### 7.2 **Allegation 2: Failure of the Bank to properly assess the legal framework of the project**

##### 7.2.1 **Details of the allegation**

According to the Complainants, the Bank failed to assess the implications of the legal framework of the project and in particular the conditions of repayment of the investment in the event that the concession authorisation be withdrawn. According to the Complainants, the regulatory framework eliminated the negative financial risk of the project for the project promoters at the expense of tax payers and energy consumers, and the Bank was aware of this.

##### 7.2.2. **Regulatory framework**

The assessment of the legal framework for a project is an integral part of the project due-diligence as outlined in § 5.6. In particular, in the context of pillar 2, any remaining risk elements not covered by the analysis of the projects economic justification, promoter capability and the EIB's Social and Environmental requirements, are analysed.

##### 7.2.3 **Findings**

Gas storage is a regulated activity and its cost is recovered through the fees of the end users as well as tolls and charges where appropriate. The EIB-CM has found that, in their due diligence, the Bank's services did address the regulated and non-regulated aspects of natural gas distribution in Spain. In their due-diligence the services identified that the project's remuneration is regulated in Order ITC/3995/2006, approved December 29, 2006, and ratified in the Decree for Concession RD 855/2008 of May 16, 2008. The ultimate setting of the date for inclusion in the remuneration regime was left to ulterior decisions of the General Directorate of Energy Policy and Mining (GDEPM), the National Energy Commission ("NEC") and ENAGAS.

The Bank's appraisal also includes analysis and documentation of the implications of the Royal Decree 855/2008 in the case of expiration or extinction of the concession. The decree establishes that in this case the installations shall revert to the Spanish State and the company shall be compensated for the net book value of the installations which are part of the UGS facility, save for in the event of fraud or gross negligence attributable to the company, in which case it shall be compensated with the residual value.

##### 7.2.4 **Conclusions**

At the time of appraisal the Bank identified and assessed risks relating to the legal framework elements that are part of the Complainant's allegations. The Bank also correctly identified that the inclusion of the cost of the Castor UGS in the remuneration regime, the tariffs to the end-users, was left to ulterior decisions making. The implications concerning the expiration or extinction of the concession were also assessed and taken into consideration by the Bank.



### 7.3 Allegation 3: Failure of the EIB to analyse the main promoter (ACS)'s technical and financial capacity to undertake the project

#### 7.3.1 **Details of the allegation**

According to the complainant the EIB and the EU failed to clearly analyse the role of one of the shareholders (ACS) of the project company and address its lack of experience to implement this type of project. Complainants also raised questions about the analysis of the Bank of the procurement process and the fact that companies related to the main investors in the project company were subcontracted to carry out certain works.

#### 7.3.2 **Regulatory framework**

As outlined in § 5.6 the EIB's appraisal is governed by a quantified value added analysis in which under "Pillar 2", the quality and soundness of the investment is appraised, notably also in relationship to the project and promoter risk and measures to mitigate possible remaining risks, as well as the promoter's implementation and operational capabilities.

#### 7.3.3 **Findings**

The EIB appraisal documents presented the project shareholding structure and provided detailed financial and operational analysis of the shareholders. The analysis is extended to ENAGAS, the Spanish public sector gas company, as it was expected to take over and operate the project after being implemented. The main shareholder, ACS, is presented as a well-known counterpart of the Bank, predominantly under project finance structures over a number of years. The analysis of the construction and operational track record and experience of ACS SCE<sup>12</sup>, the joint partner for the Castor UGS project, was highlighted by the Bank's services. The analyses focuses on the experience in different countries and highlights experience acquired by the investors in the oil and gas sectors as well as the construction of offshore platforms. The analysis of ACS together with the one of ENAGAS emphasises the synergies of both companies for building and operating the gas storage infrastructure.

As part of its due diligence, the Bank's services also appraised and documented their assessment of the procurement process. The promoter is a private company that was granted special and exclusive rights by the Spanish state for the development and operation of the project - the 30-year Castor UGS concession. The Bank assessed that only one company submitted an application and that the winning bidder is a subsidiary of the majority shareholder. It was also outlined that the contractor has been following an open book working methodology. As a result, the Bank's services concluded that although the lack of competition in response to the [Official Journal of the EU] tender was not an ideal outcome, the Bank was satisfied that the newly implemented strengthened regulatory oversight will ensure that procurement practices acceptable to the Bank are followed throughout implementation. The appraisal documents also identified that the Spanish regulatory system does not yet have benchmark costs for UGS facilities unlike for other elements of the gas sector (e.g. transmission lines and LNG regasification plants). As a consequence, the Bank's services summarised the strengthened regulations put in place by the Spanish Government in 2008 In order to be able to adequately oversee the procurement, costs and thus calculate remuneration for

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<sup>12</sup> The ACS 100% subsidiary through which ACS develops its industrial services and energy activities.

promoters of UGS projects. Amongst these new regulations, UGS facilities would require the open tender of all sub-contracts over EUR 1 million; and the regulator will also review all costs for suitability before allowing the regulated remuneration to be achieved.

#### 7.3.5 Conclusions

The EIB-CM concludes that the services have presented a comprehensive analysis of the promoter capabilities and the structure of the concessionaire of the Castor UGS project to the Board of Directors for their decision taking. Risks associated to the procurement were also identified, assessed, and measures to mitigate those risks were properly documented and reported in the decision-making process.

### 8. GENERAL CONCLUSIONS

- 8.1 The issues raised by the complainants concern the core activity of the Bank in appraising the financial, economic and legal risks. The EIB-CM remarks that the Bank's due diligence is a process that involves teams of engineers, economists and financial analysts in close cooperation with the promoter. The Bank's services' duties of due diligence and internal governance are being defined by its procedure of identifying the added value of its participation in the financing of a project. In addition, and from the perspective of credit risk assessment, it is the Bank's duty to identify and assess financial and non-financial risks and, should it be necessary, put in place appropriate measures to mitigate those risks.
- 8.2 The EIB-CM's reviews shows that the issues related to the allegations of the Complainants were properly identified, assessed, mitigated and documented by the Bank at the appraisal stage. The EIB-CM's review and the points raised by the Complainants have underlined the importance of the Bank's project appraisal processes as part of its financing decisions.
- 8.3 In light of the above, the EIB-CM concludes that its inquiry did not reveal any instances of non-compliance by the Bank's services. Therefore, the EIB-CM considers the case settled and closed with no maladministration from the Bank.

S. Derkum  
Head of Division  
Complaints Mechanism  
10.04.2018

A.Abad  
Deputy Head of Division

10.04.2018



### ANNEX I – TIMELINE OF MAJOR EVENTS

<b>Date</b>	<b>Project's events</b>	<b>Bank's events</b>
<b>May 2008</b>	EIA Prepared	
<b>October 2009</b>	EIA Statement approved by the Spanish authorities	
<b>October 2009 – July 2010</b>		Due Diligence
<b>June 2010</b>	Claim in the Spanish courts concerning fragmentation	Bank receives communication from the Promoter
<b>July 2010</b>		1st Board Approval
<b>April 2011</b>		Disbursement of the Bank
<b>June 2011</b>		Note to File justifying the fulfilment of disbursement conditions
<b>September 2011</b>		2nd Board Approval
<b>April 2013</b>	Decision on Fragmentation of the Audiencia Nacional	
<b>July 2013</b>		Approval of the Terms of the Project Bond Credit Enhancement;  The Bank subscribes EUR 300m of the bond and EUR 200m as Credit Enhancement Facility
<b>August-September 2013</b>	Injection of Cushion Gas  Seismicity is triggered	
<b>October 2013</b>	Suspension of the Project by the Spanish Government	
<b>3 October 2014</b>	Royal Decree by which the Spanish Government approves the transfer of the project to ENAGAS and the relinquishment of the concession to ESCAL	
<b>November 2014</b>		Repayment of the bond subscription

## ANNEX II – ACRONYMS

EC	European Commission
EIB	European Investment Bank
EIB-CM	European Investment Bank Complaints Mechanism
EO	European Ombudsman
ENAGAS	Empresa Nacional del Gas
EU	European Union
EUR	Euros (currency)
GDEPM	General Directorate of Energy Policy and Mining
IAR	Initial Assessment Report
NEC	National Energy Commission
PBCE	Project Bond Credit Enhancement
PCDTS	Plataforma Ciutadana en Defensa de las Terres del Sènia
TEN-E	Trans European Energy Networks
TFEU	Treaty on the Functioning of the European Union
UGS	Underground Gas Storage