



## Castor Underground Gas Storage Spain

*Complaint SG/E/2013/12*

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

# CONCLUSIONS REPORT

7 March 2018

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Prepared by

## **Complaints Mechanism**

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In addition, this review was supported by external consultants to review the legal, environmental, social, industrial and seismicity risks related to the Castor Underground Gas Storage project<sup>1</sup>.

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Plataforma Ciudadana en Defensa de les Terres del Sènia

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<sup>1</sup> In line with § 5.6.3. of the EIB-CM's Operating Procedures, In any case the content and opinions expressed in this report are the sole responsibility of the EIB Complaints Mechanism

## **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 that 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/cr/governance/complaints/index.htm>

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## EXECUTIVE SUMMARY

### The Complainants and the complaints

The European Investment Bank Complaints Mechanism (EIB-CM) is handling two complaints about the Castor Underground Storage project received at the end of 2013 and early 2014 from the Plataforma Ciudadana en Defensa de les Terres del Sènia (PCDTS) and from an individual residing in Spain.

The Complainants submitted several allegations to the EIB-CM concerning several aspects of the project. The issues raised by the Complainants are related to the environmental and social impacts of the project as well as the way in which the public consultation was carried out. The Complainants were also concerned about the risks associated with the induced seismicity of the project as well as other industrial risks. In addition, the Complainants challenged aspects related to the market projections, the economic analysis and the regulatory framework. With respect to the Bank, these allegations challenged the Bank's due diligence concerning environmental, social and governance issues during the project appraisal and monitoring. The allegations had also been submitted by the complainants to the European Commission (EC) and the European Parliament (EP) Petitions Committee<sup>2</sup> in two separate documents in 2009 and 2010. Two cases were opened by the EIB-CM to reflect the differences in the content of the complaints:

- The allegations related to the environmental and social impacts and industrial risks were addressed under case SG/E/2013/12, and
- The allegations related to governance aspects are being processed under case SG/F/2014/01.

This report deals with case SG/E/2013/12 only. The EIB-CM notes that the EC (and subsequently the EP) had provided a response to the Complainants in 2010 based on the input received from the Member State, closing the case thereafter because the Complainants did not submit further requests.

### The project and the Bank's financing

The Castor Underground Gas Storage project consists of the conversion of a former oil field ("Amposta") into a major natural gas storage facility. The Castor/Amposta field is located in the Mediterranean Sea, at a depth of 1700 m (sub-sea) and approximately 22 km off the east coast of Spain. The gas storage project, which at the time of the Bank's appraisal was identified as a priority TEN-E<sup>3</sup> project, involves 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 with a connecting pipeline to the national gas grid and a 30 km pipeline between the offshore and onshore facilities. The Castor Project, and the related exploitation concession, were owned and developed by Escal UGS S.L. ("Escal"), a company incorporated under Spanish jurisdiction, and whose main shareholders are the ACS Servicios Comunicaciones y Energy S.L. ("ACS"), a construction group in Spain, and the Canadian group Dundee Energy Limited.

On 14 July 2010, the Bank had approved a loan of up to EUR 600m for the Castor Underground Gas Storage project. This project was identified in 2011 as a potential candidate to be financed

<sup>2</sup> [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/peti/cm/838/838826/838826es.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/peti/cm/838/838826/838826es.pdf).

<sup>3</sup> The Trans-European Networks for Energy (TEN-E) strategy is focused on linking the energy infrastructure of EU countries.

with a project bond. At its meeting of 20 September 2011, the Bank's Board of Directors approved the proposal to transform the initial loan into a EUR 200m Project Bond Credit Enhancement (PBCE) instrument in the form of a standby letter of credit; the balance of the approved initial amount (up to EUR 600m) was approved to be subscribed as senior bonds and/or lent to the project through the intermediation of acceptable banks. The final terms and conditions of the proposed operation 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.

The implementation of the project was suspended in October 2013 by the Spanish Government following seismic activity that coincided in time with the injection of cushion gas into the reservoir. Subsequently, in July 2014, the promoter submitted its request to the Spanish authorities to relinquish the concession in line with the arrangements contained in the pertinent Royal Decree. This request was accepted by the Spanish Government in September 2014. The project was then transferred to ENAGAS and put into hibernation in November 2014 and the promoter was repaid the corresponding portion of the amount invested. The promoter thereupon fully repaid the bondholders, including the Bank, ending thereby the contractual relationship with the Bank.

### **Regulatory framework of the EIB-CM investigation**

The EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedures (CMPTR) apply to complaints regarding maladministration by entities of the EIB Group. The analysis of the possible administrative failure of the Bank against its obligations and commitment includes a review of compliance with rules and regulations that the Group is legally bound to observe. The review also includes the application of the Bank's environmental and industry standards that were in force when the EIB due diligence and monitoring had taken place.

The EIB-CM analysis stretches from the application of the EU and national legislation to the EIB's own project standards throughout the project cycle. In this context, the EIB-CM has reviewed the different decisions of the Bank's Board and its Management Committee from July 2010 to July 2013.

The EIB-CM took into consideration the Bank's Operational Policies, the Statement of Environmental and Social Principles and Standards<sup>4</sup> (ESPS) and the Environmental and Social Handbook (2007 and 2010 versions, where applicable) (The Handbook). In line with EIB's ESPS, the EIB-CM bases its work on the presumption that:

- (i) the EU Environmental and Social law has been correctly transposed into national law<sup>5</sup>;
- (ii) national law is being enforced by the responsible authorities<sup>6</sup>;
- (iii) the promoter of the Bank's projects are responsible for the application and enforcement of the requirements of the EIB<sup>7</sup> - including compliance with relevant laws and other obligations – and that "*that requirement applies throughout the project cycle (italics added)*".

Moreover, the EIB-CM has noted that, according to the ESPS, "*The environmental and social standards apply without qualification in the EU. Within the EU, EU law is mandatory, but the Bank*

<sup>4</sup> [http://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf)

<sup>5</sup> [http://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf), page 8, provision 20

<sup>6</sup> [http://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf), page 8, provision 20

<sup>7</sup> [http://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf), page 7, provision 12

*reserves the right to set its own higher standards should this be considered appropriate*<sup>8</sup> and that in the EU *“the Bank reserves the right to require standards that are more stringent than or fall outside EU legal requirements”*<sup>9</sup>

The EIB-CM also takes note that the Bank’s environmental due diligence aims at (i) verifying the analysis of the environmental and social risks carried out by the promoter of the financed project; (ii) assessing properly the impacts of the risks, and categorising the likelihood of those impacts; and (iii) keeping good records and files of this analysis.

Based on the above and considering § 3.1 of the EIB CMPTR, it is part of the EIB-CM mandate to assess and evaluate the allegations in the context of the overall EIB project appraisal and monitoring for the concerned project.

### **Work performed by the EIB-CM**

The EIB-CM had initial meetings with the Bank’s services to discuss the issues presented by the Complainants and to identify the areas that require particular attention. As part of the initial assessment, the EIB-CM met the EC and the EP Petitions Committee<sup>10</sup> in Brussels in June 2014 and undertook a Fact-Finding and Stakeholder Engagement mission to Spain to meet with the Complainants and the promoter in September 2014. Based on the information gathered, the EIB-CM prepared an Initial Assessment Report (IAR) that included a proposed “way forward”, which was shared with the Complainants and the promoter in May 2015. Given the complexity and large number of allegations, and in line with § 5.6.3. of the EIB-CM’s Operating Procedures, the EIB-CM engaged external expertise to support the EIB-CM with the analysis of the allegations addressed by this report. Based on the information collected during the investigation stage and subsequent exchanges and dialogue with the Bank’s services, the EIB-CM prepared this report. The content and conclusions of this report remain the responsibility of the EIB-CM.

The allegations covered in this report have been grouped as follows:

- A) Allegations pertaining to environmental impacts, such as fragmentation of the project, the impact on biodiversity and Natura 2000 network, land and marine cultural heritage, regional environmental legislation, land use and pollutant emissions and hazardous waste management;
- B) Allegations pertaining to social impacts, such as the public consultation relating to the environment and access to environmental information;
- C) Allegations associated with industrial risks, such as geological & seismicity and industrial activities.

### **Findings and conclusions**

The EIB-CM investigation shows the complexity of the issues at stake. The difficulties arise first from the complexity of the project itself, which involves the construction of facilities onshore and offshore and the conceptual development of a large underground gas storage. Concerning the complaint itself, the complexity arises from the large and diverse number of allegations, the evolving situation of the project at the time when the case was processed and the large number

<sup>8</sup> [http://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf), page 8, provision 18

<sup>9</sup> [http://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf), page 15, provision 32

<sup>10</sup> Their responses to the complainants have made public :

[http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/peti/cm/838/838826/838826es.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/peti/cm/838/838826/838826es.pdf)

of stakeholders involved. It is also worth noting that induced seismicity is an evolving field of research as outlined in the post mortem evaluation report carried out by the Massachusetts Institute of Technology (MIT) and Harvard University.

Overall, it can be concluded that the Bank appraised the project following its procedures based on the assumption that the Member State has correctly transposed and enforced the relevant EU Directives. In this regard, the EIB-CM analysis concludes that all allegations except the absence of documentation of the internal analysis of some impacts are unfounded. The main findings, conclusions and suggestions for improvement per allegation are summarised in Annex I.

The EIB-CM analysis also concludes that the ESPS provides the Bank with the possibility to request promoters to apply additional requirements or conditions, although it does not provide further details in the Handbook. The assessment of the EIB-CM of the Castor case shows that the Bank had an opportunity to reflect on the application of such additional requirements in the following two areas: the analysis of seismicity risks and the public consultation process. When there is a risk that a project may cause significant and irreversible damage to the environment, like extreme levels of induced seismicity, the application of the precautionary principle<sup>11</sup> needs to be carefully analysed. In the case that a feasible alternative is not available to reduce that risk to an acceptable degree, the Bank could advise the promoters to take additional measures..

The operation of the project has been put under hibernation. The Bank's funding has been repaid and the Bank is no longer involved. The EIB-CM will close this case with this report. However, as this investigation shows, there are important lessons to be drawn by the Bank. The EIB-CM would like to draw the Bank's management attention with a view to consider the following **areas for improvement** during the appraisal and monitoring of a project:

1. In cases where (i) an event has a low probability of occurring but may result in project failure and/or have a high negative impact on the environment, human health and/or well-being or, (ii) there is not sufficient certainty to conclude otherwise, the Bank should continue to allocate appropriate resources to conduct an in-depth and documented risk assessment, which may result in specific conditions and/or other requirements.
2. In a multiphase approval project, the Bank's services should ensure that in the appraisal and monitoring of the project, opinions are provided and documented at the different decision points. This should include all results of project risk evaluations including results of court cases and related risk/impact analysis;
3. The Bank should establish an appropriate guidance to be used when carrying out the assessment of the meaningfulness of the public consultation process. This guidance should be based on the implementation and best practices including those of the relevant Aarhus Convention bodies (e.g. Maastricht Recommendations on Public Participation in Decision-making, Guidance on the implementation of the Aarhus Convention, decisions of the Meeting of the parties and findings of the ACCC);
4. Whilst assuming the prevailing legal framework in projects in the EU, the Bank's services should strengthen awareness of instances when an enhanced due diligence may be required;

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<sup>11</sup> The precautionary principle is detailed in Article 191 of the Treaty on the Functioning of the European Union. It aims at ensuring a higher level of environmental protection through preventative decision-taking in the case of risk. The precautionary principle may be invoked when a phenomenon, product or process may have a dangerous effect, identified by a scientific and objective evaluation, if this evaluation does not allow the risk to be determined with sufficient certainty.



5. The Bank's services should verify that the concerns and risks flagged as part of the Stakeholder Engagement process are adequately assessed and addressed, as relevant, by the promoter. The Bank's services should also adequately document the outcome of their analysis and the appropriate action that needs to be taken for an informed decision making process.

In addition, the Bank's services have confirmed during the course of this investigation that the Bank has taken measures, for special cases and according to a risk-based approach, to engage specialist geophysical consultants at appraisal stage.

The EIB-CM encourages the Bank's services to bring an outline with concrete actions in relation to the areas for improvement to the attention of the Management Committee.

**Complainant:** Plataforma Ciudadana en Defensa de les Terres del Sènia (PCDTS)

**Date received :** December 2013

**Confidentiality :** No

**Project status :** Repaid

**Board Reports :** July 2010 and September 2011 with subsequent Management Committee Decision on the final terms conditions of June 2013

**Bank's exposure amount:** Subscription of the Project Bonds (actual EUR 300m) and Credit Enhancement Facility (actual EUR 200m)

## 1. ALLEGATIONS

- 1.1 In December 2013, the European Investment Bank's Complaints Mechanism (EIB-CM) received a complaint from the Plataforma Ciudadana en Defensa de les Terres del Sènia (PCDTS) concerning the Bank's financing of the Castor Underground Gas Storage project.
- 1.2 This Conclusions Report follows the Initial Assessment carried out by the EIB-CM in May 2015, which recommended that the investigation phase be focused on two main areas: (i) The Bank's due-diligence and subsequent monitoring of environmental and social issues (including the seismic risk allegations); and (ii) the Bank's due-diligence and subsequent monitoring of the governance aspects related to the project (i.a. technical and financial capacity of the promoter; economic analysis and granting of licenses and permits).
- 1.3 This report summarises the findings, conclusions and recommendations for the first area of impacts - environmental and social, including the associated industrial risks. Table 1 summarises the main concerns expressed by the Complainants.

**TABLE 1 – SUMMARY OF COMPLAINTS**

**Failure to assess the environmental and social impacts of the project, including industrial security risks**

- *The Complainant alleges that the Bank has failed to assess the environmental impact of the project and a possible breach of EU Directives. The allegations against the failure of the Bank to assess environmental impact comprise the largest number of complaints in the Complainant's documents.*
- *In addition to aspects affecting the marine flora and fauna due to the type of activities to be carried out, the Complainant emphasised the so-called "salami-slicing" of the project, in breach of EU Directives, in order to obtain the environmental licences.*
- *In the Complainant's view, the promoter did not follow a proper public consultation procedure because of limited access to documents.*
- *In addition, it is alleged that the administration selected the most favourable regional legislation to grant the environmental permits.*
- *According to the Complainants, the project would have negative impacts on protected natural areas such as the Delta del Ebro National Park and areas included in the Natura 2000 network.*
- *The Complainant also alleged that the Bank failed to verify and assess the impact of the seismic risk and criticised the inadequate security measures of the marine installations, particularly with respect to the risk of oil spills in sensitive environmental areas.*
- *It is also claimed that the EIA failed, inter alia, to analyse the processing of dangerous substances, which, in the Complainant's view, infringes the Seveso II Directive.*

1.4 Based on the information reviewed, the EIB-CM has grouped the allegations as follows:

A) Allegations pertaining to environmental impacts

- a.1 Fragmentation
- a.2 Impact on biodiversity and Natura 2000 sites
- a.3 Land and marine cultural heritage
- a.4 Regional environmental legislation applicable to the project
- a.5 Land use and study of alternatives
- a.6 Pollutant emissions and hazardous waste management

B) Allegations pertaining to social impacts

- b.1 Public consultation relating to the environment and access to environmental information

C) Allegations associated to industrial risks

- c.1 Geological and seismic risk
- c.2 Industrial risks

For each allegation, key elements of the regulatory framework will be identified in the relevant section on the said allegation.

## 2. CLAIM

The Complainants requested:

- To verify if the Bank carried out proper due diligence in assessing the risks of the project;
- To terminate the financing of the project.

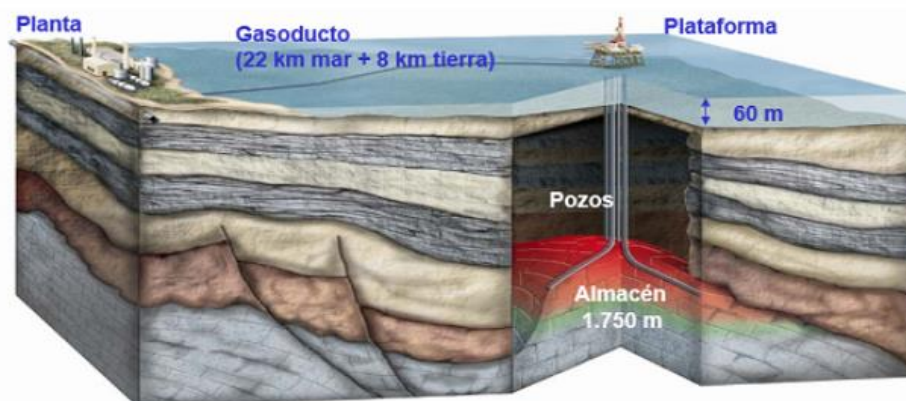
## 3. THE PROJECT AND THE BANK'S FINANCING

- 3.1 The Castor Underground Gas Storage project consists of the conversion of a former oil field ("Amposta") into a major natural gas storage facility. The oilfield was abandoned in 1990 as its exploitation became uneconomic. The Castor/Amposta field is located in the Mediterranean Sea, at a depth of 1700 m (sub-sea) and approximately 22 km off the east coast of Spain. The gas storage project, which was identified as a priority TEN-E<sup>12</sup> project, involves 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. A ruling of the Spanish Supreme Court in 2015 determined that the connection to the national grid constitutes an integral part of the project.

<sup>12</sup> Trans-European Energy Networks.

3.2 Figure 1 shows the graphic design of the project.

Figure 1: The Castor project



Source: [Promoter](#) documentation submitted to the EIB

3.3 As above-mentioned, in 2010, the Castor project was one of the trans-European energy networks (TEN-E) priority projects. The main objectives of the TEN-E strategy can be summarised<sup>13</sup> as follows:

- The interconnection, interoperability and development of trans-European networks for transporting electricity and gas are essential for the effective operation of the internal energy market in particular and the internal market in general. Users should have access to higher-quality services and a wider choice as a result of the diversification of energy sources, at more competitive prices. Closer links should therefore be established between national markets and the EU as a whole.
- The TEN-E strategy plays a crucial role in ensuring the security and diversification of supply. Interoperability with the energy networks of third countries (accession and candidate countries and other countries in Europe, in the Mediterranean, Black Sea and Caspian Sea basins, and in the Middle East and Gulf regions) is essential.
- Access to TEN-E also helps to reduce the isolation of the less-favoured, island, landlocked or remote regions, thus strengthening territorial cohesion in the European Union (EU).
- The interconnection of TEN-E also promotes sustainable development, in particular by improving the links between renewable energy production installations and using more efficient technologies, thus reducing losses and the environmental risks associated with the transportation and transmission of energy.

3.4 Annex II presents a timeline summarising the main events at project level and at the Bank. 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 identified as a potential candidate for a Project Bond. At its meeting of 20 September 2011, the Bank's Board of Directors approved a proposal to transform the initial loan into a EUR 200m Project Bond Credit Enhancement (PBCE) instrument in the form of a standby Letter of Credit; the balance of the initial approved amount (up to EUR 600m) was to be subscribed as Senior Bonds and/or to be lent to the project through the intermediation of acceptable banks. The final terms and conditions of the proposed intervention were approved by the

<sup>13</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A127066>

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.

- 3.5 The implementation of the project was suspended in October 2013 by the Spanish Government following seismic activity that coincided in time with the injection of cushion gas into the deposit. Subsequently, in July 2014, the promoter submitted its request to the Spanish authorities to relinquish the concession in line with the arrangements contained in the pertinent Royal Decree. In September 2014, this request was accepted by the Spanish Government. In accordance with the arrangements between the Promoter and the Spanish Government to relinquish the Concession<sup>14</sup>, the project was transferred to ENAGAS and put into hibernation in November 2014 and the promoter was repaid the corresponding portion of the amount invested. The promoter thereupon fully repaid the bondholders, including the Bank.

## **4 BACKGROUND TO THE COMPLAINT**

- 4.1 Following the suspension of the implementation of the project in October 2013, the financing provided by the EIB came under close scrutiny by Spanish and European civil society as well as by the European Parliament. On 30 October 2013, a coalition of 14 NGOs (later enlarged to 27) asked the Bank by letter to clarify its position on the issues surrounding the suspension of the implementation of the project. On 27 November 2013, the Bank's services replied to this letter. After that, the EIB-CM received two formal complaints – one from the PCDTS on 3 December 2013 and another one from an individual on 20 December 2013. This individual had previously contacted the European Ombudsman (EO) and the EO referred his complaint to the EIB-CM in accordance with the procedure agreed under Memorandum of Understanding (MoU) signed between the Bank and the EO.
- 4.2 In its complaint of December 2013, PCDTS made reference to a letter sent to the Bank in 2010 where it expressed its concerns about the financing of the project by the Bank. At that time, PCDTS made reference to complaints submitted to the European Commission and the Petitions Committee of the European Parliament. The EIB-CM took into consideration, as part of the allegations, the documents submitted by PCDTS to the European Commission and the Petitions Committee of the European Parliament in the documents 2010 - PETICION COMISION EUROPEA 831-2010 and 2011 - PETICION COMISION EUROPEA 610-2009, plus additional correspondence sent to the Bank during the processing of this case. The Complainants presented several allegations concerning different aspects of the project to the EIB-CM. These allegations mainly put into question the Banks's due diligence concerning environmental, social and governance issues during the appraisal. The allegations received from the individual were similar, in content, to those of the PCDTS. The EIB-CM proposed to the two Complainants to address the complaints simultaneously to the extent possible<sup>15</sup>. This proposal was accepted by the parties.

## **5 REGULATORY FRAMEWORK OF THE COMPLAINTS MECHANISM INVESTIGATION**

- 5.1 When performing its activities, the EIB is bound by the Treaty on European Union, the Treaty on the Functioning of the European Union (TFEU), EIB's 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

<sup>14</sup><https://www.boe.es/boe/dias/2014/10/04/pdfs/BOE-A-2014-10059.pdf>

<sup>15</sup> Allegations concerning governance aspects of the project are processed under the case of reference SG/E/2014/01

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>16</sup> by the EIB Group.

- 5.2 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."* This provision should be read in conjunction with the considerations on the allocation of responsibilities as regards the environmental impact assessment of projects. In addition, Part IV, Article 2.5 of the Complaints Mechanism Principles, Terms of Reference and Rules of Procedures states that *"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.
- 5.3 In analysing the possible failure of the Bank during due diligence, the EIB-CM will take into consideration the relevant policies of the Bank in assessing projects, including the Operational Policies, the ESPS and the 2007 and, where applicable, the 2010 versions of the Handbook.
- 5.4 In order to understand the Bank's role in assessing environmental and social impacts, the following articles of the ESPS guided the work of the EIB-CM:
- Article 17 of the ESPS Statement states: *"[all] projects financed by the EIB are required to undergo an appropriate Bank environmental assessment (EA), based on information provided by the promoter and other stakeholders, as detailed in the Handbook."*
  - Article 12 of the ESPS's Background states: *"The Handbook translates the environmental and social principles and standards described in the Statement into the operational practices followed by the staff of the EIB."*
  - Article 18 of the ESPS's Background states: *"The environmental and social standards apply without qualification in the EU. Within the EU, EU law is mandatory, but the Bank reserves the right to set its own higher standards should this be considered appropriate."* The Bank's right to require standards that are more stringent than or fall outside EU legal requirements is repeated in Article 32 of the ESPS's Standards. Articles 32 – 35 define three types of standards: emission, ambient and procedural. While the definitions of the first two fall within what is anticipated, the procedural standards are defined as *"the management and administrative requirements related to the protection of the environment that should be fulfilled in the development, implementation and operation of a project"*. All three types of standards are *"identified in discussions between the Bank and the promoter during project preparation, appraisal and negotiation"*.
  - Article 12 of the ESPS's Background further states that the Handbook *"explains how Bank staff conducts its routine work on environmental and social matters throughout the project cycle. It describes the extent of the work of the Bank and the responsibilities and roles of other parties, notably those of the promoter and the intermediaries with whom the Bank cooperates. The promoter is responsible for the application and enforcement of the requirements of the EIB, including*

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<sup>16</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.

*compliance with relevant laws and other obligations placed on the promoter by the Bank, typically reflected in legal undertakings.”*

- Article 6 of the ESPS’s Statement states that the “*EIB will not finance projects... that do not comply with appropriate national and EU environmental and social legislation in force*”. Article 20 of the ESPS’s Background states: “*Within the EU, the EIB assumes that EU environmental and social law has been correctly transposed into national law and that national law is being enforced by the responsible authorities. EIB due diligence focuses particularly on countries and/or specific laws where there is evidence to suggest these assumptions may be false*”.
- Article 18 of the ESPS’s Statement states: “*In some cases, the Bank EA is based on a formal EIA, according to the definition contained in the EU EIA Directive. The EIA should integrate an assessment of project alternatives and include timely public disclosure of relevant information, together with meaningful consultations, in accordance with the Directive and in pursuit of the objectives of the EIB Public Disclosure Policy*”.
- Article 25 of the ESPS’s Statement enshrines the principle of precaution: “*The EIB aims, in accordance with EU policy on the environment, at a high level of protection based on the application of the precautionary principle, and on the principles that preventative action should be taken, that environmental damage should be rectified at source, and that the polluter should pay*”.

5.5 As part of the regulatory framework, the EIB-CM also reviewed the EU and national legislation in force at the time when the EIB due diligence and monitoring took place, including the following EU Directives and Laws:

5.6

- EIA Directive (85/337/EEC);
- Directive concerning public participation in environmental decision making (2003/35/EC)<sup>17</sup>;
- Real Decreto Legislativo 1/2008, de 11 de enero, por el que se aprueba el texto refundido de la Ley de Evaluación de Impacto Ambiental de proyectos<sup>18</sup>.

5.7 Concerning the public consultation allegations, the EIB-CM also reviewed the legal framework of “The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters” (The Aarhus Convention). In this regard, the EIB-CM notes that the Convention is applicable in the case of this project for three reasons namely: the Convention is part of the EU law, the Convention is part of the Spanish law and the Convention is part of EIB’s standards.

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<sup>18</sup> Legislative Royal Decree 1/2008. Of 11 January, about the Environmental Impact Assessment of projects, BOE núm. 23, 26.01.2008.

## **6 WORK PERFORMED BY THE EIB-CM**

- 6.1 During the preliminary period the EIB-CM and the Bank's services discussed the status of the project, the background of the complaint and, more importantly, a common understanding of the different allegations received. It was agreed with the services that the EIB-CM would carry out further discussions with the European Commission's Directorate-General for Environment and the Petitions Committee of the EU Parliament to better understand the way in which these institutions had treated the allegations and the main outcome of the European Commission (EC) process. The EC explained to the EIB-CM that their assessment of 2010 was based on the EC contradictory procedure whereby the EC passes the complainants questions to the concerned Member State and prepares the replies based on input received from the Member State. As a result of this procedure, the EC did not find any area of infringement and proceeded to close the case because the complainants did not follow with additional requests. Similar conclusion was communicated subsequently by the Petitions Committee.
- 6.2 In September 2014, the EIB-CM carried out a Fact-Finding and Stakeholder Engagement mission to Alcanar (Tarragona) to discuss and clarify the details of the allegations as well as the EIB-CM's mandate with the Complainants. A meeting with the promoter in its offices located at the plant site in Vinaroz (Castellón) was also arranged in order to gather its initial views on the allegations. Subsequently, in May 2015 the EIB-CM prepared an Initial Assessment Report (IAR) whereby it was proposed to focus on two main areas: (i) the Bank's due-diligence and subsequent monitoring of environmental and social issues (including the seismic risk allegations); and (ii) the Bank's due-diligence and subsequent monitoring of the governance aspects related to the project (i.a. technical and financial capacity of the promoter; economic analysis and granting of licenses and permits).
- 6.3 Given the complexity and extent of the allegations as well as the voluminous documentation collected, a team of external experts were engaged to assist the EIB-CM during the investigation phase. In early 2016, the EIB-CM team met the complainants and the promoter in Spain to discuss in depth the issues at stake.
- 6.4 After collecting and analysing additional information, the EIB-CM finalised this Conclusions Report.

## **7 FINDINGS AND CONCLUSIONS**

### General Overview

- 7.1 The Bank's procedure for approving financing for the project was carried out in different stages. Between the autumn of 2009 and the first half of 2010, the Bank's services undertook a full technical, economic and financial assessment of the project, the site visit and the appraisal meetings. On the basis of the EIB appraisal, the Bank's Board of Directors approved, in July 2010, a funding facility of up to EUR 600m<sup>19</sup>. In September 2011, the Bank's services proposed that the project be included under the new Project Bond Credit Enhancement initiative<sup>20</sup> by a note that was submitted to and approved by

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<sup>19</sup> The EIB's Note to the Board of Directors (Investment Loan from Own Resources), CA/438/10, Document 10/358, (14 July 2010).

<sup>20</sup> The EIB's Note to the Board of Directors (Project Bond Credit Enhancement), CA/449/11, Document 11/426 (20 September 2011).



the Board of Directors. Finally, in July 2013, the Bank's Management Committee approved the final terms and conditions of the Bank's financing for the project<sup>21</sup>.

As indicated in the paragraph above, the Bank only carried out a full technical appraisal at the time of the first Board approval<sup>22</sup>. It was understood at the later stages, in 2011 and, finally, in 2013, that the subsequent proposals were just modifying the financing terms and that the underlying project remained the same being almost finalised by mid-2013. Therefore, the subsequent decisions of the Bank's decision-making bodies were based on a technical appraisal of over 3 years old with a limited additional project assessment, a gap-analysis or marginal update of the technical project appraisal.

The Findings Section will discuss the allegations presented in Section 1.4 in detail. For each allegation, a description will be provided together with the relevant references to the regulatory framework, the findings and the conclusions.

## **7.2 A) Allegations pertaining to environmental impacts**

### **a.1 Fragmentation**

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

According to the Complainants, the project promoter carried out unnecessary "salami slicing" (fragmentation) of the project ("connecting pipeline") to circumvent – or make less relevant – certain EU Directives on environmental impact studies and strategically and artificially disperse the project in parts across various authorising bodies.

#### **7.2.2 Regulatory framework**

The EIB-CM understands that the Bank's services appraised this matter under the presumption that at the time of appraisal the Member State has correctly transposed the EU law into national laws. The EIB-CM also notes that in both the 2007 and 2010 versions of the Handbook, sections B1.2 (page 31) and C.2 (page 40) respectively, entitled "Environmental and Social Assessment - Main Tasks", it is stated: "[the Bank] carries out the following main tasks in the field of environmental and social assessment (...) Where an EIA is required, confirms the boundary of the project [clarifies the boundary of the project covered by the EIA, 2007 version] and the area of influence covered by the EIA and that this is in line with the EIA Directive, confirms that the main stages of the EIA are complete and documented (screening, scoping, studies, public consultation, planning consent/authorisation, and public informed of decision) (...)".

In the section "Guidance on Assessment of EIA Process (where required)", both versions of the Handbook (B2.2, paragraph 120 and C.4 paragraph 128 respectively) require [the Bank] when judging the quality of the EIA for EIB purposes to take into account whether a series of aspects have been adequately covered, among which is the examination of all impacts "(...) and this may include project elements not under control of the Promoter, for example, access roads/rail to an airport".

#### **7.2.3 Findings**

The project requires a 30.3 km pipeline to connect the offshore platforms with the on-shore operations plant. This 30.3 km connecting pipeline has a 21.6 km marine section and an 8.7 km land section. An operative corollary of the whole Castor project is a connection with the National Gas Grid (NGG). In order to connect the project to the NGG, a pipeline

<sup>21</sup> The EIB's Note to the Management Committee (Tacit Procedure), OPSA/NPST-1/2013-1415/AZ/lf and OPSA/ESPT1/2013-1414/JA (24 June 2013).

<sup>22</sup> The actual site-visit having taken place in the autumn of 2009.

of 11.6 km (the “connecting pipeline”) was constructed by Enagas from the on-shore operations plants to a NGG connection point at Uildecona.

The Castor project itself was subject to an EIA procedure as required by Annex I of the EIA Directive (85/337/EEC), amended by Directives 97/11/EC and 2003/35/EC<sup>23</sup>. This EIA procedure did not consider the 11.6 km “connecting pipeline”, the promoter of which was ENAGAS<sup>24</sup>. This pipeline was subject to a separate screening under Annex II of the Spanish EIA legislation. As a result of this screening, it was decided that the “connecting pipeline” should not be subject to an EIA procedure<sup>25</sup>. The project had been included in the “Plan for the development of the electricity and gas sectors in Spain 2007-2016” which was subject of Strategic Environmental Assessment (SEA).

During its investigation, the EIB-CM learnt that a local company brought an administrative case before the Audiencia Nacional in November 2009<sup>26</sup> against the decision to not submit the “connecting pipeline” to an EIA procedure. On 15 April 2013, the Audiencia Nacional ruled that the project had been subject to fragmentation. An appeal against this ruling made by ENAGAS and the promoter before the Supreme Court of Spain was rejected in September 2015. In its judgement, the Supreme Court found that not subjecting the “connecting pipeline” to an EIA was against Spanish EIA legislation.

The Bank’s services informed the EIB-CM that they had examined the alleged fragmentation of the project during the due diligence by checking the cumulative impacts addressed by the associated EIA and SEA. Based on their assessment, they concluded that the “connecting pipeline” was not likely to have significant effects on the environment. In addition, the EIB-CM found evidence that the Bank was made aware by the promoter of the court claim right after it was admitted by the Spanish Court in June 2010, although it did not find any subsequent documented follow up. According to the Bank’s services, the documentation was not required considering that at that time the project was already built, the environmental effect was assessed as not significant. In addition, according to the EU Court of Justice decision of July 2008, the EIA should be carried out before the development consent was granted and not as Regularisation after the event has taken place.<sup>27</sup>

#### 7.2.4 Conclusions

The case filed in the Spanish judicial system concerning the fragmentation of the project is relevant to the analysis of this allegation. Therefore, and as the Supreme Court of Spain has definitively ruled on this matter, the EIB-CM takes note of the Court decision and has only assessed the EIB services related due diligence.

Whilst the Bank reviewed the EIA screening process carried out by the Spanish authorities, as presented in section 7.2.3 above, the Bank’s conclusion was not documented. The EIB-CM takes note that this is not aligned with good administrative practices.

A suggestion for improvement has been introduced in section 9 of this report

<sup>23</sup> Resolución de 23 de octubre de 2009, de la Secretaría de Estado de Cambio Climático, por la que se formula declaración de impacto ambiental del proyecto Almacén subterráneo de gas natural Amposta (BOE núm. 272, 11.11.2009).

<sup>24</sup> The Spanish energy company that owns and operates the country’s gas grid.

<sup>25</sup> Resolución de 5 de noviembre de 2009, de la Secretaría de Estado de Cambio Climático, por la que se adopta la decisión de no someter a evaluación de impacto ambiental el proyecto Conexión con el almacenamiento subterráneo Castor, Tarragona-Castellón (BOE núm. 282, 23.11.2008).

<sup>26</sup> Recurso Contencioso Administrativo 37/2010

<sup>27</sup> Case C-215/06 - Judgment of the Court of 3 July 2008 Commission of the European Communities v Ireland

## a.2 **Impact on biodiversity and Natura 2000 sites**

### 7.2.5 **Details of the allegation**

The Complainant alleges that the Bank failed to properly assess the impact of the project on the grounds that the project is not in line with European Union Directives on the protection of the natural environment, particularly the Habitats Directive (92/43/EEC), the Birds Directive (2009/147/EC), and EIA Directive (85/337/EEC). The detailed allegation considers that the potential impacts on protected fauna and flora species and protected natural sites were not fully addressed. In particular, the Complainant highlights the following issues:

- Non-observation of the EU Directives on the conservation of natural habitats and wild fauna and flora, including marine habitat (special reference is made to the "*Posidonia oceanica*").
- Potential impacts on protected natural areas included in the Natura 2000 network.
- Potential negative environmental impacts on the Delta del Ebro Natural Park.

### 7.2.6 **Regulatory framework**

According to the Handbook, the Bank's appraisal team is expected to verify that the project is in compliance with the EU Environmental Acquis on environmental assessment. Biodiversity and natural resource management are specific issues to be appraised and the EIB team is expected to:

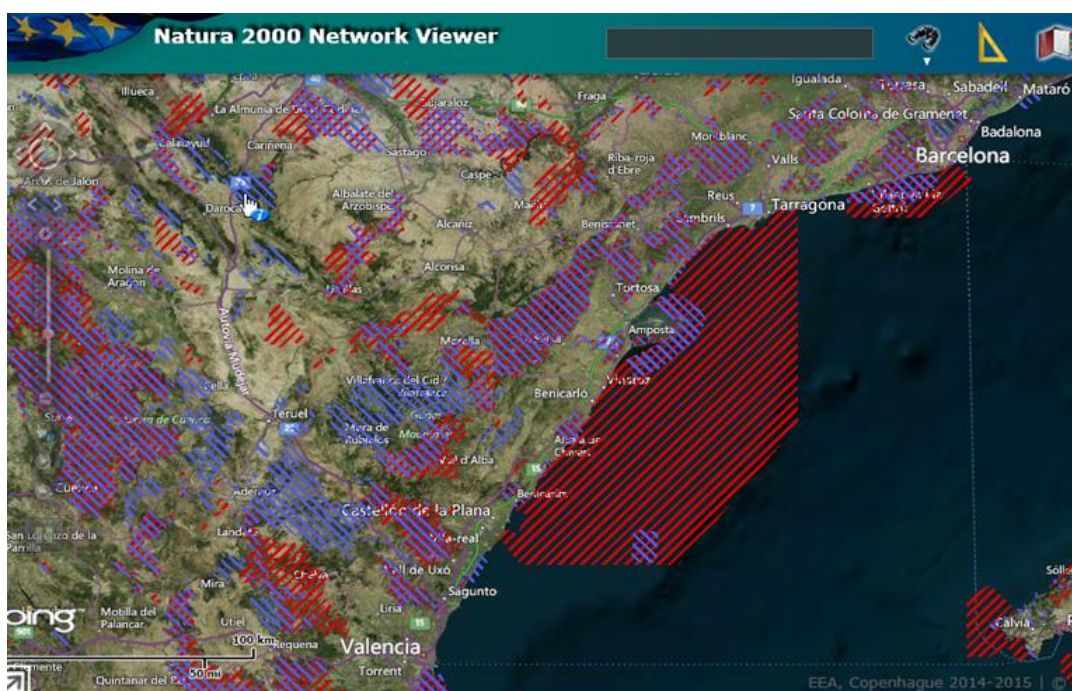
- evaluate during the screening stage whether the project is likely to be at or near a nature conservation site or in an area rich in biodiversity;
- ensure that a biodiversity assessment has been carried out on the basis of the Habitats 92/43/EEC and Bird Directives 79/409/EEC, either as part of an EIA or separately, and that Forms A/B<sup>28</sup> or equivalent have been filed for projects located in the EU Member States and accepted by the relevant competent authority;
- Form A/B, where required, should at the latest be provided prior to first disbursement as a condition of the loan and is applicable to Spain as a EU Member State;
- When specific potential significant biodiversity impacts (primary and secondary effects) have been identified by the team, the EIB should ensure that the appropriate mitigation measures have been developed.

### 7.2.7 **Findings**

At the time of licensing, the project did not encroach on any nature conservation sites. However, the Castor project is located near relevant nature conservation sites through both its onshore and offshore facilities. Relevant potential cumulative impacts such as occupation, disturbance during construction and risks of oil spills must be assessed. These impacts must be taken into account when evaluating the impact on biodiversity. The Delta del Ebro Natural Park (Natura 2000 site, Ramsar Convention, UNESCO biosphere reserve) is located 17 km from the offshore platforms (see Figure below).

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<sup>28</sup> Form A or equivalent declaration under the Habitats Directive is required for projects without significant impact on sites of nature conservation and Form B or equivalent declaration under the Habitats Directive for projects with significant impacts on sites of nature conservation, to be signed by the relevant authority responsible for monitoring sites of nature conservation.



Source: Natura 2000 network Viewer (<http://natura2000.eea.europa.eu/#>)<sup>1</sup>

During the promoter's environmental impact assessment, biodiversity concerns were raised by regional environmental bodies, local NGOs and individuals. The main concerns are summarised below:

- The Catalonia Environmental Department considers that the Delta del Ebro Site could be affected by potential leaks from the platforms of oil and other hazardous substances. Furthermore, helicopters and ships travelling to the platforms could also have an impact on wildlife.
- Ecologistas en Acción (NGO) and a number of individuals consider the biodiversity studies in the Environmental Impact Assessment Report (EIAR) to be insufficient.

The EIB-CM's review shows that potential impacts were assessed through the Environmental Impact Assessment. The EIAR includes (section 7) a comprehensive assessment of impacts on biodiversity, including detailed modelling of large oil spills. Prevention and monitoring measures are defined in Section 9. The same impacts were evaluated by the Spanish environmental authority, which issued an Environmental Impact Statement (EIS) in line with the relevant European Directives.

The Bank's services visited the site during the appraisal stage and concluded that the project would not have significant effects on nature conservation sites but there was "certain local opposition to the project and internet advocacy to that effect also". The legal procedures were correctly appraised and recorded by the Bank in accordance with the Bank's rules and regulations.

As a result, the Bank recommended that the promoter provided with a Form A<sup>29</sup> or equivalent as a Condition Precedent for disbursement. The Bank further noted that "there may be a need for further ongoing campaigns to consult with and reassure the public during construction and operations". Regarding further monitoring of the project, the Bank's team recommended "light monitoring unless there are complaints". All these conditions were also incorporated in the proposal to the Board and in the Project Implementation Agreement with the promoter, signed in April 2011.

<sup>29</sup> Form A is a document set out in the Handbook. In this case, Form A is a declaration from the competent authority responsible for monitoring sites of nature conservation importance, stating that the project is not likely to have significant effects on sites of nature conservation importance.

The first disbursement took place in April 2011. The Bank subsequently documented that the EIS issued by the Spanish environmental authority would have the same value as the Form A. The Bank's services are of the opinion that, in Spain, Article 6 of the Habitats Directive has been integrated in the EIS, and this would justify the equivalency of the two documents.

The EIB-CM has reviewed this issue taking into account the relevant provisions of the Handbook, as set below. The EIB-CM notes that the EIS cannot be automatically converted as a replacement for Form A for the following three reasons:

- the Handbook discourages reliance on EIA reports that are prepared prior to the issues of the EIS concerning biodiversity information<sup>30</sup>;
- the EIS may not necessarily cover all sites of nature conservation importance referred to in Form A<sup>31</sup>;
- The authority issuing the EIS may differ from the Competent Authority for monitoring sites of nature conservation.

The EIB-CM review has performed this analysis for this case and concludes that the material impact of this action on the overall implementation of the project may be limited given that (i) the biodiversity information included in the EIS was sufficient; (ii) that the Bank was informed that the project would not have significant effects on nature conservation sites which cover Natura 2000 sites and other types of protection regimes (e.g. Ramsar sites) and (iii) that the competent authorities were consulted and involved at the EIA stage. Under these circumstances, the basic objectives of the Form A have been taken care of in the Bank's decision for disbursement.

#### 7.2.8 Conclusions

The Bank appraised and identified issues relating to the environmental impacts of the project in accordance to the Bank's relevant policies and procedures. These issues were properly documented for decision-making by the Bank.

The Bank included a Condition Precedent for disbursement in the Project Documentation (request for Form A or equivalent) to ensure that the relevant authorisation from the competent authority was in place in line with the Habitats Directive. However, the Bank accepted the EIS as the substitute for Form A without analysing in detail whether there were any material differences between both of them. The EIB-CM review has performed this analysis and concludes that the material impact of this action on the overall implementation of the project may be limited.

In future similar situations, it is the Bank's services duty to carry out a documented analysis to identify gaps between the agreed Form A and the document considered "equivalent" from accepting EIS as the substitute for Form A.

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<sup>30</sup> Section C.5.1, paragraph 150 of 2010 v Handbook expressly states that "*often the relevance of biodiversity information provided in EIA reports is not made explicit*".

<sup>31</sup> While sites of nature conservation importance, referred to in Form A, also encompass current and potential Natura 2000 sites, they also include other sites, such as Ramsar sites and International Bird Areas which do not necessarily fully overlap with current or future Natura 2000 sites. For example the International Bird Areas criteria are not entirely consistent with Natura 2000 identification requirements and some International Bird Areas trigger species are neither Annex I listed species of the Birds Directive nor migratory species (e.g. Siberian Jay), and some International Bird Areas thresholds are also lower than those used for Natura 2000 sites.

### **a.3 Land and marine cultural heritage**

#### **7.2.9 Details of the allegation**

The Complainants allege that the project did not consider the impacts on land and marine cultural or architectural heritage. In particular, the complaint highlighted the potential impact that the Castor UGS marine pipeline could have on submarine archaeological sites, given that the maritime route had been an area of intense trade traffic in ancient times. It also raised the concern of impacts on the cultural heritage sites affected by the “connecting pipeline” to the national grid which had not been subject to an EIA (see allegation a.1 on Fragmentation).

#### **7.2.10 Regulatory framework**

According to Article 3 of the EIA Directive, the environmental impact assessment has to identify, describe and assess in an appropriate manner the direct and indirect effect of a project on a series of factors, including cultural heritage. In addition, according to the 2007 Handbook, the Bank has to assess potential social risk effects on cultural heritage (such as impacts in archaeological and significantly historical sites).

#### **7.2.11 Findings**

Section 3.8 on archaeology of the EIA presented an analysis of the cultural heritage that could be affected by the implementation of the Castor UGS project. According to this, the promoter carried out an archaeological survey of the marine and land sites where the project was to be located.

The EIAR states that although the first route foreseen for the pipeline had no potential impacts on the marine site, it was necessary to undertake a new underwater survey within 5.7 km. The same applied to the land site as a new route was decided for the pipeline on land. This was confirmed in the EIS of the Ministry of Environment, which indicated the requirement for the Valencia Cultural Heritage DG to undertake an archaeological survey according to Article 11 of Law 4/1998. This Article states that any kind of project (public or private) that might have an impact on the cultural heritage of Valencia must include a report signed by the competent regional ministry on the compliance of the project with the legal framework for the protection of cultural heritage. The EIB-CM found no evidence that the Bank’s services evaluated the report in the context of their appraisal of the EIAR of the Castor UGS project. The promoter though undertook to submit the required studies as Addenda to its Environmental Impact Study.

The EIS issued by the Ministry of the Environment contained as an obligation for the promoter to undertake:

- the measures imposed by Valencia Cultural Heritage DG;
- a new subaquatic survey of the first 5.7 km of the pipeline route in the sea;
- a new archaeological survey along the route of the pipelines and, at least, of the acquired land parcel.

These conditions have to be verified by the relevant competent authority before issuing the permits. The Bank’s monitoring rely on these verifications made by third parties.

Concerning the possible impact of the “connecting pipeline” on the “Via Augusta” (a historical Roman road), the EIA screening stated that the route of the pipeline would affect the road. As explained in section 7.2.3, the national authorities decided that this section of the project did not require an EIA. The EIB-CM has not found evidence that the Bank’s services ascertained that a detailed survey was undertaken by the promoter, before the new works were undertaken.

The EIB Appraisal Report on the Castor UGS does not contain any reference to cultural heritage effects.

#### 7.2.12 Conclusions

The Bank partly analysed the cultural impacts of the project through the review of the EIA. The EIB-CM observes that, in line with the ESPS, the Bank's services assumed that the conditions established by the regulator were fulfilled at the time of approving the EIA, and that each condition was verified by the relevant competent authority. Therefore there was not a separate verification by the Bank's services of the fulfilment of these conditions. From the EIB-CM perspective, the Bank procedure seems reasonable and proportional to the established procedure.

As discussed in §7.2, the analysis of the environmental impacts of the project did not consider the impacts, including those of cultural nature, of the connecting land pipeline. As a result, the Bank could not assess the impacts on cultural heritage of this pipeline.

A suggestion for improvement has been introduced in section 9 of this report.

#### a.4 Regional environmental legislation applicable to the project

##### 7.2.13 Details of the allegation

According to the Complainants, the EIA was prepared according to the rules of the Valencian Autonomous Region. However, despite the fact that the project lies on the border with the Catalan Autonomous Region, the EIA failed to take the standards of the Catalan autonomous region into consideration. In the complainants' views, the project took advantage of two different legal regimes to implement a project which ought to have been supervised by the State Administration, but left its most relevant element relating to the environmental impact study to be exclusively regulated by the Valencia region's legislation. According to the Complainants, the Catalan legislation, which the Complainants consider to be stricter than the Valencian one, was not taken into consideration at all; moreover, the public entities of the bordering administration were not asked to issue corresponding reports.

In addition, the Complainants raised the issue of the application of the Integrated Pollution Prevention and Control (IPPC) legislation of Valencia to the onshore processing plant IPPC permit instead of the IPPC legislation of Catalonia.

##### 7.2.14 Regulatory framework

In addition to the EU and national environmental regulations already mentioned, the EIB-CM analysis takes into consideration the Valencian and Catalan legislation on environmental matters<sup>32</sup> and the 1978 Spanish Constitution.

At the pre-appraisal stage, the Bank's services are required by the Handbook to identify the main legal requirements relating to the project, recording the main national legislation as well as EIA legislation (Section A4.2, 2007 Handbook). During the appraisal stage, the Handbook also requires the Bank's services to identify the main environmental legal and regulatory framework applicable to the project promoter during implementation (Section B1.3, 2007 Handbook).

<sup>32</sup> (i) Valencia legislation: Ley 2/1989, de 3 de marzo, de la Generalitat, de Impacto Ambiental, Decreto 162/1990, de 15 de octubre, del Consell de la Generalitat Valenciana, por el que se aprobó el Reglamento para la ejecución de la Ley 2/1989, de 3 de marzo, de la Generalitat, de Impacto Ambiental, and Law 2/2006, of 5 May, on Pollution Prevention and Environmental Quality of Valencia; (ii) Catalonia legislation: Decreto 114/1988, de 7 de abril, de evaluación de impacto ambiental and Law 3/1998, of 27 February, on the integrated intervention of the environmental administration.

## 7.2.15 Findings

The issue raised by the allegation is intrinsically linked to the domestic distribution of powers and competences between the Spanish State and the Autonomous Communities laid down by the 1978 Spanish Constitution (Constitución Española - CE).

Based on the principles of autonomy and territorial decentralisation, the State (or Central Administration) and the Autonomous Communities (CC.AA) are competent at different levels for different matters. The distribution of competences between the State and the CC.AA is established by the Constitution (Articles 148 and 149). Article 148 CE sets out the matters for which the Autonomous Communities assume competences through their Statutes (regional constitutions) and Article 149 establishes the matters for which the State has competence. The CE provides for different levels of competence.

Concerning the Castor project, given the location of the offshore plant and the marine pipeline in territorial waters means that most of the authorisations had to be granted by the Spanish State Administration and that many aspects related to its management fall under State's competence. On the other side, given the fact that the onshore processing plant is located in the territory of the Autonomous Community of Valencia means that some of the authorisation and management aspects fall under the competence of this Autonomous Community. Therefore, and taking into account the legislation in force at the time of appraisal, it can be concluded that the promoter filed its application for authorisation with the relevant national and regional authorities.

Despite the fact that the legislation of Catalonia was not applicable, the EIB-CM has reviewed the requirements for environmental impact studies at the two levels of legislation (national and regional) to verify whether Catalan legislation, had it been taken into consideration, would have called for the application of stricter or additional requirements. The analysis concluded that considering the legislation of Catalonia in the EIA would have represented no change to the Environmental Impact Study.

Concerning the allegation that the public entities of Catalonia were not consulted on the issuing of the reports, the EIA details a series of entities located in Catalonia<sup>33</sup> that took part in the EIA consultation. Therefore, the legal provisions on consultation of concerned administrations were adequately applied and those administrations were consulted.

When analysing the complaint relating to the legislation applicable to the IPPC permit, it should be noted that the processing plant under the Castor project is located in the Autonomous Community of Valencia. As already indicated, according to the distribution of powers defined by the Spanish Constitution, it is up to the Autonomous Community to

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<sup>33</sup> According to Section 8 of the document entitled "*memoria resumen*" of the Environmental Impact Study, the consulted administrations included:

- › Dirección General de Calidad Ambiental del Departamento de Medio Ambiente y Vivienda de la Generalitat de Cataluña (DG for Environmental Quality of Cataluña);
- › Dirección General de Medio Natural del departamento de Medio Ambiente y Vivienda de la Generalitat de Cataluña (DG for Nature Protection of Cataluña);
- › Dirección General de Carreteras del Departamento de Política Territorial y Obras Publicas de la Generalitat de Cataluña (DG for Roads of Cataluña);
- › Dirección General de Pesca y actividades Marítimas del Departamento de Agricultura, Ganadería y Pesca de la Generalitat de Cataluña (DG for Fisheries and Maritime Activities of Cataluña);
- › El Observatorio del Ebro (Ebro Observatory);
- › Ayuntamiento de Almassora (Municipality of Almassora);
- › Ayuntamiento de San Carlos de la Rápita (Municipality of San Carlos de la Rápita).

In addition, Section 3 of the EIS of the Ministry of the Environment and Rural and Marine Affairs lists all the consulted administrations, including not only those listed in the *memoria resumen*, but also other departments of the Administration of the *Generalitat de Cataluña* as well as of neighbouring municipalities such as *Amposta*, *Deltebre*, *San Jaume D'Enveja* and the University Rovira I Virgili.



grant authorisations such as an IPPC permit. The Valencian Regional Government granted the IPPC permit to the processing plant on 2 February 2010, given that its final location was in the municipality of Vinaroz in the province of Castellón, which forms part of the Community of Valencia.

#### 7.2.16 Conclusions

Based on the findings concerning this allegation, the EIB-CM considers that the Bank's services identified the main environmental legal and regulatory framework for the EIA and the IPPC permit correctly and that this allegation is unfounded.

### a.5 Land use and study of alternatives

#### 7.2.17 Details of the allegation

According to the Complainants, the onshore processing plant of the project is located on agricultural land instead of in an industrial area, and the EIA lacks a comprehensive analysis of alternative locations. Further, it is alleged that there is no reason for using agricultural land instead of available industrial land.

#### 7.2.18 Regulatory framework

The Spanish Environmental Impact Law<sup>34</sup> in force at the time when the EIA was prepared required an analysis of the alternatives taken into consideration, the environmental impacts of the alternatives and the reasons for the final selection. This is also required by the detailed procedures<sup>35</sup> for implementing the EIA Law, which stipulate that the EIA shall contain a review of technically-feasible alternatives and a justification for the preferred solution.

According to EIB's appraisal procedures (e.g. enshrined in the environmental policies and guidelines), the EIB is expected to (i) verify that the promoter takes appropriate measures to protect the environment and mitigate or compensate for the impact, during the pre-appraisal stage; and (ii) to take into account, whether an outline of alternatives studied by the promoter and an indication of the main reasons for this choice have been adequately covered, or not.

#### 7.2.19 Findings

The processing plant was first located near Vinaroz on a plot of land owned by ESCAL. Following protests from neighbours and local NGOs, the location was moved to the north, to a plot of unused land at roughly the same distance from the nearest villages (Vinaroz, Ulldecona, Alcanar and San Jorge). According to the promoter, the location was agreed with all the municipalities except Alcanar, which happens to be the closest. This plot of land was used for agricultural purposes before the project.

The Spanish environmental regulator considered the study of the alternatives to be sufficient in the EIS. The EIAR contains an analysis of alternatives in Section 2 of the main document, and includes the following options:

- Three (3) location alternatives for the processing plant
- One (1) routing for the terrestrial gas pipeline
- One (1) routing for the marine gas pipeline
- Two (2) fuel alternatives for the compressors on the offshore platforms

<sup>34</sup> Real Decreto Legislativo 1/2008, de 11 de enero, por el que se aprueba el texto refundido de la Ley de Evaluación de Impacto Ambiental de proyectos.

<sup>35</sup> Real Decreto 1131/1988, de 30 de septiembre, por el que se aprueba el Reglamento para la ejecución del Real Decreto Legislativo 1302/1986, de 28 de junio, de Evaluación de Impacto Ambiental.

- Two (2) technical alternatives for security releases of natural gas both on the offshore platforms and in the onshore treatment plant
- Two (2) arrangements for the offshore platforms

According to the EIB-CM analysis, the location of the onshore plant on agricultural land is common for this kind of project. Industrial risks such as explosions or fires are inherent to this plant, and locating such plants far enough from residential or industrial sites is good practice.

The study of alternatives of other project components is more limited. However, the EIB-CM observes that neither the EU EIA Directive nor the Bank's Handbook specify a number of alternatives to be considered and do not require that separate alternative studies must be carried out per component of the project. In fact, EU legislation requires promoters to provide in the EIA an outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for the choice made, taking into account the environmental effects.

### 7.2.20 Conclusions

The complaint regarding the use of agricultural land instead of industrial land can be considered to be unfounded given that safety considerations for the surrounding population were given priority over the use of land.

## a.6 Pollutant emissions and hazardous waste management

### 7.2.21 Details of the allegation

According to the Complainants, the Castor project would emit large quantities of pollutants and hazardous waste, the effects of which are not sufficiently addressed in the project documentation and are allegedly not in line with European laws. According to the Complainants: (i) the air quality study in the EIAR does not take into account relevant data from several air quality monitoring stations in Tarragona province; (ii) the flare stack will emit 2 150 580 tonnes of pollutant gases per year; and (iii) the EIAR lacks information on hazardous waste production, management protocols, etc.

### 7.2.22 Regulatory framework

Waste management and industrial pollution control are among the guiding principles applicable to all Bank's operations and hence the Bank's services are required to verify that the project takes into account international good practice in these areas. Environmental and Social Assessment Guiding Principles include: (i) compliance with the EU environmental acquis on environmental assessment as defined in the EIB Sourcebook on EU Environmental Law; (ii) compliance with international conventions and agreements ratified by the EU; and (iii) application of "best available techniques", as appropriate.

The applicable EU and national legislation in force at the time of the Bank's due diligence is::

- IPPC Directive 2008/1/EC<sup>36</sup> ;
- Waste Framework Directive 2006/12/EC<sup>37</sup>;
- Air Quality Framework Directive 96/62/EC<sup>38</sup>;
- Ley 16/2002, de 1 de julio, de Prevención y Control Integrados de la Contaminación;
- Ley 10/1998, de 21 de abril, de residuos;

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<sup>36</sup> OJ L 24, 29/1/2008

<sup>37</sup> OJ L 114, 27/4/2006

<sup>38</sup> OJ L 296 21/11/1996

- Ley 34/2007, de 15 de noviembre, de calidad del aire y protección de la atmósfera.

### 7.2.23 Findings

Both the onshore treatment plant and the offshore platforms will emit pollutants that would have to be managed appropriately and in accordance with specific EU and national regulations, and include:

- emissions into the atmosphere from compressors, venting systems and the flare stack;
- emissions into water from the gas cleaning system, cooling water, sanitary water, contaminated rain water, chemical spills/leaks, etc.
- hazardous and non-hazardous waste from the gas cleaning system, general maintenance, etc.

The EIA includes a detailed description of all operations, which will or could produce emissions of pollutants into the atmosphere, into water (surface or subsurface) and into the ground. Chapter 5 of the EIAR includes information about quantities and management systems for these externalities, and Chapter 7 assesses the related environmental impacts. Specific modelling is used to help assess the impacts on air quality and the impacts on water quality resulting from hydrocarbon spills. The management systems and prevention measures are in line with the industry standards commonly applied to projects of this size and complexity.

Regarding the pre-operational air quality assessment, the EIA identifies nine monitoring stations within a 60 km radius of the onshore plant but only considers six of them in the study, all in the Valencian Community and none in the Catalanian Community. To clarify, the three monitoring stations in Catalonia only measure ozone and particles suspended in the air while the air quality study is limited to NO<sub>x</sub> and SO<sub>x</sub>, the main air pollutants from the onshore plant. Ozone is also related to NO<sub>x</sub> emissions and in some projects (power stations, refineries, etc.), it is necessary to evaluate this relationship. It is not considered relevant for the Castor project, given the limited amount of NO<sub>x</sub> released.

Regarding the alleged considerable amount of atmospheric emissions from the flare stack (over 2 million tonnes according to the Complainants), it seems that the calculations are based on a misunderstanding. The Complainants reason that as the offshore platform flare stack is designed to evacuate 245 000 kg of gas per hour and it will work continuously (8 760 hours/year), it will emit 2 150 580 tonnes of pollutant gases per year. However, the flare stack is an emergency system and it only evacuates such quantities of gas in emergency situations. What will work continuously is the pilot flame with a consumption rate of roughly 50 kg of natural gas per hour. Pollutant emissions are calculated in detail in section 5.3.3.2 of the EIA. These emissions rates seem to be in line with the limits in force at the time; in addition, impact on air quality is assessed and validated through specific modelling tools.

Concerning the allegation about management protocols for hazardous waste, the EIB-CM reviewed whether the project falls within the scope of the IPPC Directive as transposed into Spanish law<sup>39</sup>. According to this Directive, operators of industrial installations covered by it are required to obtain an authorisation (the so called environmental or IPPC permit) from the competent authorities in the EU countries. The policy takes all environmental impacts into account including emissions into air, water and land, energy consumption, waste, etc. Permit requirements are based on the Best Available Techniques defined for each sector. The Castor project was subject to the authorisation process of the relevant authority to obtain the IPPC permit for the onshore treatment plant (which exceeded the

<sup>39</sup> Ley 16/2002, de 1 de julio, de Prevención y Control Integrados de la Contaminación.

thermal input threshold of 50 MWt). The process was not required for the offshore platforms, which had a rated thermal input of 49 MWt<sup>40</sup>. The EIB-CM notes that the Bank accepted the approach of the concerned national authorities to transpose and implement the IPPC Directive. It should also be noted that there is only one similar plant in Spain so far, therefore there is little basis for comparison with regard to the application of the IPPC Directive.

#### 7.2.24 Conclusions

The project required an IPPC permit in accordance with the IPPC Directive. This permit was granted by the relevant authority (regional environmental body) to the onshore treatment plant. The offshore platforms were considered as a separate installation below the IPPC thermal power threshold for combustion installations, and hence no IPPC permit was required. The Bank concurred with the approach of the national authority during the due diligence.

The EIA contains sufficient information to assess the compliance of the project with the relevant pollution and waste legislation. The waste management and industrial pollution control measures included in the project are in line with international good practice. Hence the EIB-CM considers the complaints regarding pollutant emissions as unfounded.

### 7.3 **B) Allegations pertaining to social impacts**

#### b.1 **Public consultation relating to the environment and access to environmental information**

##### 7.3.1 Details of the allegation

The Complainants' main allegation is that there was a breach of EU Directives 2003/35/EC [providing for public participation in respect of the drawing up of certain plans and programmes related to the environment (The Aarhus Convention)], 90/313/EC [on the freedom of access to information on the environment] and 2003/4/EC [on public access to environmental information], and that the EIB failed to verify the effectiveness of the public consultation.

More specifically, the Complainants allege that (i) the Promoter did not adhere to the Aarhus Convention and the EU Directives concerning public consultation relating to environment and the access to justice in environmental matters; (ii) key project information was not made available in the local language (only in English) and repeated requests for translations were denied; (iii) there was a lack of transparency and access to environmental information; (iv) there was an infringement of the right to present allegations and obtain responses.

Complainants particularly allege that the seismic risk studies were not made available for review during the public consultation process.

##### 7.3.2 Regulatory framework

The EIB-CM takes note that Directive 90/313/EEC mentioned by the complainants concerning the freedom of access to information on the environment was repealed by Directive 2003/4/EC with effect from 14 February 2005. Therefore, the EIB-CM will base its analysis taking into consideration only directives 2003/35 EC and 2003/4/EC.

According to the ESPS, the EIB requires, when applicable, that projects that it finances comply with the Aarhus Convention. The Aarhus Convention, which applies to this project,

<sup>40</sup> Main equipment: 2xgas turbines rated 17.51 MWt; generator rated 13.37 MWt; flare stack rated 0.63 MWt (source: EIAR, Chapter 5.3.3.2).

provides for the protection of the environment and human rights and establishes that sustainable development can be achieved only through the involvement of all stakeholders. To be involved, stakeholders need to have, inter alia, access to environmental information and, to be able to participate in decision-making processes relating to the environment.

Several provisions of the Bank's Handbook of 2007 refer and provide guidance on Stakeholder Engagement. As part of the guidance to assess the EIA process, the same Handbook indicates that "... [PJ] should take into account whether the following aspects have been adequately covered: ... 5. Public disclosure, notably "how was this done and when"..."<sup>41</sup>

In 2013, Aarhus Convention developed detailed guidelines concerning operational aspects of the Convention. At the time of the project public consultation and the Bank's appraisal, the guidance on the implementation of the Convention came from the decisions of the Compliance Committee of the Aarhus Convention, which are not binding<sup>42</sup> or enforceable<sup>43</sup>. These decisions, however, carry certain significance because they provide substantiated interpretations on how to apply the Convention in a more effective and uniform way<sup>44</sup> and they may result in issuance of appropriate measures to bring about full compliance with the Convention. From the EIB-CM perspective, this guidance is of significance in order to assess the effectiveness of the stakeholder engagement of this project.

### 7.3.3 Findings

Reports from the regional environmental bodies highlighted some environmental risks and that the project faced opposition throughout its process. In the light of this, the Bank's pre-appraisal concluded that the Bank should carry out a detailed assessment of the EIA and the public consultation process.

The Bank's appraisal report states that the public consultation procedure took place. The project's Environmental and Social Data Sheet (ESDS)<sup>45</sup> states that the promoter undertook a public consultation procedure and that the location of the onshore plant was changed following that consultation.

The Bank's services informed the EIB-CM that they had reviewed all comments sent by the stakeholders and responses given by the promoter in detail and that, as part of the Bank's procedures, they have verified that the competent authority did not have objections to it. During the review of this case, the Bank's services have indicated to the EIB-CM that the effectiveness of the public consultation is demonstrated by the number of comments received by the project (more than 200), including those of the complainant, which are included and addressed in the Environmental Permit.

The EIB-CM has found that the public consultation processes were carried out in accordance with the Spanish law. However, the EIB-CM did not find evidence that the Bank had assessed the quality of the public consultation in line with the guidance of the Aarhus Convention. More specifically, none of the analysed documents (e.g. appraisal report) contain services' views on the quality of the public participation procedure. Instead, the services relied on the presumption that there has been a correct transposition and

<sup>41</sup> Handbook, 2007, page 39, B 2.2

<sup>42</sup> Guidance Document on the Aarhus Convention Compliance Mechanism, available at: [https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC\\_GuidanceDocument.pdf](https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC_GuidanceDocument.pdf), accessed on 26 June 2017.

<sup>43</sup> Briefing of the European Parliament's Jonas Ebbesson concerning the EU and the Aarhus Convention, available at: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/571357/IPOL\\_BRI\(2016\)571357\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/571357/IPOL_BRI(2016)571357_EN.pdf), accessed on 27 June 2017.

<sup>44</sup> A. Andrusevych, S. Kern (eds), Case Law of the Aarhus Convention Compliance Committee (2004-2014), 3rd Edition (RACSE, Lviv 2016).

<sup>45</sup> Document attached to the Bank's proposal to the Board of Directors.

enforcement of the EU laws of public consultation as enshrined in Article 20 of the Background Section of the ESPS.

As a result, the EIB-CM carried out an analysis of the parts of the public consultation procedure related to the allegation raised to check compliance, notably, with the Convention's guidelines and practices as established by its Compliance Committee.

The Aarhus Convention requires public participation in all decisions that embrace any significant environmental impacts. The EIB-CM has focused its analysis on the procedures applied for the public consultation carried out for the project which was heavily criticised by the complainant. As a general guideline, it should also be emphasised that the Aarhus Convention Compliance Committee (ACCC) determined that "*Where significant environmental aspects are dispersed between different permitting decisions, it would clearly not be sufficient to provide for full-fledged public participation only in one of those decisions*"<sup>46</sup>.

EIB-CM takes note that related to environmental matters concerning the Exploitation Concession and the declaration of public utility for Castor UGS was made available to the public. This took place during the 20 calendar days prescribed in the regulations, including Saturdays (on Saturdays the premises are closed to the public) during a holiday period - August 2007 - and in premises located 80 km away from the project site. CM takes note that this procedure was challenged by the public and the complainant in terms of timing and location of documents.

In the public consultation, the announcement was made by the Government Delegation of Castellón - Industry and Energy Office -, and published in the Spanish Official Journal. This announcement opened a public participation procedure for five administrative procedures<sup>47</sup>. The procedure had a timeframe of 30 administrative days from the day after publication in the Official Journal, from 18 September 2008. The five procedures involved the review of more than 2 000 pages of documents on different technical subjects in different venues.

The EIB-CM did not find documented evidence on whether the Bank's services reviewed the factors relating to public consultation that appear to be in conflict with the findings provided by the ACCC in terms of (i) "reasonable timeframes" and (ii) availability of the documents in places close to the affected local population.

Concerning "reasonable timeframes", the analysis of the Compliance Committee resolutions shows that setting a time-frame of 20 days during holiday season for the public to examine documentation and to submit comments is not in line with the requirements of article 6.3 of the Convention<sup>48</sup>. While the appropriate timing depends on a number of factors, the ACCC had already indicated in a resolution of 2009 that the reasonable period for inspecting the documents is six weeks and for commenting 45 days<sup>49</sup>. Concerning the availability of documents, physical copies of the documents were made available

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<sup>46</sup> ACCC/C/2006/17, Report by the Compliance Committee on the Third meeting by the parties that took place in Riga between 11-13 June 2008

<sup>47</sup> (1) Administrative procedure for the Castor project and its ancillary installations; (2) Acknowledgment of the public utility of the Castor UGS project and its ancillary installations; (3) The Environmental Impact Study prepared by ESCAL UGS S.L. under the EIA procedure; (4) The IPPC permit known as Autorización Ambiental Integrada (AAI-integrated environmental permit) under Spanish legislation; (5) Administrative concession to occupy the maritime public domain subject to Ley 22/1988, de Costas and its regulation;

<sup>48</sup> ACCC/C/2008/24, Report of the Compliance Committee on its Twenty-sixth meeting that took place in Geneva between 15-18 December 2009

<sup>49</sup> 1ACCC/C/2007/22, Report of the Compliance Committee on its Twenty-fourth meeting that took place in Geneva between 30 June and 3 July 2009

simultaneously in different locations, which may also impair the effectiveness of the consultation process.

Concerning the allegation that key project information was not made available in Spanish (only in English) and that repeated requests for translations were denied, contrary to Article 3.9 of the Aarhus Convention, the EIB-CM found that the regulator had requested the translation of some documents, providing a new period of 30 days to review them<sup>50</sup>. Concerning the translation of technical documents, the same regulator asked the promoter in May 2009 to translate into Spanish, within 15 days, a list of 24 very technical documents included in the processing plant installations project, the marine platform installations project and the pipeline installations project. The promoter complied with this request.

In terms of accessing seismic risk studies, Chapter 3 of the EIAR provides a general description of the regional and local geology based on existing sources of information (IGME, Spanish Geological Survey), a field visit and a geotechnical field campaign (see further § 7.4.3). Whilst responses to concerns raised by the stakeholders could be described as ambiguous<sup>51</sup>, the most important outcome for the public consultation was to install two additional short-period seismographs under a "Seismic Monitoring project in the Surroundings of the Castor Underground Gas Storage". The EIB-CM has not been able to trace whether the EIB services ascertained that the public had had access to seismic studies.

#### 7.3.4 Conclusions

The EIB-CM confirmed that the Bank's services reviewed and documented key aspects of the public consultation procedure. For example the Bank's services discussed with the promoter the process followed and were aware that the project had received a large number of comments and complaints from different stakeholders. Concerning the specific allegation of the translation of documents into the local language, the EIB-CM review concludes that the documents were eventually translated into Spanish and were made available to the public for comments.

The EIB-CM review also concluded that applied timeframes and locations are not fully in line with non-binding guidance for an effective consultation as established by the Aarhus Convention Compliance Committee. The EIB-CM analysis has identified limitations concerning the timeframes applied (the "when" indicated in the Handbook) and the availability of documents (the "how" indicated in the Handbook). When gaps are identified taking into account the prevailing guidance, the Bank could have, as set in §157 of the Handbook, engaged further with the promoter and other relevant stakeholders. EIB-CM takes note that the Bank did not request the promoter additional covenants or conditions requesting additional requirements.

In conclusion, the public consultation processes were carried out in accordance with Spanish law, which had previously transposed correctly the relevant EU law, and was aligned with the main principles of Aarhus Convention. In general, the complainants' allegations can be considered unfounded in terms of access to documents, transparency and remedies.

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<sup>50</sup> The Resolution of 23 October 2009 formulating the favourable EIS on the Castor project and the Resolution of 7 June of 2010 of the DG on Energy Policy and Mining granting administrative authorisation and acknowledging the public utility of the installations

<sup>51</sup> During the EIA process, the regulator had requested the promoter to study seismic activity frequency and to compare it to previous trends in order to determine whether the gas injection operations altered the natural conditions; the promoter's response was that the monitoring of micro-seismicity during the gas filling stage by installing geophones in any of the monitoring soundings could be considered. In addition, during the public consultation, it was mentioned that the project: "will raise the risk of earthquakes, as stated by Shell during the operation of the oil field". This allegation was discarded by the promoter, which stated in the response to the allegations that such an allegation lacked any scientific merit.

## 7.4 **C) Allegations associated to industrial risks**

### c.1 **Geological and seismic risk**

#### 7.4.1 **Details of the allegation**

The Complainants allege that the Bank failed to verify the assessment of the geological and seismic risks.

#### 7.4.2 **Regulatory framework**

The EIB-CM focused its analysis on the EU and national legislation<sup>52</sup> in force at the time when the public participation took place (and when the pre-appraisal and appraisal of the project was undertaken by the EIB).

A European Standard<sup>53</sup> for underground gas storage was approved in 1998<sup>54</sup>. Two aspects of this standard are used in the case under review, namely “storage in aquifers” and “storage in oil and gas fields”. For the present allegation concerning geological and seismic risks, the European Standard lists a series of issues to be addressed, ranging from geological characteristics and modelling, hydraulic reservoir properties, the integrity of the caprock, the risk of failure of the caprock and integrity of the well (sealing capacity) to limiting operating parameters.

The European regulatory framework for gas storage does not address seismicity and reservoir characteristics of natural gas as identified in the Castor project. However, and subsequent to the European Standard for underground gas storage, geological storage of CO<sub>2</sub> is comprehensively covered in the Carbon Capture and Storage Directive (2009/31/EC)<sup>55</sup>, accompanying guidelines<sup>56</sup> and by several EU-funded projects on CO<sub>2</sub> storage such as CO<sub>2</sub>Qualstore<sup>57</sup> and CO<sub>2</sub>Wells<sup>58</sup>. The EU Directive and the supporting guidelines present a more exhaustive list and methodology for characterising a potential storage reservoir compared to the European Standard for underground gas storage.

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<sup>52</sup> This legislation involves:

- › Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, amended by Council Directive 97/11/EC of 3 March 1997;
- › European Standard, Technical Committee BS EN 1918-1:1998 Gas supply systems. Part 2: Functional recommendations for storage in oil and gas fields;
- › Real Decreto 997/2002, de 27 de septiembre, por el que se aprueba la Norma de Construcción Sismo resistente de Construcción: Parte general y edificación (NCSE-02);
- › Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003;
- › Real Decreto Legislativo 1/2008, de 11 de enero, por el que se aprueba el texto refundido de la Ley de Evaluación de Impacto Ambiental de proyectos.

<sup>53</sup>European Standards are documents that have been ratified by one of the 3 European Standards Organisations (CEN, CENELC or ETSI).

<sup>54</sup> European Standard, Technical Committee BS EN 1918-1:1998 Gas supply systems. Part 1: Functional recommendations for storage in aquifers; Part 2: Functional recommendations for storage in oil and gas fields.

<sup>55</sup> EC. 2009. Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EC, European Parliament and Council Directives 200/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006. Official Journal of the European Union, L 140/114.

<sup>56</sup> EC. 2011. Implementation of Directive 2009/31/EC on the Geological Storage of Carbon Dioxide – Guidance Document 2. Characterisation of the Storage Complex, CO<sub>2</sub> Stream Composition, Monitoring and Corrective Measures. ISBN-13978-92-79-19834-2.

<sup>57</sup> DNV. 2009. CO<sub>2</sub>Qualstore. DNV Report No.: 2009-1325.

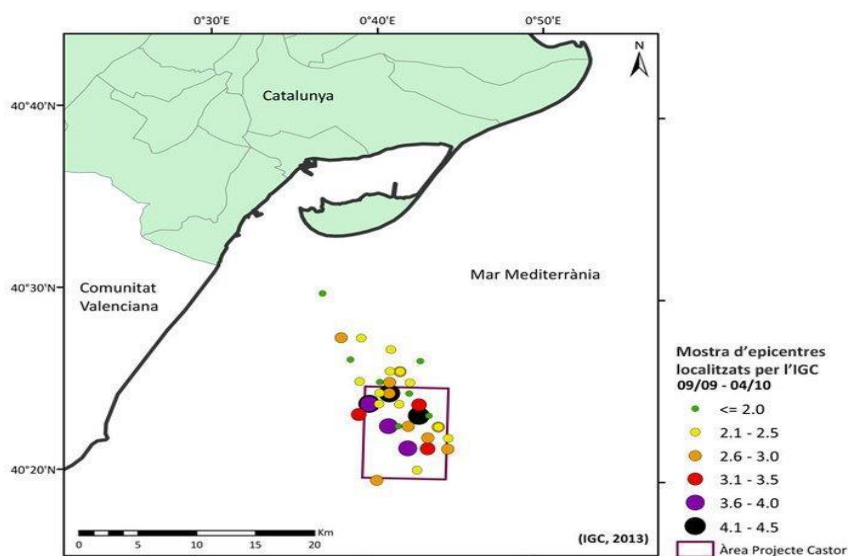
<sup>58</sup> DNV. 2011. CO<sub>2</sub>Wells. DNV Report No.: 2011-0448.



### 7.4.3 Findings

The Amposta oil reservoir comprises a geological structure which is 5 km long, 2.5 km wide and up to 250 m thick. The structure provides an estimated total of 1.9 Gm<sup>3</sup> of storage capacity (1.3 Gm<sup>3</sup> working gas and 0.6 Gm<sup>3</sup> cushion gas, 50% extractable). At the top reservoir level, the reservoir is bordered to the west and the east by a series of faults striking NNE-SSW and a set of faults almost perpendicular to the western main fault system<sup>59,60</sup>.

A spatially localised seismic sequence of more than 1000 tremblors of different intensity, most of them categorised as microseisms, originated close to the project, starting on 5 September 2013 and lasting at least until October 2013, when the Government decided to suspend the activities of the project. The sequence culminated in a maximal moment magnitude  $M_w$  4.3 earthquake on 1 October 2013. The most relevant seismogenic feature in the area is the Fosa de Amposta fault system. However, no significant known historical seismicity has been registered by this fault system in the past. The epicentral region was located near the offshore platforms of the Castor project. Following the seismic activity, official studies were commissioned by the National Geographic Institute (IGN), and the Spanish Institute of Geology and Mining (IGME). Both reports prepared in 2014 concluded that the indications were that the seismicity was the result of gas-injection activity. The IGME report also concluded that the fault that led to the seismic activity was not known to IGME and therefore it was not mapped. These findings were confirmed by an integrated structural, seismological and geomechanical study commissioned by the Spanish authorities to a group of experts of the Massachusetts Institute of Technology (MIT) and Harvard University and released in April 2017<sup>61</sup>.



Source: Institut Cartogràfic i Geològic de Catalunya

The EIB services have informed the EIB-CM that an analysis of the seismicity risks was performed and considered to be insignificant. The EIB-CM notes that the seismicity risk analysis (induced or not) was not documented. Therefore the EIB-CM has reviewed the

<sup>59</sup> Geostock. 2010. Castor. Castor Underground Gas Storage Facility. Seismic Interpretation Study - Contribution to the Static Model. AMP/Y/J/001.

<sup>60</sup> Batchelor, J.A. et al., 2007. Validating the integrity of the Amposta Structure for gas storage offshore Spain. Offshore European. Society of Petroleum Engineers.

<sup>61</sup> [http://www.minetad.gob.es/es-es/gabineteprensa/notasprensa/2017/documents/castor\\_final\\_report\\_final\\_signed.pdf](http://www.minetad.gob.es/es-es/gabineteprensa/notasprensa/2017/documents/castor_final_report_final_signed.pdf) , conclusions, page 6

information available at the time of appraisal in order to determine whether there were any shortcomings in the Bank's due diligence.

On the basis of comprehensive studies concerning the technical appraisal into, notably, site characterisation and studies of caprock integrity and leak-off tests, it was determined that the threshold pressure for the caprock is higher than needed for the planned gas injection operation. The EIB-CM' assessment also found that more comprehensive studies were performed in 2003 but it appeared they have not been taken into consideration in the final determination of thresholds.

The EIB-CM notes that the stress history and the future stress regime during injection and withdrawal of gas were not assessed nor was any potentially induced seismicity considered to be a risk factor throughout the technical assessments prior to the 2013 events. According to the EIB-CM review, the project does not contravene legislation, but with techniques available at the time the injection site characterisation could have been taken further than the dynamic simulation model used during the appraisal stage. The EIB-CM also observes that potential issues/risks were identified in the geotechnical study. In particular, the response of existing reservoir fluid to gas injection was uncertain, as was the integrity of seal rock where the over-pressure of underground gas storage (UGS) may give rise to subsurface movement.

In Section 3.3.8 *Geotecnia* (Geotechnics) of the EIA, the area is characterised as having low seismic intensity according to the seismic map defined in the NCSE-02<sup>62</sup>. There is however a lack of an in-depth analysis regarding seismic risks. Chapter 8 of the EIA reflects comments made by public administrations and stakeholders in the scoping process as well as during the public consultation. As outlined in §7.3.3 two additional short-period seismographs were installed after the public consultation under a "Seismic Monitoring project in the Surroundings of the Castor Underground Gas Storage". However, the EIB-CM notes that the implementation of the proposed Monitoring activities was followed neither by risk analysis nor by upstream risk mitigation measures (e.g. testing seismicity scenarios, mapping seismicity resistance of buildings, etc.). This is of particular importance as the Bank considers the need to apply the precautionary principle when there is a risk that a project may cause significant and irreversible damage to the environment. In such cases, measures should be taken by the promoter, if a feasible alternative is not available to reduce that risk to an acceptable degree.

Despite the shortcomings identified in this section, it should be highlighted, especially from the perspective of the Bank's due diligence, that up to the point of the Bank's first approval (July 2010), there were no obvious indications of intense and frequent seismic activity. The Amposta field had operated without any reported seismic anomalies; the field and surrounding area was not in a zone that was considered by the Spanish Geological authorities to be of seismic risk (i.e. on the Spanish seismic risk map); the promoter had drilled a successful test well in 2005; the promoter had undertaken studies on caprock fracture strength and reservoir simulation and the geological and geophysical studies that were expected and required per good industry practice. Further evidence of lack of seismic activity awareness is the fact that the technical/financial audit requested from Det Norske Veritas (DNV, 2013), at a very late stage in the project development, did not originally include the seismic risk issue; this was only added after the seismic events of September/October 2013 (the audit process overlapped the seismic activity).

Seismic activity is highly uncertain in its nature and therefore very difficult to accurately forecast. While it is possible to undertake modelling studies, it is only with actual seismic data (recorded after the occurrence of earthquakes) that seismic studies such as the one requested from IGME in 2013 can be carried out. This is also the opinion of the experts from the MIT and Harvard University, who conclude saying "*Finally, it is important to point*

<sup>62</sup> Norma de Construcción Sismorresistente : Parte General y Edificación, Real Decreto 997/2002, de 27 de septiembre 2002

*out that this is a post-mortem evaluation of the Castor project, which employs new paradigms for integrating geology, geophysics and reservoir geomechanics. As such, it is unreasonable to expect that a study with industry-standard methodologies would have reached these conclusions ahead of the injection. Our study however, points to the need for new standards to quantify the seismicity risks associated to underground operations, especially in areas where active faults are present<sup>63</sup>.*

#### 7.4.4 Conclusions

As noted in the EIA study, the area in question was categorised as a low seismic intensity area. The EIB-CM notices the evolving nature in terms of industry standards of issues related to induced seismicity. Notwithstanding that, the EIB-CM's review observes that the Bank's appraisal documents lack any documentation concerning the seismicity risk from the technical perspective. Taking into account: (i) indications at the time of appraisal of risks associated to gas injection in underground gas storage, (ii) the uncertainty associated to seismicity, and (iii) the feedback received during the public consultation, the Bank could have taken additional steps in its due diligence to examine risks associated to the seismicity and geology (e.g seeking independent opinions beyond those of the promoter and the Lender's Technical Advisor).

No industrial standards or guidelines for the Castor Gas Storage project were contravened by the promoter since as no EU legislation or national standards for implementing underground natural gas storages existed at the time of the assessments - and literature on depleted gas fields was sparse.

### c.2 Industrial risks

#### 7.4.5 Details of the allegation

The Complainants alleges that the EIA lacks an analysis of the processing of dangerous substances; that there is infringement of the Seveso II Directive; that the project has insufficient security measures for the marine installations, including for the risk of oil spills in sensitive environmental areas; and that the project lacks emergency plans and procedures to prevent serious accidents.

#### 7.4.6 Regulatory framework

Prevention of accidents with repercussions for human beings and the environment is one of the aspects to be reviewed by the Bank for all its operations, together with other "Occupational and Community Health and Safety" issues. The Bank's team is expected to screen the project for any social impacts and risks during the pre-appraisal stage, and conduct a specific review of these issues at a later stage. Furthermore, the Bank's team is expected to verify that the project complies with the relevant directives and national legislation.

Both the EU and Spain have a strong legal framework aimed to prevent industrial accidents and deal with their potential consequences<sup>64</sup>.

<sup>63</sup> [http://www.minetad.gob.es/es-es/gabineteprensa/notasprensa/2017/documents/castor\\_final\\_report\\_final\\_signed.pdf](http://www.minetad.gob.es/es-es/gabineteprensa/notasprensa/2017/documents/castor_final_report_final_signed.pdf)

<sup>64</sup> The following legal provisions in force at the time the project was licensed have been taken into account in this analysis:

- Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention, 1976, 1995);
- Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control;
- Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (Seveso II Directive);
- International Convention for the Prevention of Pollution from Ships (MARPOL);

### 7.4.7 Findings

The Castor project deals with standard industrial risks (mostly chemical leaks and spills) and specific risks inherent to the use of natural gas (fire, explosions, etc.).

Regarding the potential consequences of these risks, it should be pointed out that the onshore treatment plant is located far from populated areas but near a major motorway, whilst the offshore platforms would have to deal with potential spills or accidents in the open sea and the risk of contamination of the Delta del Ebro Natural Park (at a distance of 17 km from the platforms).

During the public consultation, several organisations expressed concerns about the industrial risks. Following the review of the project documentation, it is the view of EIB-CM that the risk was sufficiently documented:

- The pre-engineering included an early assessment of hazardous situations on the offshore platforms. The HAZID<sup>65</sup> methodology included the identification of hazards with environmental consequences and highlighted areas of improvement to be taken into consideration in the final design.
- The pre-engineering also included a HAZOP<sup>66</sup> study of the onshore treatment plant with recommendations and areas of improvement.
- The EIAR considers the event of a diesel spill of 400 tonnes at the offshore platforms. A GNOME<sup>67</sup> model is used to assess the conditions in which the spill could reach the coast and the Delta del Ebro Natural Park. Recommendations and preventive measures are included in the EIAR as a result of this study. The EIAR did not consider the risk of a crude oil spill from the reservoir.
- The EIAR also considers chemical spills at the onshore treatment plant. Quantities involved are relatively low and only standard prevention measures are recommended (secondary containments, strict labelling, training of workers, etc.).

In respect to Seveso II Directive (96/82/EC)<sup>68</sup> the promoter and the Spanish authorities considered that the national legislation transposing this Directive does not require its application on the Underground Gas Storage.

At the EU level, the inclusion of similar facilities under the Seveso II Directive has been unclear and its application left to the discretion of each Member State, which, in turn, has led to a non-harmonised approach among Member States. The EIB-CM also observes that the complainants concerns about the application of Seveso II to underground gas

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- Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage;
  - Ley 16/2002, de 1 de julio, de Prevención y Control Integrados de la Contaminación;
  - Ley 26/2007, de 23 de octubre, de Responsabilidad Medioambiental;
  - Real Decreto 393/2007, de 23 de marzo, por el que se aprueba la Norma Básica de Autoprotección de los centros, establecimientos y dependencias dedicados a actividades que puedan dar origen a situaciones de emergencia;
  - Real Decreto 1254/1999, de 16 de julio, por el que se aprueban medidas de control de los riesgos inherentes a los accidentes graves en los que intervengan sustancias peligrosas;
  - REAL DECRETO 1196/2003, de 19 de septiembre, por el que se aprueba la Directriz básica de protección civil para el control y planificación ante el riesgo de accidentes graves en los que intervienen sustancias peligrosas.

<sup>65</sup> The Hazard Identification (HAZID) study is a technique for early identification of hazards and threats and can be applied at the conceptual or detailed design stage

<sup>66</sup> A hazard and operability (HAZOP) study is a design review technique used for hazard identification, and for the identification of design deficiencies which may give rise to operability problems.

<sup>67</sup> GNOME (General NOAA Operational Modelling Environment) is the modelling tool the Office of Response and Restoration's (OR&R) Emergency Response Division uses to predict the possible route, or trajectory that a pollutant might follow in or on a body of water as in the case of an oil spill (<http://response.restoration.noaa.gov/gnome>).

<sup>68</sup> Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances

storage projects are a reflection of the debate on this matter on the EU at the time of the appraisal of the project. Hence, this matter was discussed at the 19<sup>th</sup> Meeting of the Seveso Committee of Competent Authorities (CCA) where it was concluded that the Seveso II Directive should generally be applied to all such forms of storage, including storage in natural gas fields/strata. This was confirmed at the 20<sup>th</sup> Meeting in the CCA. The conclusions of these discussions were reflected in a proposal made by the EC to the European Council dated December 2010, that stated “... *since ‘exploitation’ must be seen in a strict sense, this means that storing natural gas in natural strata and disused mines should thus fall within the scope of the Directive*”<sup>69</sup>.

The ambiguity of the application of Seveso II Directive to underground gas storage was clarified subsequently by the EC with the Seveso III Directive (2012/18/EU). Its Article 2(2)(g) states that the “*Directive shall not apply to*”...“*storage of gas at underground offshore sites*”. Seveso III Directive repealed Seveso II Directive on 1 June 2015.

The EIB-CM takes note that the Bank had assessed this matter in accordance to the presumption that Spain had correctly transposed the EU laws and did not consider that the project falls under the requirements of Seveso II. The EIB-CM was informed by the Bank’s services that they reviewed this matter and took into consideration the EC formal answer provided to the European Parliament in 2010. The EIB-CM has not found however any documentation that records the Bank’s services review.

Taking into account the Complainants concerns, the EIB-CM has also reviewed whether the application of Seveso II Directive would have had any significant impact on the development of this project. In this regard, the EIB-CM observes that the Seveso II Directive is based on three basic pillars: (i) **prevention**: deploying major accident prevention policies, producing safety reports, conducting inspections, etc.; (ii) **limiting the consequences for human health and the environment**: internal and external emergency plans; and (iii) **public participation/information**: the public concerned needs to be consulted for specific individual projects; operators and Member States need to provide information in the event of an accident and access to justice needs to be granted in the event of an accident.

After reviewing the project documentation that was available at the time of the appraisal, the “*prevention*” principle can be considered to be fulfilled. The Castor project has a HSE policy and prevention was a main driver in the design of the facilities from the beginning. The measures to “*limit the consequences for human health and the environment*” in the event of an accident can also be considered to be in line with the Seveso II Directive. There is an emergency plan with both internal resources and external emergency measures that will be used in the event of an emergency. However, it appears that the only aspect that cannot be considered as met under the scenario that Seveso II would have applied is that emergency plans were not made available for consultation by the public.

#### 7.4.8 Conclusions

The EIB-CM review concludes that the EIA included the analysis of the processing of dangerous substances; major oil spills were modelled to assess the potential impact on sensitive areas; prevention measures, in line with the industry standards, were put in place and an emergency plan was foreseen for operation. The appraisal documents produced by the Bank also make reference to security measures.

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<sup>69</sup> Commission Staff Working Paper Impact Assessment, Accompanying document to the Proposal for a Directive of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances COM(2010) 781 final SEC(2010) 1591 final

According to the review carried out by the EIB-CM, in terms of materiality, the project seems to comply materially with key recommendations of Seveso II concerning the prevention of accidents and limiting the consequences for human health, but was not aligned with the recommendations on public consultation with the public concerned.

The EIB-CM notes that at the time of appraisal, both the promoter and the Spanish authorities considered that this UGS facility did not fall within the scope of the Directive and its transposing legislation in Spain. The Bank's services concurred with this view. Whilst the EIB-CM considers that the Bank followed its own procedures, it takes note of the different approaches to transpose the Directive by the various EU Member States in respect of UGS at the time of appraisal.

EIB-CM also notes that Seveso III Directive, repealing Seveso II Directive, states that offshore underground gas storages do not fall under the scope of the Directive.

## **8 GENERAL CONCLUSIONS**

- 8.1 The EIB-CM's investigation shows the complexity of the issues at stake. The difficulties arise first from the complexity of the project itself, which involves the construction of onshore and offshore facilities and the conceptual development of a large project of underground gas storage in Spain. Concerning the complaint itself, the complexity arises from the large number of stakeholders, the large number of different allegations and the evolving situation at the time of the processing of the case.
- 8.2 Concerning the project, the EIB-CM notes that, at the time of appraisal, the Castor project was identified as part of the Trans-European Networks (TEN-E) energy corridors. The EU identified a number of priority corridors under its TEN-E strategy. These corridors require urgent infrastructure development in order to connect EU countries isolated from European energy markets, strengthen existing cross-border interconnections, and help integrate renewable energy.
- 8.3 The implementation and construction of the Castor project followed a long period of gestation with the preparation of a large number of technical studies and administrative reports. In addition, the project generated considerable controversy amongst different stakeholders. The EIB-CM investigation confirmed that the project received a significant number of comments and complaints during the different consultation processes. Despite the fact that the Spanish Government has meanwhile suspended the implementation of the project and repaid contractual indemnities to the promoter, the EU institutions (notably the EU Parliament) and civil society remain highly sensitive to decisions concerning the repayment of the investment and the future of the plant.
- 8.4 However, as a result of the suspension of the project, the EU is deprived of one of the priority projects identified under the TEN-E initiative and, therefore, it is important for the Bank to understand and identify if there were gaps in the Bank's due diligence and monitoring during the project cycle, in order to learn from this experience. In addition, the Bank is accountable to EU citizens for its actions and decisions and, particularly, to those affected by the project. This report aims therefore at providing answers to the public on the above points and to identify useful lessons for future activities of the Bank.
- 8.5 The number of allegations and claims received by the promoter before the approval by EIB's Board of Directors in July 2010 was significant. It is therefore worthwhile establishing the scope of the EIB-CM investigation, which is limited to the role of the Bank during the appraisal and monitoring of the project. EIB's policies are clear with respect to the Bank's responsibilities in the projects that it finances. The promoter is responsible for the application and enforcement of the EIB requirements, including compliance with relevant

laws and other obligations imposed on the promoter by the Bank, typically reflected in legal undertakings.

- 8.6 The EIB-CM notes that, because the project was located in an EU Member State, the Bank's appraisal was carried out in line with the ESPS that assumes that, within the EU, the concerned Member State has correctly transposed and enforced the EU laws. Under this assumption, the scope of the Bank's due diligence is limited to mainly verifying whether the promoter has conformed to the existing legal framework. In June 2014, the EIB-CM had a meeting with the relevant EC services which informed the EIB-CM that no infringement procedure had been launched against Spain on these allegations. Therefore, taking into account the application of the presumption that the Member State has transposed correctly the relevant Directive, the EIB-CM finds no indication that the Bank's services have not carried out the due diligence of the project in line with the Bank's environmental policies and guidelines.
- 8.7 However, this EIB-CM investigation has shown that the strict application of the presumption of correct transposition and enforceability of EU Directives also has limitations and may expose the Bank to additional risk. In this regard, the Spanish Supreme Court has ruled in 2015 that the project had been subject to fragmentation at the time of the preparation of the environmental studies. The EIB-CM notes that the Bank could not properly assess the cultural impacts of the project in accordance with its requirements, basically because one of the components of the project (the land pipeline) was not part of EIA. Whilst the Bank must take into consideration the prevailing legal framework in EU Member States, the Bank should not be prevented of exercising its own judgement on specific project impacts under specific circumstances such a court proceedings or when gaps in the process have been identified.
- 8.8 Based on the findings of its appraisal, the Bank has a right to request more requirements, where appropriate, in projects that it finances. Under the current review, the EIB-CM has identified two different situations that could potentially trigger this request:
- absence of clear industry standards or guidelines for some of the risks associated with the investment (e.g. induced seismicity) which may result in damages that go beyond the project itself
  - request to conduct a review of the implementation of the national procedure at project level (e.g. carried out public consultation procedure).

In some cases, these additional requirements may refer to well-known procedures (e.g. public consultation procedure and the guidance provided by the Aarhus Convention Compliance Committee) whereas in others standards may not yet exist (e.g. induced seismicity).

The EIB-CM is of the opinion that under any of these two situations the appraisal of the Bank should include a documented analysis to the decision making bodies of the Bank.

- 8.9 The Bank's review of projects will in any case have its own limitations. As already indicated, the Bank is not responsible for implementing the project, although it does have the responsibility to verify the promoter's adoption and implementation of EIB's requirements, i.e. that the main environmental, legal, economic and technical aspects of the project are put in place before and during implementation. In large and technically complex projects like this one, it would be unrealistic to expect that all the identified present and future impacts and risks are assessed with the same degree of depth during the uncertainty of the appraisal stage and a prioritization is necessary.
- 8.10 Contrary to the ex-ante analysis of the Bank's appraisal team, the analysis of the EIB-CM is carried out ex-post which allows working with the benefit of hindsight and evidenced facts. In this context, the EIB-CM can take a different view if necessary, and assess the

prioritization of risks with regard to the material impact of possible shortcomings in the implementation of the project. In this particular case and without doubt, the lack of assessment of the induced seismicity risk can be considered as “material” as this is what ultimately caused the suspension of the project by the Spanish authorities. This risk has been largely analysed by different bodies after the suspension of the project. It can be concluded that its importance in the future development of the project was overlooked by the different advisors and other stakeholders involved in the project. Although this lack of analysis cannot be attributed to the Bank during the implementation of the project, the EIB-CM has not found any documented analysis of this risk.

- 8.11 Given the suspension of the project, it is difficult for the EIB-CM to take a view on the materiality in the implementation of the project of other issues identified in this report for which the Bank presumed that EU laws were correctly transposed and enforced, such as the fragmentation, the cultural impacts, the analysis of alternatives, and the application of the Seveso Directive. However, the EIB-CM observes that despite the different approvals involving the Governing Bodies of the Bank (Board approvals of July 2010 and September 2011) and Management Committee approval of July 2013, the Bank did not carry out any subsequent reviews of technical issues. As the findings of this report show, there were developments (i.a. court case of fragmentation, changes in the Seveso directive, continuous criticism of the project) at the time of implementing the project that could have merited a fuller involvement of the Bank’s technical expertise throughout the different decision-making stages.

## 9 LESSONS LEARNT AND SUGGESTIONS FOR IMPROVEMENT

- 9.1 The review of the Castor case provides some indications as to which areas the Bank could reflect in its appraisal of large, industrial or infrastructure projects:

*A) Issues concerning the Bank’s appraisal procedures and application of the precautionary principle:*

As set in section 26 of the ESPS, the EIB considers the need for applying the precautionary principle when there is a risk that a project may cause significant and irreversible damage to the environment. In such cases, measures should be taken by the promoter to avoid in the first place and if a feasible alternative is not available to reduce that risk to an acceptable degree.

### **In cases where:**

- **an event has a low probability of occurring but may result in project failure and/or have a high negative impact on the environment, human health and/or well-being or**
  - **there is not sufficient certainty to conclude otherwise,**
  -
- the Bank should allocate appropriate resources to conduct an in-depth and documented risk assessment, which may result in specific conditions and/or other requirements. (9.1.A1)**

The appraisal of projects is structured on multidisciplinary teams covering several areas of expertise. However, the technical aspects of complex projects - from the engineering and financial point of view - may result in risks that require very specific analysis and expertise (in this case the seismic/geological risks as well as risks related to the gas injection techniques). The EIB-CM did not find evidence that such specialised expertise, other than the Lender’s Technical Advisor, was mobilised by the Bank.



**The Bank's services have confirmed during the course of this investigation that the Bank has taken measures, for special cases and according to a risk-based approach, to engage specialist geophysical consultants at appraisal stage. (9.1.A2)**

The limited (or absence of) technical input requested once the Board of Directors had approved the first funding facility in July 2010 was not commensurate with the risks associated with the subsequent funding facilities, especially as the Bank was adopting a higher credit exposure with the final financial instrument approved in July 2013 (Project Bond Credit Enhancement).

**In a multiphase approval project, the Bank's services should ensure that in the appraisal and monitoring of the project, opinions are provided and documented at the different decision points. This should include all results of project risk evaluations including results of court cases and related risk/impact analysis (9.1.A3)**

*B) Prevailing legal framework:*

As discussed throughout the report, and in particular from §8.6 to §8.8, the Bank appraises projects in the EU member States under the presumption that EU laws have been correctly transposed and enforced at national level, unless evidence indicates otherwise, as set in section 20 of the ESPS that would require enhanced due diligence. However, as noted in the report, it may at times be difficult for EIB project teams to identify relevant instances where this may be needed.

**The Bank's services should strengthen awareness of instance when such enhanced due diligence may be required. (9.1.B1)**

*C) Particular considerations on the role of the Bank when assessing the meaningfulness of the public consultation process:*

The EIB-CM takes note that the Bank has adopted more recently a standard on stakeholder engagement (Standard number 10). Moreover, the EIB-CM notes that the Bank's services are currently developing a guidance document on its implementation.

The EIB-CM review shows that when the Bank is involved after the consultation is concluded, which is the prevalent case in the EU member states, the Bank should carry out an assessment (commensurate to the risks) of the meaningfulness of this process on the basis of the standard and the forthcoming guidance material. The aim of this assessment is to identify any gaps that may require follow up with the promoter. This may lead to specific contractual conditions (e.g. enhanced monitoring, Stakeholder Engagement Plan).

In case the Bank becomes involved before the completion of the public consultation process, the Bank could guide the promoter on the implementation of the Aarhus Convention, related EU legislation and the above mentioned Bank's standard. Whilst the responsibility for the public consultation remains with the promoter and/or competent authority, the Bank, as a public EU body, can play an important role in proactively enhancing the effectiveness of the stakeholder engagement.

**The Bank should establish an appropriate guidance to be used when carrying out the assessment of the meaningfulness of the public consultation process. This guidance should be based on the implementation of best practices including those of the relevant Aarhus Convention bodies (e.g. Maastricht Recommendations on Public Participation in Decision-making, Guidance on the implementation of the Aarhus Convention, decisions of the Meeting of the parties and findings of the ACCC). (9.1.C1)**

In addition, the public consultation process can be a useful tool for identifying risks that deserve specific attention from the perspective of good banking practice. In May 2010, i.e. during the first appraisal by the Bank, the Complainants already drew the Bank's attention to a series of concerns that were confirmed over time: the court ruling confirmed the fragmentation of the project and, as a result, the limited appraisal of cultural impacts. The seismicity risks were also documented by the public consultation. However, the Bank did not enter into discussions on mitigation measures with the promoter regarding these issues.

**The Bank's services should verify that the relevant concerns and risks flagged as part of the Stakeholder Engagement process are adequately assessed and addressed, as relevant, by the promoter. The Bank's services should also adequately document the outcome of their analysis and the appropriate action that needs to be taken for an informed decision making process. (9.1.C2)**

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07 March 2018

## ANNEX I - SUMMARY OF ALLEGATIONS AND MAIN CONCLUSIONS

A) Allegations pertaining to environmental impacts			
Allegation	Main Findings	Main conclusions	Suggestions for improvement
<b>a.1 Fragmentation:</b>	<p>The “connecting pipeline” was not subject to an environmental impact assessment at the screening phase. The fragmentation of the gas “connecting pipeline” was confirmed by the Spanish courts.</p> <p>The services have informed the EIB-CM that after the court decision the Spanish authorities maintained their view and issued the relevant permit.</p>	The EIB-CM did not find any documentation during the investigation that the Bank assessed the fragmentation and the implications of the ongoing court proceedings nor thereafter when the Court sentence was issued.	<p>In a multiphase approval project, the Bank’s services should ensure that in the appraisal and monitoring of the project, opinions are provided and documented at the different decision points. This should include all results of project risk evaluations including results of court cases and related risk/impact analysis (9.1.A3)</p> <p>The Bank’s services should verify that the relevant concerns and risks flagged as part of the Stakeholder Engagement process are adequately assessed and addressed, as relevant, by the promoter. The Bank’s services should also adequately document the outcome of their analysis and the appropriate action that needs to be taken for an informed decision making process. (9.1.C2)</p>
<b>a.2 Impact on biodiversity and Natura 2000 sites</b>	<p>Potential impacts were assessed through the Environmental Impact Assessment. The same impacts were evaluated by the Spanish environmental authority, which issued an Environmental Impact Statement (EIS) in line with the relevant European Directives.</p> <p>The Bank requested a specific condition precedent for disbursement concerning biodiversity impacts</p>	The Bank appraised and identified issues relating to the environmental impacts of the project in accordance to the Bank’s relevant policies and regulations.	The Bank services should carry out a documented analysis whether there are any potential gaps between Form A and the document considered equivalent (e.g. competent authority, protected areas)
<b>a.3 Land and marine cultural heritage:</b>	<p>Concerning cultural impacts included in the EIA of the project, the promoter fulfilled the conditions set by the competent authority.</p> <p>Cultural impacts of the gas onshore pipeline were not assessed as there was not a requirement to carry out an EIA,</p>	The impacts of the project on the “Via Augusta” by the “connecting pipeline” were not assessed by the Bank due to the fragmentation of the project.	<p>In a multiphase approval project, the Bank’s services should ensure that in the appraisal and monitoring of the project, opinions are provided and documented at the different decision points. This should include all results of project risk evaluations including results of court cases and related risk/impact analysis (9.1. A3)</p> <p>The Bank’s services should verify that the relevant concerns and</p>

			risks flagged as part of the Stakeholder Engagement process are adequately assessed and addressed, as relevant, by the promoter. The Bank's services should also adequately document the outcome of their analysis and the appropriate action that needs to be taken for an informed decision making process. (9.1.C2)
<b>a.4 Regional environmental legislation applicable to the project</b>	The promoter filed its application for authorisation with the relevant national and regional authorities.	Allegation unfounded	No
<b>a.5 Land use and study of alternatives</b>	Safety considerations for the surrounding population were given priority over the use of land.  Concerning the analysis of alternatives, the EIB-CM observes that the EIA studies were more detailed in considering alternatives sites for the onshore plant than for the onshore and offshore pipelines.	Allegation unfounded.	No
<b>a.6 Pollutant emissions and hazardous waste management</b>	The EIA contains sufficient information to assess the compliance of the project with the relevant pollution and waste legislation. The waste management and industrial pollution control measures included in the project are in line with international good practice. The analysis focused on the onshore plant only.	Allegation unfounded	No

<b>B) Allegations pertaining to social impacts</b>			
<b>Allegation</b>	<b>Main Findings</b>	<b>Main conclusions</b>	<b>Suggestions for improvement</b>
<b>b.1</b> <b>Public consultation relating to the environment and access to environmental information</b>	<p>The public consultation processes were carried out in accordance with Spanish law. The requested documents were also translated into Spanish and were made available to the public for comments.</p> <p>The EIB-CM analysis did not find evidence that the Bank's services had addressed the quality of the public consultation in line with guidance of the Aarhus Convention Compliance Committee.</p>	<p>The Bank reviewed numerous comments on the project resulting from public consultation and it did not form a view over the suitability of timeframes and availability of documents during public consultation.</p>	<p>The Bank should establish an appropriate guidance to be used when carrying out the assessment of the meaningfulness of the public consultation process. This guidance should be based on the implementation and best practices including those of the relevant Aarhus Convention bodies (e.g. Maastricht Recommendations on Public Participation in Decision-making, Guidance on the implementation of the Aarhus Convention, decisions of the Meeting of the parties and findings of the ACCC). (9.1.C1)</p> <p>The Bank's services should verify that the relevant concerns and risks flagged as part of the Stakeholder Engagement process are adequately assessed and addressed, as relevant, by the promoter. The Bank's services should also adequately document the outcome of their analysis and the appropriate action that needs to be taken for an informed decision making process. (9.1.C2)</p>

<b>C) Allegations associated to industrial risks</b>			
<b>Allegation</b>	<b>Main Findings</b>	<b>Main conclusions</b>	<b>Suggestions for improvement</b>
<b>c.1 Geological and seismic risk</b>	<p>No industrial standards or guidelines for assessment of geological or seismic risk existed at the time of the assessments - and literature on depleted gas fields was sparse.</p> <p>The Bank's documents for appraisal lack any analysis concerning the seismicity risk from the technical perspective.</p>	<p>The complainants' allegations are unfounded based on the fact of absence of specific regulation.</p> <p>The EIB-CM is of the opinion that the Bank could have taken additional steps in its due diligence to examine risks associated to the seismicity and geological risk. This would have been necessary taking into account the size of the storage; and the lack of clear standards in the industry as well as the uncertainty of the impacts associated to this risk</p>	<p>In cases where: (i) an event has a low probability of occurring but may result in project failure and/or have a high negative impact on the environment, human health and/or well-being or (ii) there is not sufficient certainty to conclude otherwise, the Bank should allocate appropriate resources to conduct an in-depth and documented risk assessment, which may result in specific conditions and/or other requirements. (9.1.A1)</p> <p>The Bank's services have confirmed during the course of this investigation that the Bank has taken measures, for special cases and according to a risk-based approach, to engage specialist geophysical consultants at appraisal stage. (9.1.A2)</p> <p>In a multiphase approval project, the Bank's services should ensure that in the appraisal and monitoring of the project, opinions are provided and documented at the different decision points. This should include all results of project risk evaluations including results of court cases and related risk/impact analysis (9.1.A3)</p>
<b>c.2 Industrial risks</b>	<p>The EIA included the analysis of the processing of dangerous substances; major oil spills were modelled to assess the potential impact on sensitive areas; prevention measures, in line with the industry standards, were put in place and an emergency plan was foreseen for operation.</p> <p>The EIB-CM notes that at the time of appraisal, both the promoter and the Spanish authorities considered that this UGS facility did not fall within the scope of the Directive and its transposing legislation in Spain. The Bank's services concurred with this view.</p>	<p>Whilst the EIB-CM considers that the Bank followed its own procedures, it takes note of the different approaches to transpose the Directive by the various EU Member States in respect of UGS at the time of appraisal.</p> <p>EIB-CM also notes that Seveso III Directive, repealing Seveso II Directive, states that offshore underground gas storages do not fall under the scope of the Directive.</p>	<p>In cases where: (i) an event has a low probability of occurring but may result in project failure and/or have a high negative impact on the environment, human health and/or well-being or (ii) there is not sufficient certainty to conclude otherwise, the Bank should continue to allocate appropriate resources to conduct an in-depth and documented risk assessment, which may result in specific conditions and/or other requirements. (9.1.A1)</p>

**ANNEX II – 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

## ACRONYMS

CC.AA	Comunidades Aunotónomas (Auotonomous Communities)
CE	Constitución Española (Spanish Constitution)
DNV	Det Norske Veritas
EA	Environmental assessment
EC	European Commission
EI	Environmental Impact
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
EP	European Parliament
EIB	European Investment Bank
EIB-CM	European Investment Bank Complaints Mechanism
EIS	Environmental Impact Statement
EO	European Ombudsman
ESPS	EIB's <a href="#">Statement of Environmental and Social Principles and Standards</a>
EU	European Union
EUR	Euros (currency)
HAZID	Hazard Identification
HAZOP	Hazard Operability
IAR	Initial Assessment Report
IGME	Instituto Geológico y Minero de España (Spanish Institute of Geology and Mining)
IGN	Instituto Geográfico Nacional (National Geographic Institue)
IPPC	Integrated Pollution Prevention and Control
NCSE-02	Norma de Construcción Sismorresistente: Parte general y edificación
NGG	National Gas Grid
PBCE	Project Bond Credit Enhancement
PCDTS	Plataforma Ciudadana 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
UNECE	United Nations Economic Commission for Europe