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Judgment of the General Court in Case T-295/20 | Aquind and Others v Commission

Internal energy market and Union list of projects of common interest: General Court dismisses the Aquind group's action

EU law confers on the Member State concerned by the project the power to accept or to refuse to include the project in the list of PCIs, without the Commission being able to overrule a refusal

The applicants, Aquind Ltd, Aquind SAS and Aquind Energy Sàrl, are the promoters of a proposed electricity interconnector connecting the electricity transmission systems of the United Kingdom and France ('the proposed Aquind interconnector'). Considered to be fundamental in the infrastructure needed for the completion of the internal energy market, that project was included in the list of 'projects of common interest' (PCIs) of the European Union by Delegated Regulation 2018/540. ¹

Since that Union list of PCIs is to be drawn up every two years, the list established by Delegated Regulation 2018/540 was replaced by the one established by Delegated Regulation 2020/389 ² ('the contested regulation'). The new list in annex to the contested regulation listed the proposed Aquind interconnector as one of the projects which are no longer considered to be Union PCIs.

The applicants then brought an action before the General Court seeking annulment of the contested regulation, in so far as it removes the proposed Aquind interconnector from the Union list of PCIs.

The Court **dismisses that action in its entirety**. In its judgment, it holds, inter alia, that where a Member State decides to refuse the inclusion, in the list provided for in Regulation No 347/2013, ³ of a PCI located in its territory, **that Member State has a discretion in the matter which the European Commission cannot call into question**.

Findings of the Court

In the first place, the Court examines the question whether the Commission's statement of reasons for not including the proposed Aquind interconnector in the contested regulation as a Union PCI, on the basis of the French Republic's refusal to give its approval to the inclusion of that project in the Union list of PCIs, could be regarded as a sufficient statement of reasons. ⁴

In that regard, after recalling the wording of the second paragraph of Article 172 TFEU, according to which guidelines

¹ Commission Delegated Regulation (EU) 2018/540 of 23 November 2017 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest (OJ 2018 L 90, p. 38).

² Commission Delegated Regulation (EU) 2020/389 of 31 October 2019 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest (OJ 2020 L 74, p. 1).

³ Article 3 of Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ 2013 L 115, p. 39).

⁴ In the light of the settled case-law on the matter.

and PCIs which relate to the territory of a Member State **are to require that Member State's approval**, the Court considers that, in view of its clear wording, which presents no difficulty in interpretation, that provision **confers a discretion on the Member State concerned to give its approval to the inclusion of a project in the Union list of PCIs or to refuse to do so**. The legislature's choice to introduce a form of right of veto in favour of the Member State concerned is explained by the fact that the trans-European network policy **includes territorial aspects** and thus, in some way, touches upon **town and country planning**, which is an area **that traditionally falls within the sovereignty of the Member States**.

In the present case, the Court finds that **the Commission fulfilled the obligation to state reasons**⁵ by referring to **the French Republic's refusal** to give its approval to the inclusion of the proposed Aquind interconnector in the Union list of PCIs. Similarly, the Commission cannot be criticised for not having asked the French Republic for explanations of the detailed reasons for that refusal. In that context, the provisions of Regulation No 347/2013⁶ cannot be interpreted as meaning that the Commission could be held liable for a possible unlawful act committed by a Member State where that Member State refuses to give its approval to a project and that it must therefore answer for a potential infringement of the obligation to state reasons committed by that Member State. According to the Court, such an approach **would be contrary** to the rules governing **the division of powers between the Member States and the Commission**, as provided for in Article 172 TFEU and reiterated in Regulation No 347/2013. The FEU Treaty has **clearly established limits on the competence of the European Union in the field of Union PCIs**, since the Commission **is prevented from including in the list of those PCIs a project which has not received the approval of the Member State** on whose territory the project is to be implemented.

In the second place, the Court examines an alleged infringement of the procedural and substantive rules laid down in Regulation No 347/2013.⁷ In that regard, it finds that the applicants **have not demonstrated** that the fact that the proposed Aquind interconnector was the most uncertain of the projects that could have been included in the Union list of PCIs **could call into question the legality of the contested regulation**. The Court points out that, under Regulation No 347/2013,⁸ **the Commission was required to take into consideration the French Republic's refusal to approve the inclusion of the proposed Aquind interconnector in the Union list of PCIs** and that **it could not call into question the reasons why that project was the most uncertain**. It adds that Regulation No 347/2013⁹ provided that the grounds for the refusal put forward by a Member State must be examined **if a Member State of the regional group concerned so requests**. The Commission was therefore **not entitled** to request that the grounds relied on by the French Republic be examined and therefore it **did not commit any error** in that regard. In the present case, **no Member State came forward to ask the French Republic to explain the reasons for its refusal**. Even if the French Republic's conclusion that the proposed Aquind interconnector was the most uncertain is based on an error of assessment, the Commission **did not have the power to correct it, any more than the Court itself has jurisdiction to examine that issue**.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are

⁵ Under point (a) of the second subparagraph of Article 3(3) of Regulation No 347/2013 and Annex III.2(10) to that regulation.

⁶ Article 3(1) and (4) and Article 16 of Regulation No 347/2013.

⁷ In particular, Article 5(8) of Regulation No 347/2013.

⁸ Under point (a) of the second subparagraph of Article 3(3) of Regulation No 347/2013 and Annex III.2(10) to that regulation.

⁹ Annex III.2(10) to Regulation No 347/2013.

contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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