

ACS in Vinaroz (Spain)

By **Observatori del Deute en la Globalització - ODG** (Spain)



About the corporation:

Name: ACS Group (Actividades de Construcción y Servicios)

Sector: Construction (Civil works, construction and mining), Industrial sectors (Energy and water distribution networks, specialized facilities, control systems and integrated projects), Services (buildings and at city level)¹

Country of origin: Spain

Ownership of the corporation's capital (shareholders, owners, etc.):

On February 28, 2017, the ACS Group has 314,664,594 shareholders. The main ones are²:

- Florentino Pérez (President and CEO) – 12.52%
- Blackrock – 3.01%
- Norges Bank – 2.74%
- Invernelin Patrimonio, S.L. – 2.07%
- Percacer, S.L. – 1.35%
- Comercio y Finanzas, S.L. – 1.32%

Name of the transnationals' subsidiary operating in the place of operation related to the case:

Escal UGS (66.7% belonging to ACS Group)

Countries where the transnational corporation operates:

Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Bolivia, Botswana, Brazil, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, France, Greece, Georgia, Germany, Guatemala, Hong Kong, India, Indonesia, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kazakhstan, Malaysia, Mauritania, Mexico, Mongolia, Morocco, New Zealand, Nicaragua, Norway, Panama, Peru, Poland, Portugal, Qatar, Romania, Saint Kitts and Nevis, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, The Netherlands, The Philippines, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela, Vietnam³.

Location of the case: Vinaroz - Spain

ACS group is currently the 4th biggest and most powerful construction and engineering corporation in the world, after three Chinese. The group consists of 47 companies and subsidiaries, among which the German company Hochtief and the Australian Cimic stand out. Its business extends to 64 countries and its turnover in the first semester of 2018 reached almost 44.5 billion euros.

In 2008, the Spanish Government approved the construction of the Castor project; Spain's biggest offshore gas storage plant, built in an old oil field 22km offshore in the Mediterranean Sea. The infrastructure has never been in operation for during the cushion gas injections it moved the Amposta fault, producing over 1000 earthquakes, some over 4.2 degrees in the Richter scale. Castor is a Public Private Partnership (PPP) that had to be cancelled due to evident failures, including on proper due diligence to identify the possible impacts of the project. A very expensive and unnecessary infrastructure, which more than tripled its initial cost and that has become a massive scandal in the country for the political and corporate collusion perceived behind the project as well as for the social, economic and environmental impacts it generated at local and state level.

The construction company was Escal UGS, subsidiary company of the ACS group, created for this objective. The project was also refinanced by the European Investment Bank (EIB).

Citizens are facing the possibility of having to assume the cost of this project, which amounts to 3.28 billion euros, including interests, maintenance and the compensation paid to the company when it renounced the concession.

The citizen group called "Caso Castor" has filed a criminal lawsuit against the company and various Spanish politicians the seek justice, make those responsible accountable and put an end to the impunity of political and corporate elites, aiming at reversing the illegitimate payment to the company and demanding the construction is dismantled.

This case is part of the report
THE EU AND THE CORPORATE IMPUNITY NEXUS
BUILDING THE UNBINDING TREATY ON TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS

The full report can be downloaded at:
<https://multinationales.org/The-EU-and-the-Corporate-Impunity-Nexus>

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Background

The Castor project is an offshore gas storage plant in front of the coast of Vinaroz, between the provinces of Catalonia and Valencia. This natural gas storage plant was to be the fourth to be built in the Spanish state and was supposed to guarantee the supply of this fossil fuel in the event of an increase in demand or possible disruption with exporting countries. Due to the geopolitical situation between the European Union and Russia, the EU seeks to stop depending on Russian energy. The European Energy Union has been created under this claim, aiming at extending the current European gas infrastructure network and diversify exporters of this fossil fuel⁴. Castor was thought to play an important role in this strategy, since the Spanish state is one of the few European countries that does not depend on Russian gas.

Role of the EIB

The European Investment Bank (EIB) played an important role in the implementation of the Castor project, since it was the one who refinanced it, including it as a pilot project of the Project Bond 2020 initiative⁵. The main promoter and constructor of the Castor project, ACS, requested the project be refinanced by the EIB for the repayment term (25 years) was better than that offered by the consortium of 17 banks that financed this project initially (7 years). Financed twice by the EIB, despite criticisms from the European Parliament and from its own Complaints Mechanism, to date the EIB never recognised publicly its responsibilities in this fiasco. The Project Bond Initiative 2020 is a financial mechanism designed to benefit investors, which has ended up acting against the public interest.

Role of the Spanish government

In 1996, Dundee Energy Limited proposed to take advantage of an old oil field on the coast of Vinaroz to be used as a geological gas storage. Due to the strategic nature of this type of infrastructure, the Spanish Government favoured a Spanish company to get involved in the project. Considering the characteristics of the infrastructure, its significance at the international level and the possible links with the political sphere, ACS was the ideal candidate to carry out this project. Although ACS was not the initial promoter of the Castor project, it ended up being the largest shareholder of the joint venture that was created to build the Castor project: Escal UGS.

ACS is one of the Spanish construction corporations that obtains the largest number of concessions of public works, infrastructures and services in the country.

There is an intimate relationship between ACS' shareholders and the Spanish oligarchy, since the main shareholders are also part of it. ACS' president, Florentino Pérez, is one of the most powerful men in the country and has close relations with the political world. ACS does not have an interest group to lobby politicians, but it is publicly known that in the VIP area of Real Madrid's football stadium -of which Florentino Pérez is also president-, exchanges and negotiations go on between politicians, judges, and other senior officials to talk business. Several articles have been written about this⁶.

Several municipalities of the affected area -known as Terres del Sènia-, opposed the project, except for the municipality where the Castor infrastructure was built: Vinaroz. During the preparation and concession of the project, the maritime line that delimits Catalonia with Valencia was modified by the PSOE Government and the Minister of Public Works at the time of Magdalena Álvarez Arza (later vice-president of EIB)⁷. This probably happened because Valencia was not so restrictive with environmental regulations.

Controversies around the project arose when ACS renounced the concession of the project when they realised the Castor platform could not be exploited, after the earthquakes it produced with the first cushion gas trial injections. The Spanish Government accepted their renunciation and produced a Royal Decree Law (RDL) obliging itself to return the net value of the infrastructure in 35 days due to its "urgent nature". As noted before, the Castor project's debt was refinanced by the EIB's 'Europe 2020 Project Bond Initiative', that required the return of the investment on certain dates. November 30th, 2014 was one of these return dates and it is known that pressures from Europe forced the urgent payment. The RDL came into effect on October 4th and the 35 days of margin married the EIB's requirements.



Visit of the former Spanish Minister of Energy (Jose Manuel Soria), the president of Escal UGS (Recadero del Potro) and other politicians to the maritime platform on October 2013, after the injection of cushion gas that produced more than one thousand earthquakes Photo: Flickrair (<https://goo.gl/BCct8J>)



People's tribunal on the Castor project that take place in Barcelona in June 17th 2017
Photo: Bru Aguiló - Fotomovimiento

Citizens were made to assume the cost of the Castor project through their gas bills⁸, which amounts to 3.28 billion euros -including interests, maintenance and the compensation paid to the company when it renounced the concession. But this decision was suspended in December 2017 by the Constitutional Court, arguing that the ruling did not abide to law for it should not have been considered of urgent nature⁹, suspending the repayment mechanism through gas bills. With the Constitutional Court's ruling, there is currently a conflict between the Spanish government and the banks that financed the company's compensation: Santander, Caixabank and Bankia. They accepted to 'finance' the company's compensation at 4.3% interest rate, and are now negotiating with the government¹⁰ and announcing possible legal actions in order to get their money back, what would mean that citizens would pay double for this compensation. Furthermore, in November 2018 the Spanish Supreme Court ordered the Government to return a part of the maintenance costs to citizens (representing only 1% of the total). The controversy is still open and ongoing.

Impacts of the corporation's operations

The Castor project has generated impacts at both local and state level, affecting fundamental rights, financial impacts, environmental damages and threats to democracy due to lack of transparency and political-corporate collusion.

More than one thousand earthquakes of up to 4.2 degrees on the Richter scale were produced as a result of the start-up tests, between the months of September and October 2013, causing social alarm and damage in buildings. The earthquakes are attributed to ACS/Escal UGS, since they occurred during the infrastructure start-up operations, causing deep trauma to the local people, affecting them emotionally and causing serious damages to their towns and houses.

There are also indications that point at technical staff and politicians of the Ministry of Environment (including Elena Espinosa Mangan - PSOE) for their responsibility in not carrying out a proper environmental impact assessment. In particular, at those who granted the Castor project's Environmental Impact Assessment in October 23rd, 2009 (BOE 272 November 11th, 2009) with lack of attention to seismic risk. Furthermore, it was decided not to submit the project that connected the Castor onshore gas facility to the offshore storage plant for an Environmental Impact Assessment. This resolution was declared void by sentence of April 15th, 2013 by the Contentious Administrative Chamber of the National Court, ratified by the Supreme Court on June 10th, 2015.

There is a link between the Spanish Government and the episode of seismicity mentioned above, since a seismicity study was not requested to approve the construction and the project was allowed to be fragmented into three parts (onshore plant, gas pipeline and offshore plant) for the Declaration of Environmental Impact¹¹.

In addition, there are previous studies, such as the one carried out by the Observatori de l'Ebre, which concluded that the exploitation of the Castor infrastructure could reverberate in earthquakes, due to the characteristics of the gas storage plant, located on the geological fault line of Amposta.

Regarding democracy and transparency, the consultation phase of the project violated the Aarhus Convention on public participation in public concession processes, for only 30 days were available to participate and these coincided in the months of July and August, when most of Spanish citizens are on vacation. In addition, the document provided consisted of 600 pages of technical language only in English, radically limiting the possibility of citizens understanding the details of the Castor project (Marsal, 2014).

The cost of the Castor project, how it was been hidden from the national budget through a Public Private Partnership (PPP)¹² and the compensation to the company, represent a hole for the Spanish economy as well as private debt turned into illegitimate public debt. This is intimately linked to the austerity policies applied by the European Union and the limits on public expenditure (the 'debt break') imposed on member states. The Castor project is one of the Spanish mega-infrastructures that has had big repercussions on the indebtedness of the Spanish state and its citizens (public debt). As happened with the banks back in the 2008 crisis, the Spanish government won't to let construction companies fall. Over 2017 and 2018 the Government has 'bailed-out' many highway projects. An example are those surrounding the capital Madrid for 2 billion euros, also granted to ACS.

The Debt Observatory in Globalisation (ODG)¹³, the activist collective Xnet¹⁴, the Catalan Institute on Human Rights¹⁵ and many citizens at a voluntary level, are collaborating to drive a legal and communications campaign to report the bad practices of the Castor project. This citizen group called "Caso Castor" has filed a criminal lawsuit¹⁶ against Florentino Pérez-ACS, 5 ex-Ministers (of both PP and PSOE government) and other actors involved for their responsibilities in the Castor project, and with allegations of prevarication, fraud in public administration and embezzlement of public funds¹⁷. During their investigation, many anomalies¹⁸ were detected: the construction company was also a concessionaire and had hardly any competitors, the contract included a clause that accepts fraud or negligence, modification ad hoc of sea boundaries to place the platform in territories with a more 'favourable government', several anomalies in the environmental and seismic impact reports, extension of the term for the waiver of the concession to prevent it from expiring or no distribution of damages or moratorium has been proposed. The lawsuit is now at the Constitutional Court from November 2018, after being rejected by the National High Court, and the campaign is gathering a lot of strength and support.

Affected people and resistance

During the earthquakes episode, the local people from the Terres del Sénia were the ones most affected. But the rest of citizens at the state level are also hit, specially gas consumers and more so people suffering energy poverty: 11% of the Spanish population, basically women and older population¹⁹.

In 2007, one year before that the Castor project was granted to Escal UGS, the Plataforma Ciutadana en Defensa de les Terres del Sénia²⁰ was set up to denounce the impacts that this project could have on their territory and the local economy. This citizen platform has been responsible for conducting citizen campaigns in the different municipalities affected by the Castor project, political advocacy on parliamentary groups and city councils, in addition to raising their complaints to the European level.

On the other hand, the Debt Observatory in Globalisation (ODG), based in Barcelona, has been investigating the Castor project since 2013 working in collaboration with local citizen platforms. On June 17th, 2017 it organised a "Peoples' Tribunal on the Castor Project"²¹ pointing at ACS, the Ministry of Energy, Industry and Tourism and the EIB. As mentioned before, ODG is also driving the citizen lawsuit "Caso Castor", whose main objectives are:

- Non-payment of the compensation scheme paid to Escal UGS, whatever the mechanism used, and the "return" of previous payments.

- The dismantling of the Castor gas storage platform and the cost to be imputed to the company responsible for its failure.
- To show that the project's costs, together with other costs included in bills for basic services, are illegitimate, and generate and aggravate energy poverty in the country and undermine energy democracy.
- To prove the whole project was unnecessary; it is about the 'business of building' useless gas infrastructure.
- To fight impunity and corruption, pointing at the Castor project as an example a Public Private Partnership (PPP) and how this model helps hide corruption and corporate collusion, not acting in public interest.
- The "gas bubble" needs to burst. It has led the Spanish gas system into deficit due to the over construction of infrastructures that have fallen into disuse or are being used much less than expected.
- The critique of the promotion of gas through the geopolitical justification of dependence on Russia, by the European Union, when the Spanish state has excellent conditions for the implementation of renewable energy.
- The critique of the model of large infrastructures, large investments and large corporations, which imposes itself above the needs of the population, causing social and environmental impacts and generate illegitimate debt.

Denunciations at the national and international level

There is a trial in course in Vinaroz's Central Magistrates' Court nº4. In January 2015, Castellón's public prosecutor presented a complaint in Valencia's Superior Court of Justice accusing low rank officials and technicians for the earthquakes. The judicial process has been declared complex, so the investigation process has been extended, and the judges in charge of the case have been repeatedly replaced.

At the national level, in February 2018, Caso Castor group presented their criminal lawsuit to the National High Court, targeting senior officials, such as government Ministers between 2008 and 2014, and businessmen, among whom is Florentino Pérez. As noted before, the lawsuit is now at the Constitutional Court from November 2018, after being rejected by the National High Court, and could possibly appeal to the European level if no effective legal protection is delivered by Spanish justice.

Also pending are the possible legal actions banks will take in litigation with the Spanish government²², to recover the credit given for the company's compensation.

ENDNOTES

- 1 Grupo ACS: www.grupoacs.com/activities/construction/
- 2 Grupo ACS: www.grupoacs.com/accionistas-e-inversores/la-accion/capital-social/participaciones-significativas-y-autocartera/
- 3 ACS Group: www.grupoacs.com/about-acs/international/
- 4 Global Gas lock-in: Bridge to nowhere: <https://odg.cat/en/publication/global-gas-lock-in>
- 5 Eldiario.es: www.eldiario.es/ultima-llamada/Vamos-ganar-Castor-debemos-pagarlo_6_722387759.html
- 6 El confidencial: www.elconfidencial.com/deportes/futbol/champions/2017-05-04/palco-bernabeu-ciudadanos_1376817/ and https://www.elconfidencial.com/deportes/futbol/liga/2017-12-24/palco-bernabeu-clasico-real-madrid-barcelona_1497854/
- 7 Caso Castor: <https://casocastor.net/anomalias-caso-castor/>
- 8 Observatori del Deute en la Globalització (ODG): <https://odg.cat/en/node/819>
- 9 Boletín Oficial del Estado: www.boe.es/buscar/act.php?id=BOE-A-2014-10059
- 10 El Mundo: www.elmundo.es/economia/2018/01/03/5a4ba906468aeb8c2f8b456f.html
- 11 Caso Castor: <https://casocastor.net/anomalias-caso-castor/>
- 12 Observatori del Deute en la Globalització (ODG): <https://www.odg.cat/en/publication/public-private-partnerships-failing>
- 13 Observatori del Deute en la Globalització (ODG): <https://www.odg.cat/en/>
- 14 Xnet: <https://xnet-x.net/>
- 15 IDHC: <https://www.idhc.org/es/>
- 16 Caso Castor: <https://casocastor.net/castor-case/>
- 17 Caso Castor: <https://casocastor.net/delitos-caso-castor/>
- 18 Caso Castor: <https://casocastor.net/anomalias-caso-castor/>
- 19 Público: www.publico.es/sociedad/pobreza-energetica-diez-personas-espana-no-calentar-hogar.html
- 20 Plataforma Ciudadana en Defensa de les Terres del Sénia (PCDTS): <http://plataformapelsenia.blogspot.com/>
- 21 Observatori del Deute en la Globalització (ODG): <https://odg.cat/es/juicio-castor>
- 22 elEconomista: www.eleconomista.es/empresas-finanzas/noticias/8851815/01/18/Energia-se-plantea-exigir-a-ACS-los-1350-millones-recibidos-por-Castor.html

BIBLIOGRAPHY

Marsal, J., (2014), *Castor: la bombolla sísmica*, Catalunya, Edicions Saldonar