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WHITE PAPER

July 2022

REPowerEU: A New Energy Landscape for Europe

In March 2022, the European Commission published “REPowerEU,” a blueprint of its planned changes to the regulation of European Union energy markets in direct response to the Russian invasion of Ukraine in February 2022. At its core, REPowerEU’s main objective regarding the gas market is to diversify supply in order to gain independence from Russian gas imports.

The blueprint was supplemented by a detailed REPowerEU plan in May 2022. In furtherance of its goal to diversify supply, the European Union has also announced closer cooperation with the United States through the establishment of a joint Task Force on Energy Security and an EU Energy Platform for the voluntary common purchase of gas, liquefied natural gas (“LNG”), and hydrogen by Member States and selected other European countries.

These actions will result in an irreversible paradigm shift in the regulation of EU energy markets that will impact prevailing business models, commercial dealings, and investment strategies in the European Union. It will also have a profound impact on global energy markets.

Like any major market transformation, the irreversible paradigm shift will challenge affected markets and their stakeholders, and it will also provide unparalleled opportunities for those who are able to adapt.

This *White Paper* is the first in a series of publications where we will address the various legal and commercial developments relating to REPowerEU and has a particular focus on gas. As such, it is intended to set the stage for what is to come.

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INTRODUCTION

The current developments in the European Union, including the recently proposed REPowerEU plan, the envisaged closer cooperation with the United States, and the EU Energy Platform will transform the European energy markets on a scale that has yet to be seen. The closest comparison is market liberalization two decades ago.

Through the late 1990s and into the early 2000s, the EU gas and power markets were dominated by mostly state-owned monopolies at all levels of the value chain. Thereafter, markets were transformed through liberalization to form EU-wide competitive markets that were free of commercial and legal barriers.

Extensive regulatory measures by the European Union, accompanied by stringent enforcement actions by regulators, competition authorities, and courts, precipitated this comprehensive transformation: Business models that had been in place for more than 50 years had to be discarded, new players entered the markets, and former ones either underwent significant restructuring or exited the market. New markets and products emerged, and so-called legacy products were either revamped or abolished. These rapid changes also led to considerable legal uncertainty, with proceedings before courts and arbitral tribunals commonplace.

As soon as the dust from market liberalization began to settle, another major transformation was on the horizon—this time in the form of the “European Green Deal.” First announced in December 2019, the European Green Deal intends to transition the EU Member States from legacy fuel sources such as coal and oil to green technologies in order to reduce CO₂ emissions and achieve climate neutrality in the European Union by 2050, on the premise that “climate change and environmental degradation are an existential threat to Europe and the world.”¹

The European Green Deal was intended to be rolled out over approximately 20 years following a structured process that took existing market realities and contractual relationships into account.² For example, long-term gas imports from Russia were a major cornerstone of the European Green Deal, as the availability of natural gas would allow a phasing-out of dirtier fuels while still ensuring energy security. For this reason, the European Green Deal transition was meticulously timed to

coincide with the expiration of the bulk of the existing long-term gas supply agreements between European importers and their Russian supplier (Gazprom).

The implementation of REPowerEU will affect the main pillars of the European Green Deal because it seeks to replace Russian gas imports in the near term. This will upend the existing system, not only because of the more rapid shift to renewables but also because of the need to invest rapidly in and build additional infrastructure to accommodate alternatively sourced gas supplies such as additional LNG transport vessels, regasification terminals, and pipelines. The need to invest in additional gas infrastructure to replace Russian pipeline gas imports may lead to tensions with the goals of the European Green Deal going forward.

THE CURRENT EU ENERGY MIX AND EXISTING INFRASTRUCTURE

In order to understand the implications of REPowerEU and the challenges and opportunities that lie ahead, it is crucial to understand the energy mix and the limitations of gas infrastructure in the European Union.

European energy sources are diverse and were so even before the Russian invasion of Ukraine in February 2022. For example, in 2020, the gross available energy³ in the European Union was composed of:

- 34.5% petroleum products (including crude oil),
- 23.7% natural gas,
- 17.4% renewable energy,
- 12.7% nuclear energy, and
- 10.2% coal.⁴

While the share of renewables in the energy mix is increasing year-on-year, natural gas still represents nearly a quarter of the European Union’s overall energy consumption. It is also the dominant source of energy for households in the European Union and holds a 32.1% market share in that segment.⁵

The relatively high share of natural gas in Europe’s energy mix is coupled with a high dependency on natural gas imports. According to Commission reports, the European Union imports 90% of the gas it uses, with the majority of that gas

being pipeline gas. In 2021, the main suppliers of gas to the European Union were:

- Russia, 45.3%,
- Norway, 23.6%, and
- Algeria, 12.6%.⁶

The energy mix and the gas suppliers differ substantially between Member States, with some Member States such as Germany, Austria, and the Czech Republic being significantly more dependent on Russian gas imports than others.⁷

The dominance of Russian gas in the European Union results from myriad factors, including the European Union's lack of substantial indigenous sources, its relative proximity to Russia, Russia's plentiful supplies, and the existence of pipelines permitting delivery throughout Europe by distinct corridors, including:

- Nord Stream 1, which runs under the Baltic Sea to Germany,
- Yamal, which traverses Belarus and Poland to Germany,
- Brotherhood, which traverses Ukraine before diverging and delivering supplies to Central and Southern Europe, and
- Turk Stream, which runs via the Black Sea and Turkey.

Additional pipelines bring alternatively sourced gas from Algeria north to Spain and Italy;⁸ from Norway south to the Benelux, Germany, and France;⁹ from Azerbaijan west to Italy via Albania, Greece, and Turkey;¹⁰ and from Libya north to Italy.¹¹

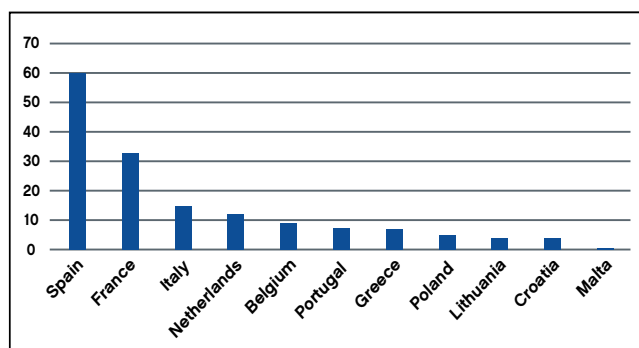
Pipeline gas is inexpensive compared to LNG and can be transported with relative ease through Europe's existing pipelines. In contrast, LNG is markedly more expensive, more difficult to transport, and requires regasification before it can be put into circulation.

As a result, LNG accounted for only 20% of European gas imports in 2021. These suppliers are diverse and span vast geographic regions. They include:

- The United States, 28%,
- Qatar, approximately 20%,
- Russia, approximately 20%,
- Nigeria, 14%, and
- Algeria, 11%.¹²

The European Union's overall LNG import capacity is 156 billion cubic meters ("bcm") per year, which is enough to meet around 40% of total current gas demand.¹³ This total import capacity is misleading, however, because the existing LNG infrastructure is unevenly distributed—several countries have little to no access to LNG and those countries with plentiful access to LNG, such as Spain, are not able to easily transport it to other Member States.¹⁴ Thus, while a great deal of LNG import capacity exists, the infrastructure to move it to areas of demand does not.

The LNG import capacity for the EU27 is:¹⁵



Data source: Gas Infrastructure Europe

LNG imports to the European Union have increased by 70% in the first quarter of 2022, and this development is predicted to continue, turning Europe into the premium market for LNG.¹⁶

Several Member States have announced plans to rapidly speed up the construction of LNG regasification terminals in response to Russia's invasion of Ukraine and the push for the European Union to diversify gas supplies.¹⁷ As part of the Joint Statement between the European Commission and the United States on Energy Security, the European Union announced it would work with Member States to accelerate the necessary regulatory approval process to facilitate the building of new infrastructure.¹⁸

THE EUROPEAN COMMISSION'S PROPOSAL: "REPOWEREU" AND ACCOMPANYING MEASURES

The European Union has taken a number of far-reaching steps in response to the war in Ukraine. These range from sanctions targeting the Russian economy, including a ban on the import of Russian oil and coal, to those focused on Russian oligarchs.¹⁹ Many of these steps will dramatically reshape the

energy landscape in Russia, the European Union, and beyond as the European Union seeks independence from Russian fossil fuels. At the same time, some of the targets proposed, for instance regarding energy savings, may be considered aspirational as it is unclear whether and how these goals will indeed be reached.²⁰

The European Commission plans to make Europe independent from Russian fossil fuels “well before 2030, starting with gas.”²¹ This goal should be reached by energy savings, massive investments in renewables, and the diversification of gas supplies.²²

REPowerEU is in addition to the ambitious targets the European Union has set for itself in the European Green Deal, which includes reducing net greenhouse gas emissions by at least 55% by 2030 (from 1990 levels) and increasing the binding target of renewable sources in the European Union’s energy mix to 40% of the Union’s gross final consumption of energy.²³ The European Commission already proposed a new EU framework to decarbonize gas markets, promote hydrogen, and reduce methane emissions in December 2021.²⁴

To reduce energy demand, REPowerEU defines more aggressive targets regarding energy savings. Specifically, the Commission proposes to reduce energy consumption by 13% by 2030. To do so, Member States should initiate communication campaigns targeting households and industry, and should also use fiscal measures to encourage energy savings.

On the supply side, REPowerEU strives to accelerate and scale up the clean energy transition by increasing the use of renewable energy in power generation, industry, buildings, and transport. To that effect, the Commission proposes increasing the target of renewable energies in the Renewable Energy Directive from 40% to 45% by 2030. This will be accompanied by a target of 10 million tons each of domestic renewable hydrogen production and renewable hydrogen imports by 2030, and by boosting sustainable biomethane production to 35 bcm by 2030.

Regarding the supply of gas specifically, the European Union’s foremost goal is to diversify supplies. To reduce and replace Russian-supplied natural gas, particular emphasis is on LNG imported from the United States, and the European Union and the United States have already established a joint Task Force

on Energy Security. It is designed to ensure stable demand for additional LNG imported from the United States of approximately 50 bcm/year until at least 2030. In their joint statement, the European Union and the United States expressly mention that “the price formula of LNG supplies to the EU should reflect long-term market fundamentals, and stability of the cooperation of the demand and supply side,” and that this growth is consistent with their shared net zero goals.²⁵

The joint statement also addresses the price formula and expressly references the Henry Hub as a consideration. The Henry Hub is located in Erath, Louisiana, and interconnects with nine interstate and four intrastate pipelines. It is a very liquid spot trading point and is generally seen as the primary price set for the North American gas market.

As a further step to reach gas supply diversification, the Commission and Member States have formed an EU Energy Platform for the voluntary common purchase of gas, LNG, and hydrogen, which is also open to the Western Balkans, Ukraine, Moldova, and Georgia. Its three functions are:

1. Demand aggregation and structuring, optimized and transparent use of the import;
2. Storage and transmission gas infrastructure, thereby maximizing security of supply and replenishment of storage; and
3. Joint international outreach.²⁶

As a next step, the Commission considers developing a mechanism for the voluntary joint purchase of gas. A task force of nine EU countries is currently preparing an action plan to identify gas supply bottlenecks and propose solutions for joint purchases.²⁷ The joint purchasing would be possible only for LNG available on the market, whereas the current situation requires in particular the conclusion of long-term agreements to secure energy supply, which cannot yet be effectively achieved by joint purchases.²⁸

The Commission acknowledges that REPowerEU will require significant financial investments, which the Commission estimates at around €210 billion within the next five years (to 2027) and with additional €10 billion for gas infrastructure.²⁹ For example, additional LNG terminals will need to be built to increase capacity for LNG imports.

These required investments in gas infrastructure may be impacted by the fact that the European Union currently encourages investments in clean energy, for example through the Taxonomy Regulation,³⁰ even though certain gas investments will qualify as taxonomy-aligned investments under the delegated adopted during the summer, which will lead to more favorable financing conditions.³¹ In any case, a careful balancing act between the ESG goals set in the Green Deal and the realities of the current energy market may be required.

CHALLENGES AND OPPORTUNITIES ARISING FROM THE IRREVERSIBLE PARADIGM SHIFT

An irreversible paradigm shift of the regulation of EU energy markets is in the making as a result of REPowerEU and accompanying EU measures. These developments will have manifold effects.

First, we expect that financial investments in energy infrastructure, which had waned in recent years due to low prices and eventual energy transition/ESG goals, will need to increase substantially. Investments in LNG-related infrastructure including terminals, transport ships, and pipelines are foreseeable. The need to secure the necessary financing may be in conflict with the ESG goals set by the European Union with regards to sustainable investment.

Second, regulatory permit proceedings will need to be streamlined and fast-tracked. This has already been identified as a priority by the European Union, which lists the acceleration of permitting and innovation of renewable energy projects in Member States as a goal in its REPowerEU communication.

Third, to ensure energy security, a renaissance of long-term gas supply agreements is on the horizon. This will create the contractual and commercial incentives to divert global LNG resources to the European Union from other regions (i.e., the

Asian markets). Long-term gas contracts are already envisaged in the joint Task Force on Energy Security between the European Union and the United States. Such closer cooperation may have further side effects and could lead to a markedly increased importance for the Henry Hub for non-U.S. pricing.

The above will undoubtedly challenge existing business models and commercial relationships and will trigger the need for advice on the new regulatory regime and legal support in its implementation. This includes:

- Regular monitoring of evolving regulations;
- Guidance on how to navigate regulations and on their implementation;
- Advice on ESG and any tensions that may arise with respect to new regulations;
- Permitting for new projects;
- Competition law and state aid; and
- Dispute resolution, including dispute prevention, mitigation of risks, and dispute resolution. Disputes may be gas-specific and occur on the upstream (e.g. relating to exits from existing investments or lost investment expectations), import (e.g. relating to performance, amendment and termination of existing long-term agreements) and downstream (e.g. regarding possible ripple effects from import level and government interferences) markets. They may also concern general commercial, transactional and construction law.

The issues outlined here are the tip of the so-called iceberg and market participants are advised to seek legal advice. Jones Day has a special task force assisting clients active on all levels of the value chain of affected markets.

Stay tuned for further *White Papers* on REPowerEU, where we will delve into the issues highlighted above in detail. What can already be said is that REPowerEU will have a profound impact on companies, Member States and existing infrastructure projects alike.

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ENDNOTES

- 1 See the [European Commission's webpage on the European Green Deal](#).
- 2 The role of natural gas as a transitional source of energy has also been recognized under the Taxonomy Regulation, where a delegated act has expressly recognized certain gas energy activities as economic activities covered by the Taxonomy. See Commission Delegated Regulation (EU) amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities, C/2022/0631 final.
- 3 Gross available energy refers to the overall supply of energy for all activities on a territory. In other words, gross available energy = Primary production + Recovered & Recycled products + Imports – Export + Stock changes. See “[Energy Statistics—an overview](#),” Eurostat.
- 4 “[Energy Statistics—an overview](#),” Eurostat.
- 5 “[Gas factsheet](#),” ACER. The majority of gas is used in industry, not households.
- 6 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, REPowerEU: Joint European Action for more affordable, secure and sustainable energy, COM(2022) 108 final.
- 7 See Anna Cooban, “[Germany faces \\$240 billion hit if Russian gas is cut off](#),” CNN, April 13, 2022.
- 8 See “[As Europe seeks alternatives to Russian gas, Algeria has pipeline capacity to spare](#),” S&P Global, January 28, 2022.
- 9 See “[The Oil and Gas Pipeline System](#),” Norwegian Petroleum.
- 10 See [website of Trans Adriatic Pipeline](#).
- 11 See [website of Greenstream](#).
- 12 “[Liquefied natural gas](#),” European Commission. The situation is rapidly changing—for example, in 2016, the United States was not yet among the top three exporters of LNG to the EU: see the EU Commission's Memo of February 16, 2016, titled “[Liquefied Natural Gas and gas storage will boost EU's energy security](#).”
- 13 “[EU27 annual regasification capacity of LNG](#),” European Parliamentary Research Service.
- 14 See the EU Commission's Memo of February 16, 2016, titled “[Liquefied Natural Gas and gas storage will boost EU's energy security](#).”
- 15 “[EU27 annual regasification capacity of LNG](#),” European Parliamentary Research Service.
- 16 “[Gas Market Report, Q2-2022](#),” International Energy Agency.

- 17 [“EU countries bet on floating LNG terminals to raise import capacity,”](#) Euractiv, March 31, 2022.
- 18 [“Joint Statement between the European Commission and the United States on European Energy Security,”](#) European Commission, March 25, 2022: “The European Commission will work with the governments of EU Member States to accelerate their regulatory procedures to review and determine approvals for LNG import infrastructure, to include onshore facilities and related pipelines to support imports using floating storage gasification unit vessels, and fixed LNG import terminals.”
- 19 For a regularly updated overview, see website of the European Commission, [„Sanctions adopted following Russia’s military aggression against Ukraine.”](#)
- 20 For an analysis of the feasibility, see “The EU plan to reduce Russian gas imports by two-thirds by the end of 2022: Practical realities and implications,” The Oxford Institute for Energy Studies, March 2022; “REPowerEU and the Short-Term Outlook for the European Gas Market,” The Oxford Institute for Energy Studies, July 2022.
- 21 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, [REPowerEU Plan](#), COM(2022) 230 final; [“REPowerEU: Joint European action for more affordable, secure and sustainable energy,”](#) European Commission, March 8, 2022.
- 22 [“REPowerEU: Joint European action for more affordable, secure and sustainable energy,”](#) European Commission, March 2022.
- 23 European Commission website, [“Delivering the European Green Deal.”](#)
- 24 Proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast), COM/2021/804 final; Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen, COM/2021/803 final.
- 25 [“Joint Statement between the European Commission and the United States on European Energy Security,”](#) European Commission, March 25, 2022.
- 26 [“Energy Security: Commission hosts first meeting of EU Energy Purchase Platform to secure supply of gas, LNG and hydrogen,”](#) European Commission, April 8, 2022.
- 27 [“Central eastern Europe energy hub to coordinate EU gas supplies,”](#) Euractiv, June 29, 2022.
- 28 See [“Gemeinschaftlicher Gaseinkauf der EU kommt nicht vom Fleck,”](#) (“Community gas purchasing by the EU is not getting off the ground”), *Der Standard*, June 27, 2022.
- 29 €225 billion is already available under the Recovery and Resilience Facility (“RRF”) introduced during the COVID-19 pandemic. The Commission has adopted guidance on how Member States can adopt their Recovery and Resilience Plans to accommodate REPowerEU. See Commission Notice, [“Guidance on Recovery and Resilience Plans in the context of REPowerEU.”](#)
- 30 Regulation (EU) 2020/852 of the European Parliament and of the Council of June 18, 2020, on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.
- 31 [“Taxonomy: MEPs do not object to inclusion of gas and nuclear activities,”](#) European Parliament, July 6, 2022.

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