

PAW CONFERENCE

Energy security and energy independence catalyzed by the war in Ukraine

A multi-disciplinary panel of speakers discussed the practical, economic, and legal ramifications of energy security and energy independence in the context of the war in Ukraine during *Paris Arbitration Week*. The panel consisted of **Tim Gould**, chief economist at the *International Energy Agency (IEA)*, **Bob Broxson**, energy expert at *Secretariat*, **Alexander Nesterov**, former vice-president of *TNK-BP*, and **Meike von Levetzow**, partner at *Noerr*. The discussion was moderated by **Maria Kostytska**, partner at *Winston & Strawn*.

Tim Gould presented the IEA's "A 10-Point Plan to Reduce the European Union's Reliance on Russian Natural Gas", which was published on March 3, 2022. The Plan envisaged, *inter alia*: no new gas supply contracts with Russia; replacement of Russian gas supplies from alternative sources; minimum gas storage requirements; acceleration of deployment of new wind and solar projects; power generation from bioenergy and nuclear sources, etc. Tim Gould stated that "reducing reliance on Russian gas will not be simple, but a concerted and sustained policy effort across multiple sectors, alongside strong international collaboration, could bring down imports by one-third within one year".

Bob Broxson discussed the role of global and particularly U.S. liquefied natural gas (LNG) exports in substituting or supplementing Russian natural gas exports to Europe. He mentioned that while the U.S. had considerable natural gas capacity, complete replacement of the Russian natural gas in Europe could be hindered by economic, infrastructure, regulatory and legal factors. On the U.S. side, he mentioned that the United States does not have a national gas company and that private

companies sell gas to the market, and that for U.S. private companies to sell LNG to Europe, Europe would have to be the highest bidder on the market. He also referred to delays in putting in place the needed gas pipeline infrastructure in certain areas in the United States. On the European side, Bob Broxson underlined that even if Europe had the needed regasification capacity, it did not dispose of a sufficiently integrated gas network that would enable the transfer of gas across the continent.

Alexander Nesterov drew upon his experience in gas distribution to discuss the extent of Europe's current dependency on Russian oil and the potential for its replacement from alternative sources. In his view, one option, the easiest solution and the "lesser evil" would be to buy oil and oil products from Iran or Venezuela, provided that the applicable sanctions are lifted. Another solution would be for the OPEC countries to increase their quotas of supply of oil and oil products. If Europe were to turn to alternative sources of oil supply, Russia would need to sell its oil to other buyers, such as China and India. Considering that the Chinese are "tough negotiators" that would insist on price reductions, this change would actually put downward pressure on oil prices.

Meike von Levetzow discussed the potential disputes arising from the suspension and non-certification of the Nord Stream 2 project, including treaty claims, contract claims, and claims under German law before German courts. In her opinion, the Nord Stream 2 AG, incorporated in Switzerland, might initiate ECT claims against Germany or the European Union for damages caused by administrative decisions suspending the project. Financial

companies that invested in the project might also be considered as potential claimants, since they are likewise protected under the ECT. Claims in relation to the legality of these decisions under German or European law would need to be initiated before German courts or a European judicial body. Commercial arbitrations based on contracts, particularly construction and gas distribution contracts, could not be excluded. Complex issues may arise due to insolvency of the main operating company of Nord Stream 2 and in relation to enforcement of any future awards. However, Meike von Levezow's take-away is that *"planning for energy security is much more important at the moment than thinking about potential disputes."* *"There is not only a necessity but also ample possibility to increase European energy independence, but it takes political and regulatory will, in Europe, in the United States and around the globe."*

The panel discussion was followed by a Q&A session moderated by **Maria Kostytska**. She raised a question as to whether the newly adopted Presidential Decree in Russia requiring payment for gas in rubles could be construed as a change not only in currency but also in price, such that could trigger "price reopener" clauses or renegotiation of other contractual terms, such as duration or volumes. Some of the participants mentioned that, from the legal standpoint, the contractual price probably would not change, since the Decree provided for the exchange of foreign currency into rubles at the end of the payment chain. **Alexander Nesterov** observed that this measure would not change much for the European counterparts or consumers, since the payment for Russian gas would be made in foreign currency and then exchanged by Gazprombank into ruble equivalent, and such system had already existed before the Decree, but only in relation to 80% of proceeds from gas sales. ■

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